

# **AIA**® Document A121™ CMc – 2003 and AGC Document 565

## ***Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor***

### **AGREEMENT**

made as of the 14th day of February in the year of 2008  
(In words, indicate day, month and year)

**BETWEEN** the Owner:  
(Name and address)

Port Neches-Groves Independent School District  
Port Neches, Texas

and the Construction Manager:  
(Name and address)

H.B. Neild & Sons, Inc.  
5950 Walden Road  
P. O. Box 22555  
Beaumont, Texas 77720-2555

The Project is:  
(Name, address and brief description)

Replacement of the Port Neches Middle School and Groves Middle School  
Port Neches, Texas  
Groves, Texas

The Architect is:  
(Name and address)

SHW Group LLP  
20 East Greenway Plaza, Suite 200  
Houston, Texas 77046

The Owner and Construction Manager agree as set forth below:

### **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 1997 Edition of AIA Document A201, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 RELATIONSHIP OF PARTIES**

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

### **§ 1.2 GENERAL CONDITIONS**

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™–1997, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™–shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™–1997 shall mean the Construction Manager.

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

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

### **§ 2.1 PRECONSTRUCTION PHASE**

#### **§ 2.1.1 PRELIMINARY EVALUATION**

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

#### **§ 2.1.2 CONSULTATION**

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

#### **§ 2.1.3 PRELIMINARY PROJECT SCHEDULE**

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

#### **§ 2.1.4 PHASED CONSTRUCTION**

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

#### **§ 2.1.5 PRELIMINARY COST ESTIMATES**

**§ 2.1.5.1** When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

**§ 2.1.5.2** When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

**§ 2.1.5.3** When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

**§ 2.1.5.4** If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

#### **§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS**

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 LONG-LEAD-TIME ITEMS**

The Construction Manager shall recommend to the Owner and 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 acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

#### **§ 2.1.8 EXTENT OF RESPONSIBILITY**

The Construction Manager 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 shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

#### **§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

#### **§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME**

**§ 2.2.1** When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

**§ 2.2.2** As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of

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the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

#### **§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE**

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

- .1** A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- .2** A list of allowances and a statement of their basis.
- .3** 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 contained in the Drawings and Specifications.
- .4** The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
- .5** The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

**§ 2.2.7** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

**§ 2.2.8** Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 2.2.9** The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

**§ 2.2.10** The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

#### **§ 2.3 CONSTRUCTION PHASE**

##### **§ 2.3.1 GENERAL**

**§ 2.3.1.1** The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- (2) the Owner's first authorization to the Construction Manager to:
  - (a) award a subcontract, or
  - (b) undertake construction Work with the Construction Manager's own forces, or
  - (c) issue a purchase order for materials or equipment required for the Work.

### **§ 2.3.2 ADMINISTRATION**

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 2.3.2.2** If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 2.3.2.3** Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

**§ 2.3.2.4** The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

**§ 2.3.2.5** Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™–1997, including the Owner's occupancy requirements.

**§ 2.3.2.6** The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

**§ 2.3.2.7** 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 at regular intervals.

### **§ 2.4 PROFESSIONAL SERVICES**

Section 3.12.10 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

### **§ 2.5 HAZARDOUS MATERIALS**

Section 10.3 of A201™–1997 shall apply to both the Preconstruction and Construction Phases.

## **ARTICLE 3 OWNER'S RESPONSIBILITIES**

### **§ 3.1 INFORMATION AND SERVICES**

**§ 3.1.1** The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

**§ 3.1.2** The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager.

**§ 3.1.3** The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

### **§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS**

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

**§ 3.1.4.1** Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

**§ 3.1.4.2** Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining 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 information on the survey shall be referenced to a project benchmark.

**§ 3.1.4.3** The services of a geotechnical engineer when such services are requested by the Construction Manager. 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, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

**§ 3.1.4.4** Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

**§ 3.1.4.5** The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

### **§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE**

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™-1997, the Architect does not have such authority.

### **§ 3.3 ARCHITECT**

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA® Document B151™-1997, *Abbreviated Standard Form of Agreement Between Owner and Architect* current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described

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in B151™-1997, requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

#### § 3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

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

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

#### § 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

| (Paragraphs deleted) Pre-Construction Phase fee as a percentage of the cost of the work 0.0%

| § 4.1.2 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

| (Paragraphs deleted)

#### § 4.2 PAYMENTS

| § 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

| § 4.2.2 Payments are due and payable within 45 ( 45 ) days from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

| (Paragraphs deleted)

| Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

#### § 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

| (Paragraphs deleted) Construction Phase fee shall be paid as a percentage of the cost of work at 5.0%.



## **§ 5.2 GUARANTEED MAXIMUM PRICE**

**§ 5.2.1** The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

| Not to exceed Forty-Three Million, Twelve Thousand and no/100 Dollars (\$43,012,000).

| The Construction Manager shall not share approved and accepted cost savings proposals.

## **§ 5.3 CHANGES IN THE WORK**

**§ 5.3.1** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in Section 7.3.3 of A201™–1997.

**§ 5.3.2** 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 A201™–1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™–1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. 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.

**§ 5.3.3** In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™–1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement.

**§ 5.3.4** If no specific provision is made in Section 5.1.1 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 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

## **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 those customarily 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 this Article 6.

### **§ 6.1.2 LABOR COSTS**

- .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 agreement, at off-site workshops
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

(Paragraphs deleted)

- .3 Wages and salaries of the Construction Manager'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.
- .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 that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

### § 6.1.3 SUBCONTRACT COSTS

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

### § 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- .2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.
- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

### § 6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.  
(Paragraphs deleted)
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .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.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.
- .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 or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™-1997 or other provisions of the Contract Documents.
- .6 Data processing costs related to the Work.
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.

- .9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

#### **§ 6.1.7 OTHER COSTS**

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

#### **§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK**

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

- .1 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 10.6 of A201™-1997.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

**§ 6.1.9** The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of AIA or A201™-1997, 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 6.2.

#### **§ 6.2 COSTS NOT TO BE REIMBURSED**

**§ 6.2.1** The Cost of the Work shall not include:

- .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 Sections 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- .6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.
- .9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

#### **§ 6.3 DISCOUNTS, REBATES AND REFUNDS**

**§ 6.3.1** 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 therefor 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 secured.

**§ 6.3.2** Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **§ 6.4 ACCOUNTING RECORDS**

**§ 6.4.1** The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

## **ARTICLE 7 CONSTRUCTION PHASE**

### **§ 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:

Determined by all parties at the Pre-construction conference after receiving the approved Payment Application.

**§ 7.1.3** Provided an Application for Payment is received by the Architect not later than the      day of a month, the Owner shall make payment to the Construction Manager not later than 45 days after receiving the approved Payment Application. 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.

**§ 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 (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based upon 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 completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage 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 which 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 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 may be included as provided in Section 7.3.8 of A201™-1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

- .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 ( 5.00% ). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 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 accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™–1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent ( 5.00% ). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

§ 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 accountants acting in the sole interest of the Owner.

## § 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™–1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™–1997 or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants 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 accountants 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 accountants, 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 A201™-1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™-1997.

**§ 7.2.4** If the Owner's accountants 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 proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants 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.

**§ 7.2.5** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## **ARTICLE 8 INSURANCE AND BONDS**

### **§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER**

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™-1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

**§ 8.1.1** Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

**§ 8.1.2** Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards): Refer to Attachment 1 of this agreement incorporated from the Request for Proposals for Replacement of the Port Neches Middle School & Groves Middle School for Port Neches-Groves Independent School District.

Each Occurrence  
General Aggregate  
Personal and Advertising Injury  
Products-Completed Operations Aggregate

(Paragraphs deleted)

(Paragraphs deleted)

### **§ 8.2 INSURANCE REQUIRED OF THE OWNER**

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™-1997. Such insurance shall be written for not less than the following limits, or greater if required by law: Refer to Amendments to the Standard Form of Agreement Between Owner and Construction Manager AIA Document A121(2003).

(Paragraphs deleted)

Init.

### **§ 8.3 PERFORMANCE BOND AND PAYMENT BOND**

**§ 8.3.1** The Construction Manager shall (Insert "shall" or "shall not") furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to One hundred percent ( 100.00% ) of the Contract Sum in accordance with the Texas Education Code 440.038(e)..

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

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

### **§ 9.1 DISPUTE RESOLUTION**

**§ 9.1.1** During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™-1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

### **§ 9.2 OTHER PROVISIONS**

**§ 9.2.1** Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™-1997, *General Conditions of the Contract for Construction*.

### **§ 9.2.2 EXTENT OF CONTRACT**

This Contract, which includes this Agreement and the other documents incorporated herein by reference, 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 the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

### **§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS**

Article 1.6 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

### **§ 9.2.4 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

### **§ 9.2.5 ASSIGNMENT**

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of A201™-1997, 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.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

**§ 10.1.1** Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™-1997.

**§ 10.1.2** If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

**§ 10.1.3** If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager.

Init.

- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager'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 at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

#### **§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™-1997.

**§ 10.2.1** In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™-1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™-1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

#### **§ 10.3 SUSPENSION**

The Work may be suspended by the Owner as provided in Article 14 of A201™-1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™-1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

### **ARTICLE 11 OTHER CONDITIONS AND SERVICES**

The following Attachments are incorporated as part of this agreement.

- 11.1** Attachment 1 – Insurance Requirements
- 11.2** Attachment 2 – List of Drawings
- 11.3** Attachment 3 - Amendments to the Standard Form of Agreement Between Owner and Construction Manager, AIA Document A121 (2003), are incorporated as part of this agreement.



11.4 AIA Document A201 -1997 General Conditions of the Contract for Construction.

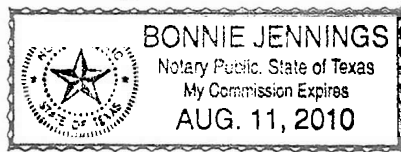
11.5 Attachment 4 - Amendments to General Conditions of the Contract for Construction, AIA Document A201-1997, are incorporated as part of this agreement.

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

OWNER

Dr. Lani Randall  
(Signature)  
Dr. Lani Randall  
(Printed name and title)  
2-15-08  
Date

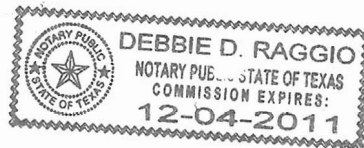
Bonnie Jennings  
ATTEST



CONSTRUCTION MANAGER

Thomas B. Mchild  
(Signature)  
Thomas B. Mchild  
(Printed name and title)  
2/14/08  
Date

Debbie D. Raggio  
ATTEST



## Attachment 1

### Insurance Requirements

The Contractor shall provide and maintain insurance in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located for the work covered in this contract. The minimum insurance coverage shall be as follows. The contractor shall provide a certificate showing availability of the coverage.

Type of Coverage	Limits of Liability	
A. Workmen's Compensation:	Statutory	
B. Employer's Liability:	\$100,000	\$300,000
C. Comprehensive General Liability		
1. Bodily Injury	\$1,000,000	\$1,000,000
	Each Occurrence	Aggregate
2. Property Damage	\$1,000,000	\$1,000,000
	Each Occurrence	Aggregate
D. Comprehensive Automobile Liability		
1. Bodily Injury	\$500,000	\$500,000
	Each Person	Each Occurrence
2. Property Damage	\$300,000	
	Each Occurrence	

#### E. Owner's Protective Liability Insurance Policy:

The Contractor shall obtain at his expense an Owner's Protective Liability Insurance naming the Owner, his employees and the Architect/Engineer and his authorized representatives as insured with the following limits:

1. Bodily Injury	\$1,000,000	\$1,000,000
	Each Person	Each Occurrence
2. Property Damage	\$1,000,000	\$1,000,000
	Each Occurrence	Aggregate

The immunity of the Owner shall not be a defense from the insurance carrier.

#### F. Builder's Risk Insurance:

The Contractor shall obtain at his expense Builder's Risk Insurance against the perils of fire, lightning, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, and malicious mischief, in the amount of insurance equal at all times to the insurable value of materials delivered and labor performed. The policy shall be issued jointly in the names of the Contractor, his Sub-Contractor and the Owner, as their interests may appear. The policy shall have endorsements as follows:

1. This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises.
2. Loss, if any, shall be adjustable with and payable to the Owner as Trustee for whom it May Concern.

#### G. Property Insurance:

1. The Contractor shall purchase and maintain property insurance in the amount of the initial Construct Sum as well as subsequent modifications thereto for the entire work at the site on a replacement cost basis without voluntary deductibles.

#### H. Performance Bond and Payment Bond:

1. The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising there under.
2. The surety companies shall be acceptable to the Owner and licensed admitted carriers in the State of Texas. The surety shall be listed with appropriate underwriting limitation, on the U.S. Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies).

3. Each Bond shall be of penal sum equal to 100% of the Contract Sum and shall be compatible with the provisions of the governing authority. Bonds shall remain in force throughout the Warranty period.

I. Umbrella Liability Policy:

For Projects including construction of an addition, or renovation, to an existing facility, wherein the Owner continues operation of, or personnel within said existing facility; the Contractor shall obtain, at his expense, an Excess Liability Umbrella Policy in the amount of not less than \$1,000,000.

Certificates of Insurance:

Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to Commencement of the work. Submit four (4) copies of all certificates of insurance in order that one copy may be attached to each copy of the Contract Agreement. These coverages afforded under the policies shall not be cancelled until at least thirty (30) days prior written notice has been given to the Owner.

## ATTACHMENT 2

### REPLACEMENT FOR THE PORT NECHES MIDDLE SCHOOL AND GROVES MIDDLE SCHOOL

#### GROVES MIDDLE SCHOOL

G001 COVER SHEET  
G002 INDEX OF DRAWINGS  
G111 CODE REVIEW  
G112 CODE REVIEW  
G121 EGRESS PLAN  
G122 EGRESS PLAN  
G151 WALL TYPES

C002 GENERAL NOTES  
C003 OVERALL CIVIL SITE PLAN  
C004-1 CIVIL SITE PLAN PHASE I  
C005-1 DEMOLITION PLAN PHASE I  
C101-1 DIMENSIONAL LAYOUT PHASE I (SHEET 1 OF 4)  
C102-1 DIMENSIONAL LAYOUT PHASE I (SHEET 2 OF 4)  
C103-1 DIMENSIONAL LAYOUT PHASE I (SHEET 3 OF 4)  
C104-1 DIMENSIONAL LAYOUT PHASE I (SHEET 4 OF 4)  
C201-1 GRADING PLAN PHASE I (SHEET 1 OF 4)  
C202-1 GRADING PLAN PHASE I (SHEET 2 OF 4)  
C203-1 GRADING PLAN PHASE I (SHEET 3 OF 4)  
C204-1 GRADING PLAN PHASE I (SHEET 4 OF 4)  
C301-1 STORM SEWER PLAN PHASE I (SHEET 1 OF 4)  
C302-1 STORM SEWER PLAN PHASE I (SHEET 2 OF 4)  
C303-1 STORM SEWER PLAN PHASE I (SHEET 3 OF 4)  
C304-1 STORM SEWER PLAN PHASE I (SHEET 4 OF 4)  
C305-1 STORM WATER POLLUTION PREVENTION PLAN PHASE I  
C306-1 DRAINAGE AREA MAP PHASE I  
C307-1 DRAINAGE AREA MAP CALCULATION PHASE I  
C401-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 1 OF 4)  
C402-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 2 OF 4)  
C403-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 3 OF 4)  
C404-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 4 OF 4)  
C501-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 1 OF 4)  
C502-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 2 OF 4)  
C503-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 3 OF 4)  
C504-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 4 OF 4)  
  
AD01 DEMO SITE PLAN  
AD11 DEMOLITION PLAN  
AS01 SITE PLAN

AS02 SITE PLAN

S001	GENERAL NOTES
S111	PARTIAL FOUNDATION PLAN - AREA "A"
S112	PARTIAL FOUNDATION PLAN - AREA "B"
S113	PARTIAL FOUNDATION PLAN - AREA "C"
S114	PARTIAL FOUNDATION PLAN - AREA "D"
S115	PARTIAL FOUNDATION PLAN - AREA "E"
S116	PARTIAL FOUNDATION PLAN - AREA "F"
S117	PARTIAL FOUNDATION PLAN - AREA "G"
S118	PARTIAL FOUNDATION PLAN - AREA "H"
S119	PARTIAL FOUNDATION PLAN - AREA "J"
S121	MEZZANINE FRAMING PLAN - AREA "A"
S128	MEZZANINE FRAMING PLAN - AREA "H"
S131	ROOF FRAMING PLAN - AREA "A"
S132	ROOF FRAMING PLAN - AREA "B"
S133	ROOF FRAMING PLAN - AREA "C"
S134	ROOF FRAMING PLAN - AREA "D"
S135	ROOF FRAMING PLAN - AREA "E"
S136	ROOF FRAMING PLAN - AREA "F"
S137	ROOF FRAMING PLAN - AREA "G"
S138	ROOF FRAMING PLAN - AREA "H"
S139	PARTIAL ROOF FRAMING PLAN
S301	TYPICAL FOUNDATION DETAILS
S302	TYPICAL FOUNDATION DETAILS
S401	TYPICAL MASONRY DETAILS
S501	FLOOR FRAMING DETAILS
S502	ROOF FRAMING DETAILS
S502	ROOF FRAMING DETAILS
S551	WIND BRACE DETAILS
A101	OVERALL FLOOR PLAN
A111	AREA "A" FLOOR PLAN
A112	AREA "B" FLOOR PLAN
A113	AREA "C" FLOOR PLAN
A114	AREA "D" FLOOR PLAN
A115	AREA "E" FLOOR PLAN
A116	AREA "F" FLOOR PLAN
A117	AREA "G" FLOOR PLAN
A118	AREA "H" FLOOR PLAN
A119	AREA "J" FLOOR PLAN
A121	CLERESTORY AND MECHANICAL MEZZANINE PLAN
A122	CLERESTORY AND MECHANICAL MEZZANINE PLAN
A151	OVERALL ROOF PLAN
A152	ROOF PLAN

A153	ROOF PLAN
A201	EXTERIOR ELEVATIONS
A202	EXTERIOR ELEVATIONS
A203	EXTERIOR ELEVATIONS
A211	BUILDING SECTIONS
A212	BUILDING SECTIONS
A213	BUILDING SECTIONS
A214	BUILDING SECTIONS
A301	EXTERIOR WALL SECTIONS
A302	EXTERIOR WALL SECTIONS
A303	EXTERIOR WALL SECTIONS
A304	EXTERIOR WALL SECTIONS
A311	TYPICAL ROOF DETAILS
A321	SECTION DETAILS
A322	SECTION DETAILS
A323	SECTION DETAILS
A331	TYPICAL MASONRY - PLAN AND JOINT DETAILS
A332	TYPICAL STEEL STUD - PLAN AND JOINT DETAILS
A401	ENLARGED TOILET ROOM PLANS
A402	ENLARGED TOILET ROOM PLANS
A431	MISCELLANEOUS INTERIOR DETAILS
A511	DOOR SCHEDULES AREA "A", "B", "C", "D", AND "E"
A512	DOOR SCHEDULES AREA "F", "G", "H", AND "J"
A514	DOOR AND FRAME TYPES
A515	DOOR AND FRAME TYPES
A516	TYPICAL HEAD/JAMB/SILL DETAILS
A517	TYPICAL HEAD/JAMB/SILL DETAILS
A518	TYPICAL HEAD/JAMB/SILL DETAILS
A521	ROOM FINISH SCHEDULE AREA "A", "B", "C", AND "D",
A522	ROOM FINISH SCHEDULE AREA "E", "F", "G", "H" AND "J"
A531	COLOR SCHEDULE & NOTES
A601	OVERALL RCP
A611	AREA "A" RCP
A612	AREA "B" RCP
A613	AREA "C" RCP
A614	AREA "D" RCP

A615 AREA "E" RCP  
A616 AREA "F" RCP  
A617 AREA "G" RCP  
A618 AREA "H" RCP  
A619 AREA "J" RCP

A811 INTERIOR ELEVATIONS  
A812 INTERIOR ELEVATIONS  
A813 INTERIOR ELEVATIONS  
A814 INTERIOR ELEVATIONS  
A815 INTERIOR ELEVATIONS  
A816 INTERIOR ELEVATIONS

A911 FF&E - AREA "A"  
A912 FF&E - AREA "B"  
A913 FF&E - AREA "C"  
A914 FF&E - AREA "D"  
A915 FF&E - AREA "E"  
A916 FF&E - AREA "F"  
A917 FF&E - AREA "G"  
A918 FF&E - AREA "H"  
A919 FF&E - AREA "J"

MEPS01 MEP SITE PLAN

M111 LEVEL 1 MECHANICAL PLAN - AREA-A  
M112 LEVEL 1 MECHANICAL PLAN - AREA-B  
M113 LEVEL 1 MECHANICAL PLAN - AREA-C  
M114 LEVEL 1 MECHANICAL PLAN - AREA-D  
M115 LEVEL 1 MECHANICAL PLAN - AREA-E  
M116 LEVEL 1 MECHANICAL PLAN - AREA-F  
M116 LEVEL 1 MECHANICAL PLAN - AREA-G  
M116 LEVEL 1 MECHANICAL PLAN - AREA-H  
M116 LEVEL 1 MECHANICAL PLAN - AREA-J

M120 LEVEL 1 PLUMBING PLAN - AREA-A  
M121 LEVEL 1 PLUMBING PLAN - AREA-A

M211 MECHANICAL DETAILS AND SCHEDULES  
M212 MECHANICAL DETAILS AND SCHEDULES  
M213 MECHANICAL DETAILS AND SCHEDULES

E001 ELECTRICAL SYMBOL LEGEND

EL111 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-A  
EL112 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-B

EL113 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-C  
EL114 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-D  
EL115 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-E  
EL116 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-F  
EL117 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-G  
EL118 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-H  
EL119 LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-J

EP111 LEVEL 1 ELECTRICAL POWER PLAN - AREA-A  
EP112 LEVEL 1 ELECTRICAL POWER PLAN - AREA-B  
EP113 LEVEL 1 ELECTRICAL POWER PLAN - AREA-C  
EP114 LEVEL 1 ELECTRICAL POWER PLAN - AREA-D  
EP115 LEVEL 1 ELECTRICAL POWER PLAN - AREA-E  
EP116 LEVEL 1 ELECTRICAL POWER PLAN - AREA-F  
EP117 LEVEL 1 ELECTRICAL POWER PLAN - AREA-G  
EP118 LEVEL 1 ELECTRICAL POWER PLAN - AREA-H  
EP119 LEVEL 1 ELECTRICAL POWER PLAN - AREA-J

P111 LEVEL 1 PLUMBING PLAN - AREA-A  
P112 LEVEL 1 PLUMBING PLAN - AREA-B  
P113 LEVEL 1 PLUMBING PLAN - AREA-C  
P114 LEVEL 1 PLUMBING PLAN - AREA-D  
P115 LEVEL 1 PLUMBING PLAN - AREA-E  
P116 LEVEL 1 PLUMBING PLAN - AREA-F  
P117 LEVEL 1 PLUMBING PLAN - AREA-G  
P118 LEVEL 1 PLUMBING PLAN - AREA-H  
P119 LEVEL 1 PLUMBING PLAN - AREA-J

P211 LEVEL 1 PLUMBING PLAN - AREA-E

P311 PLUMBING DETAILS  
P312 PLUMBING DETAILS

K101 FOODSERVICE EQUIPMENT PLAN  
K102 FOODSERVICE EQUIPMENT SPECIAL CONDITIONS PLAN  
K103 FOODSERVICE EQUIPMENT PLUMBING CONNECTIONS PLAN  
K104 FOODSERVICE EQUIPMENT ELECTRICAL CONNECTIONS PLAN

#### PORT NECHES MIDDLE SCHOOL

A001 COVER SHEET  
A021 CODE REVIEW  
A022 CODE REVIEW  
A023 CODE REVIEW



SV01 TOPOGRAPHIC SURVEY  
C002 GENERAL NOTES  
C003 OVERALL CIVIL SITE PLAN  
C004-1 CIVIL SITE PLAN PHASE I  
C005-1 DEMOLITION PLAN PHASE I  
C101-1 DIMENSIONAL LAYOUT PHASE I (SHEET 1 OF 4)  
C102-1 DIMENSIONAL LAYOUT PHASE I (SHEET 2 OF 4)  
C103-1 DIMENSIONAL LAYOUT PHASE I (SHEET 3 OF 4)  
C104-1 DIMENSIONAL LAYOUT PHASE I (SHEET 4 OF 4)  
C201-1 GRADING PLAN PHASE I (SHEET 1 OF 4)  
C202-1 GRADING PLAN PHASE I (SHEET 2 OF 4)  
C203-1 GRADING PLAN PHASE I (SHEET 3 OF 4)  
C204-1 GRADING PLAN PHASE I (SHEET 4 OF 4)  
C301-1 STORM SEWER PLAN PHASE I (SHEET 1 OF 4)  
C302-1 STORM SEWER PLAN PHASE I (SHEET 2 OF 4)  
C303-1 STORM SEWER PLAN PHASE I (SHEET 3 OF 4)  
C304-1 STORM SEWER PLAN PHASE I (SHEET 4 OF 4)  
C305-1 STORM WATER POLLUTION PREVENTION PLAN PHASE I  
C306-1 DRAINAGE AREA MAP PHASE I  
C307-1 DRAINAGE AREA MAP CALCULATION PHASE I  
C401-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 1 OF 4)  
C402-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 2 OF 4)  
C403-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 3 OF 4)  
C404-1 WATER & SANITARY SEWER PLAN PHASE I (SHEET 4 OF 4)  
C501-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 1 OF 4)  
C502-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 2 OF 4)  
C503-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 3 OF 4)  
C504-1 PAVEMENT JOINTING LAYOUT PHASE I (SHEET 4 OF 4)

AD11 DEMOLITION SITE PLAN  
AS01 OVERALL SITE PLAN  
AS11 ENLARGED SITE PLAN

S001 GENERAL NOTES  
S111 PARTIAL FOUNDATION PLAN - AREA "A"  
S112 PARTIAL FOUNDATION PLAN - AREA "B"  
S113 PARTIAL FOUNDATION PLAN - AREA "C"  
S114 PARTIAL FOUNDATION PLAN - AREA "D"  
S115 PARTIAL FOUNDATION PLAN - AREA "E"  
S116 PARTIAL FOUNDATION PLAN - AREA "F"  
S117 PARTIAL FOUNDATION PLAN - AREA "G"  
S122 MEZZANINE PLAN - AREA "B"  
S126 MEZZANINE PLAN - AREA "F"  
S131 ROOF FRAMING PLAN - AREA "A"  
S132 ROOF FRAMING PLAN - AREA "B"

S133	ROOF FRAMING PLAN - AREA "C"
S134	ROOF FRAMING PLAN - AREA "D"
S135	ROOF FRAMING PLAN - AREA "E"
S136	ROOF FRAMING PLAN - AREA "F"
S137	ROOF FRAMING PLAN - AREA "G"
S301	TYPICAL FOUNDATION DETAILS
S302	TYPICAL FOUNDATION DETAILS
S401	TYPICAL MASONRY DETAILS
S501	STEEL DETAILS
S551	WIND BRACE DETAILS

A101	OVERALL FLOOR PLAN
A102	MEZZANINE PLAN
A111	ENLARGED AREA 'A'
A112	ENLARGED AREA 'B'
A113	ENLARGED AREA 'C'
A114	ENLARGED AREA 'D'
A115	ENLARGED AREA 'E'
A116	ENLARGED AREA 'F'
A117	ENLARGED AREA 'G'
A151	ROOF PLAN

A201	EXTERIOR BUILDING ELEVATIONS
A202	EXTERIOR BUILDING ELEVATIONS
A211	BUILDING SECTIONS
A212	BUILDING SECTIONS
A401	ENLARGED TOILET ROOM PLANS
A402	ENLARGED TOILET ROOM PLANS

A501	WALL TYPES
A511	DOOR SCHEDULES
A512	DOOR AND WINDOW FRAMES
A513	DOOR AND WINDOW FRAMES
A516	HEAD, JAMB AND SILL DETAILS
A517	HEAD, JAMB AND SILL DETAILS
A518	HEAD, JAMB AND SILL DETAILS

A811	INTERIOR ELEVATIONS
A812	INTERIOR ELEVATIONS
A813	INTERIOR ELEVATIONS
A814	INTERIOR ELEVATIONS
A815	INTERIOR ELEVATIONS

A911	ENLARGED AREA 'A' CASEWORK
A912	ENLARGED AREA 'B' CASEWORK

A913	ENLARGED AREA 'C' CASEWORK
A914	ENLARGED AREA 'D' CASEWORK
A915	ENLARGED AREA 'E' CASEWORK
A916	ENLARGED AREA 'F' CASEWORK
A917	ENLARGED AREA 'G' CASEWORK
A918	CASEWORK ELEVATIONS
A920	CASEWORK ELEVATIONS
A921	CASEWORK ELEVATIONS
A922	CASEWORK ELEVATIONS

#### MEPS01 MEP SITE PLAN

M111	LEVEL 1 MECHANICAL PLAN - AREA-A
M112	LEVEL 1 MECHANICAL PLAN - AREA-B
M113	LEVEL 1 MECHANICAL PLAN - AREA-C
M114	LEVEL 1 MECHANICAL PLAN - AREA-D
M115	LEVEL 1 MECHANICAL PLAN - AREA-E
M116	LEVEL 1 MECHANICAL PLAN - AREA-F
M116	LEVEL 1 MECHANICAL PLAN - AREA-G
M116	LEVEL 1 MECHANICAL PLAN - AREA-H
M116	LEVEL 1 MECHANICAL PLAN - AREA-J

M120	LEVEL 1 PLUMBING PLAN - AREA-A
M121	LEVEL 1 PLUMBING PLAN - AREA-A

M211	MECHANICAL DETAILS AND SCHEDULES
M212	MECHANICAL DETAILS AND SCHEDULES
M213	MECHANICAL DETAILS AND SCHEDULES

#### E001 ELECTRICAL SYMBOL LEGEND

EL111	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-A
EL112	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-B
EL113	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-C
EL114	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-D
EL115	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-E
EL116	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-F
EL117	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-G
EL118	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-H
EL119	LEVEL 1 ELECTRICAL LIGHTING PLAN - AREA-J

EP111	LEVEL 1 ELECTRICAL POWER PLAN - AREA-A
EP112	LEVEL 1 ELECTRICAL POWER PLAN - AREA-B
EP113	LEVEL 1 ELECTRICAL POWER PLAN - AREA-C
EP114	LEVEL 1 ELECTRICAL POWER PLAN - AREA-D
EP115	LEVEL 1 ELECTRICAL POWER PLAN - AREA-E

EP116 LEVEL 1 ELECTRICAL POWER PLAN - AREA-F  
EP117 LEVEL 1 ELECTRICAL POWER PLAN - AREA-G  
EP118 LEVEL 1 ELECTRICAL POWER PLAN - AREA-H  
EP119 LEVEL 1 ELECTRICAL POWER PLAN - AREA-J

P111 LEVEL 1 PLUMBING PLAN - AREA-A  
P112 LEVEL 1 PLUMBING PLAN - AREA-B  
P113 LEVEL 1 PLUMBING PLAN - AREA-C  
P114 LEVEL 1 PLUMBING PLAN - AREA-D  
P115 LEVEL 1 PLUMBING PLAN - AREA-E  
P116 LEVEL 1 PLUMBING PLAN - AREA-F  
P117 LEVEL 1 PLUMBING PLAN - AREA-G  
P118 LEVEL 1 PLUMBING PLAN - AREA-H  
P119 LEVEL 1 PLUMBING PLAN - AREA-J

P211 LEVEL 1 PLUMBING PLAN - AREA-E

P311 PLUMBING DETAILS  
P312 PLUMBING DETAILS

K101 FOODSERVICE EQUIPMENT PLAN  
K102 FOODSERVICE EQUIPMENT SPECIAL CONDITIONS PLAN  
K103 FOODSERVICE EQUIPMENT PLUMBING CONNECTIONS PLAN  
K104 FOODSERVICE EQUIPMENT ELECTRICAL CONNECTIONS PLAN

Attachment 3

**AMENDMENTS TO STANDARD FORM OF  
AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER  
AIA DOCUMENT A121 CMC (2003)**

DATE: February 14, 2008

CONTRACT DATE: February 14, 2008

OWNER:

Port Neches-Groves Independent School District  
Port Neches, Texas

CONSTRUCTION MANAGER:

H. B. Neild & Sons, Inc.  
5950 Walden Road  
P. O. Box 22555  
Beaumont, Texas 77720-2555

PROJECT:

Replacement of the Port Neches Middle School and Groves Middle School  
Port Neches, Texas  
Groves, Texas

ARCHITECT:

SHW Group, LLP  
20 East Greenway Plaza, Suite 200  
Houston, Texas 77046

PROGRAM MANAGER:

LANWalton  
1722 Broadmoor, Suite 100  
Bryan, Texas 77802

WHEREAS, Independent School District (hereinafter referred to as "Owner") and (hereinafter referred to as "Construction Manager") desire to enter into an Agreement under which Construction Manager will perform services relating to the above-named projects on behalf of Owner;

WHEREAS Owner and Construction Manager have agreed to enter into AIA Document A121CMC-2003 and AGC Document 565, Standard Form of Agreement Between Owner and Construction Manager (2003 edition), as the basic form for that Agreement; and

WHEREAS certain terms and conditions of that Agreement need to be modified to comply with applicable laws and policies affecting Owner and Construction Manager in the construction of these projects, Owner and Construction Manager hereby agree to the following amendments to the Agreement:

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

OWNER

Dr. Lani Randall  
(Signature)

CONSTRUCTION MANAGER

Thomas B. Neild  
(Signature)

Dr. Lani Randall, Superintendent

Thomas B. Neild Vice Pres

(Printed name and title)

Port Neches-Groves  
Independent School District

2-15-08  
Date

(Printed name and title)

2/14/08  
Date

The following provisions amend, replace, modify, and/or supplement the provisions of the "Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor," AIA Document A121 CMc (2003) ("Agreement"), and control such provisions to the extent of any conflict. Where a portion of the Agreement is not amended, replaced, modified and/or supplemented by these Amendments, the unaltered portions of the Agreement shall remain in effect.

1. Paragraph 1.1 shall be amended as follows:

After the third "Owner" in the first sentence add "to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations, as approved by the Board and set forth in the Contract Documents."

In the second sentence after "shall furnish construction" add "services (if allowed in accordance with law)" and after "services, and" add "shall"

At the beginning of the third sentence after "Owner" add "and the Construction Manager" and after the second "Construction Manager" add "Construction Manager's subcontractors, Program Manager (if applicable),"

2. Paragraph 1.1.1 shall be added as follows:

"§ 1.1.1 The Contract Documents consist of this Agreement, as amended, Conditions of the Contract, as amended (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the proposal signed by the Construction Manager, the request for proposals, and Contractor's proof of payment and performance bonds and proof of insurance. These form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents, other than Modifications, appears in Article 11. All Amended, General, or Supplementary Conditions to the General Conditions of the Contract are also incorporated herein by reference. Any reference to AIA Document A201-1997 in this Agreement shall be construed as the AIA Document A201 - 1997 as amended."

3. Paragraph 1.1.2 shall be added as follows:

"§ 1.1.2 This Agreement, as amended, 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 Modification approved by the Owner's Board of Trustees, and signed by Owner's authorized representative and Construction Manager. In the event of conflict, terms and conditions contained in the Agreement as amended shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions; as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents, including the Request for Proposal and any addenda thereto, which takes precedence over the Proposal, unless specifically agreed otherwise herein, and the Proposal."

4. Paragraph 1.1.3 shall be added as follows:

"§1.1.3 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive changing the Guaranteed Maximum Price, or to agree to an extension to the date of Substantial or Final Completion. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: , or successor."

5. Paragraph 1.1.4 shall be added as follows:

1.1.4 The Board designates the authorized representatives identified in Paragraph 3.2 to act on its behalf in other respects."

6. Paragraph 1.2 shall be added as follows:

Insert "as amended" after the words "Contract for Construction," in the first sentence of this section.

Add “, as amended,” after each “1997” in the section.

7. Paragraph 2.1.2 shall be added as follows:

In the third sentence of this section, after the word “completion” add “which shall satisfy Owner's time requirements;”

8. Paragraph 2.1.2.1 shall add the following language:

“§ 2.1.2.1 During the Pre-Construction 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 Sub paragraph 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. ”

9. Paragraph 2.1.3 shall be amended as follows:

Delete the second sentence of this section.

Delete the word “and” after the word “Architect” in the third sentence of this section, and add “, and Construction Manager's subcontractors.” after the word “Manager.”

Delete the word “and” after the word “priority,” and add “and proposed date of Final Completion acceptable to Owner” after the word “Completion,” in the fourth sentence of this section.

In the fifth sentence of this section, after the word “Architect,” add “and shall implement necessary corrective action.”

10. In Paragraph 2.1.4 after “Drawings and Specifications,” delete all remaining original language and add “so as to facilitate the proposal of a Guaranteed Maximum Price when the Drawings and Specifications are at least ninety percent complete. The Drawings and Specifications shall be deemed to be ninety percent complete when all elements of the drawings and Specifications are not less than ninety percent complete, as mutually agreed by the Architect and the Construction Manager.”

11. Paragraph 2.1.5.4 shall be amended by adding the following language after the word “Architect” at the end of the existing sentence:

“ . . . for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.”

12. Paragraph 2.1.6 shall be amended by deleting the word “The” in the first sentence of the existing paragraph and replacing it with the following language:

“To the extent not inconsistent with the Construction Manager's requirements under Texas Education Code section 44.038, the . . . ”

13. Paragraph 2.1.8 shall be amended as follows:

Add "and potential cost savings" after the word “alternatives”, and “Architect” before the word “Owner” in the second sentence of this section.



Add “or reasonably should recognize” after the word “recognizes” in the fourth sentence of this section, and delete “therewith” and replace it with “with applicable laws, statutes, ordinances, building codes, rules, or regulations,”

14. Paragraph 2.2.1 shall be amended as follows:

After “When” at the beginning of this paragraph add “all design elements of” after “complete,” add “as determined by the Architect, Owner, and the Construction Manager,”; after “Cost of the Work,” and add “, General Conditions,”. At the end of the existing paragraph add “If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, 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, that are within the Owner's budget, and that 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.”

15. Paragraph 2.2.2 shall be deleted in its entirety and replaced with the following language:

“§ 2.2.2 The Guaranteed Maximum Price may contain a separately identified Owner controlled contingency factor (the “Construction Contingency”) for the mutual use of the parties. The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required for costs incurred in the Work from unforeseeable causes, or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk and expense. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include an Owner's Contingency, which is defined as an allowance established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner. If Construction Manager fails to include a specific line item for Owner's contingency in the GMP, then the contingency amount shall be split in half 50% shall be the Construction Contingency and 50% shall be Owner's Contingency.”

16. Paragraph 2.2.3 shall be amended by adding the following at the end of the existing sentence:

“, and the Owner's Contingency, a sum established by the Owner for the Owner's exclusive use to cover costs, per Section 2.2.2.”

17. Paragraph 2.2.4 shall be amended by adding the following sections:

“.6 The Date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall be acceptable to Owner.

.7 The Guaranteed Maximum Price proposal may not be based in any part on any subcontract or material supply contract which would require the Owner to compensate the Construction Manager on other than a maximum cost basis."

18. Paragraph 2.2.5 shall be amended by adding the following language at the end of the existing paragraph:

"As soon as feasible after Architect's preliminary approval of the Construction Manager's proposed Guaranteed Maximum Price as detailed in Amendment No. 1, the Architect will complete the Amendment forms and return them to the Construction Manager for his review, signature and presentation to Owner's Board of Trustees."

19. Paragraph 2.2.6 shall be amended as follows:

At the beginning of the existing paragraph, add "The Owner shall be allowed not less than thirty days after receipt to review and take action on the Construction Manager's Guaranteed Maximum Price proposal." After "Owner's" in the second sentence, add "Board of Trustees"; after "Price proposal", delete "in writing" and add "by Board action". Acceptance of the Guaranteed Maximum Price by Owner's Board of Trustees at a duly-called Board meeting shall constitute Notice to the Construction Manager of Acceptance of the Guaranteed Maximum Price and Notice to Proceed. The Construction Manager will be allowed a maximum of five (5) business days from the date of Owner's Board's approval to obtain the required bond forms and insurance certificates, policies and endorsements and return same to the Architect for review and transmittal to the Owner for Owner's final review."

20. Paragraph 2.2.8 shall be amended as follows:

After "Owner's" in the first sentence, add "Board of Trustees"; after "Price proposal, the" in the first sentence, add "Construction Manager shall present Amendment No. 1 for execution by the Board. Amendment No. 1 shall contain the"; after "basis.", delete "shall be set forth in Amendment No. 1" and add the following sentence "The date inserted on the first page of Amendment No. 1 will be the date the Owner's Board of Trustees formally accepts the Guaranteed Maximum Price.

In the next sentence, after "deductions", add "only by"; after "a change in the", add "Scope of the"; after "Work", add "approved by Owner's Board of Trustees"; after "Date of Substantial Completion shall", add "only"; and after "adjustment", add "if approved by Owner's Board of Trustees".

21. Paragraph 2.2.10 shall be amended as follows:

After "shall", add "not"; after "Work", add "any"; and after "taxes", add "from which Owner is exempt."

22. Paragraph 2.2.11 shall be added as follows:

" § 2.2.1 1 The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in Amendment No. 1."

23. Paragraph 2.3.1.1 shall be added as follows:

"§ 2.3.1.1 The date of commencement of the Construction Phase is the first business day after the Construction Manager's receipt of the written Notice to Proceed, as provided in § 8.1.2 of AIA Document A201 -1997, as amended and constitutes day zero ("0") of the stated Completion Time for Work under the Amendment."

24. Paragraph 2.3.2.1 shall be amended as follows:

Delete the first sentence.

Delete all existing language in the second sentence after "The Construction Manger shall" and replace it with "publicly advertise and solicit through competitive purchasing, as required by law, proposals from subcontractors for the performance of all major elements of the Work."

In the third sentence, delete "will" and replace it with "shall", and replace "bids" with "proposals"

Delete the remainder of the original section and replace it with the following:

“The Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Project offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal. All proposals shall be made public within seven days after the Owner's final selection. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.”

25. Paragraph 2.3.2.2 shall be deleted and replaced with the following paragraph:

“§ 2.3.2.2 If during the course of recommending proposals, the Construction Manager recommends to Owner a proposal from subcontractor, but the Owner requires another proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur as a result, if such change exists. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.”

26. Subparagraph 2.3.2.2.1 shall be added as follows:

“§ 2.3.2.2.1 The Construction Manager shall include the following specific notices in the information to proposers:

.1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;

.2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;

.3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code section 756.02.”

27. Subparagraph 2.3.2.2.2 shall be added as follows:

“§ 2.3.2.2.2 Nothing herein shall preclude the Construction Manager from including other notices required or allowed by law.”

28. Paragraph 2.3.2.4 shall be amended as follows:

Add “weekly or otherwise regularly-scheduled” after the word “conduct” in the first sentence of this section.

Add at the end of the existing section the following language:

“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.”

29. Paragraph 2.3.2.5 shall be amended by adding “as revised” after “1997.”

30. Paragraph 2.3.2.6 shall be amended by deleting the final period and adding the following language at the end of the existing paragraph:

“at any time during work hours, and shall be present for discussion at the meetings referenced in subparagraph 2.3.2.4 above.”

31. Paragraph 2.3.2.7 shall be amended by adding “, including changes to the Work approved by Owner, after the word “progress” in the first sentence.

32. Paragraph 2.3.3 shall be added as follows:

“§ 2.3.3 The contractor shall bear full responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Health and Safety Code section 756.021 et seq., as further provided in AIA document A201-1997, as amended. 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:

§ 2.3.3.1 The Occupational Safety and Health Administration standards for trench safety in effect for the construction of the Work.

§ 2.3.3.2 The special shoring requirements, if any, of the Owner.

§ 2.3.3.3 Any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.”

33. Paragraph 2.3.4 shall be added as follows:

“§ 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.”

34. Paragraph 2.4 shall be amended by adding “, as amended,” after “1997.”

35. Paragraph 2.5 shall be amended by adding “, as amended,” after “1997.”

36. Paragraph 3.1.2 shall be deleted in its entirety.

37. Paragraph 3.1.3 shall be amended to add the following language at the end of the existing paragraph:

“, including the Owner's Contingency as provided in Section 2.2.2.”

38. Paragraph 3.1.4 shall be amended by deleting the second sentence and replacing it with the following paragraph:

“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 precaution 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.”

39. Paragraph 3.1.4.3 shall be amended as follows:

Add “reasonably required by the scope of the Work or the Project and are” after the word “are” in the first sentence.

Add “and approved by the Owner” after the word “Manager” in the first sentence.

40. Paragraph 3.1.4.5 shall be amended as follows:

After “scope of the”, add “Work or the Project”; after “Manager”, add “and approved by the Owner.”

41. Paragraph 3.2 shall be deleted and replaced with the following language:

“Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within Owner's contingency. The Owner's Board of Trustees designates as its authorized representatives, the following individuals”:

Superintendent

Assistant Superintendent

Business Manager

42. Paragraph 3.3 shall be deleted and replaced with the following language:

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

43. Paragraph 3.4 shall be deleted in its entirety.

44. Paragraph 3.5 shall be added as follows:

#### "3.5 INSPECTION SERVICES

The Owner shall provide or contract for, independently of the Construction manager, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Work by Owner.

45. Paragraph 4.1.1 shall be amended by deleting the words "multiple of" after the word "sum" in this section, and adding "schedule of fees," after the word "Expense" in this section.

46. Paragraph 4.1.2 shall be amended by deleting "shall" and replacing it with "may".

47. Paragraph 4.1.2 shall be amending by deleting "a multiple of".

48. Paragraph 4.2.2 shall be amended deleting all of the original language after the word "interest" in the second sentence and replacing it with the following language:

"in accordance with Texas Government Code section 225 1.025. (Note: These blanks should be filled in with "30" if the school board meets more often than once per month, and with "45" if the school board meets once per month.)"

49. Paragraph 5.1.1 shall be amended by adding the following language at the end of the exiting paragraph:

" ; provided, however, Construction Manager shall not be entitled to a fee on any Work that Construction Manager self performs for the Project and further provided that no Construction Manager fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work. All charges, if any, for General Conditions shall be included in the Construction Manager's fee. All reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal, duplication, and data processing fees and expenses; and all travel, meals and lodging shall be deemed to be included in the Construction Manager's fee."

50. Paragraph 5.2.1 shall be amended as follows:

Add the following sentence to the beginning of this section: "The Guaranteed Maximum Price for the Project shall be added to this Agreement by the execution of Amendment No.1, as approved by Owner's Board of Trustees, which Amendment No. 1 shall thereafter be incorporated into this Agreement for all purposes.";

In the original first sentence, after "Amendment No. 1", add "as approved by Owner's Board of Trustees,"; after "deductions", add "approved"; and after "by", add "Owner's Board of Trustees, due to Owner's Board-approved".

At the end of the existing paragraph, add "Should the Construction Manager complete the Project for less than the Guaranteed Maximum Price, the remaining funds shall be credited to the Owner as a deduction from the Guaranteed Maximum Price. Construction Manager shall also return to the Owner all unused funds from any Contingency account as a deduction from the Guaranteed Maximum Price. The Construction Manager shall not participate in any savings. All savings shall be credited to Owner."

51. Paragraph 5.3.1 shall be amended as follows:

After "Price", add "shall be calculated in accordance with Article 7 of A201-1997, as amended. Adjustments to the Guaranteed Maximum Price shall only be considered"; after "on account of" add "Owner-approved"; and after "No.1" add "provided, however, that no adjustment to the Guaranteed Maximum Price shall become effective unless approved by Owner's Board of Trustees."

52. Paragraphs 5.3.2, 5.3.3, and 5.3.4 shall be deleted in their entirety.

53. Paragraph 6.1.1 shall be amended by adding after the second "Work": "and properly charged against the GMP"; and at the end of the existing paragraph adding a new sentence: "Cost of the Work that exceeds the GMP shall be borne by the Construction Manager."

54. Paragraph 6.1.2 shall be amended as follows:

.1 After "perform", add "minor on-site work or as otherwise allowed by applicable law"; after "Owner's", add "prior written"; and after "agreement", add "performing same".

.2 After "agreement", add ", but only when directly involved in the Project."

.4 After "Construction Manager for", add "employment-related".

55. Paragraph 6.1.3 shall be amended adding the following language at the end of the existing paragraph :

"Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per Article 2.3.2.1, as amended, shall be treated as Work performed by a Subcontractor under Article 6.1.3. The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal submitted by the Construction Manager for such Work, rather than "actual costs" as provided elsewhere in Article 6 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for purposes of computing the allowable costs and fees payable to the Construction Manager."

56. Paragraph 6.1.5 shall be amended as follows:

.2 Add "Actual" at the beginning of this section.

After "rental charges", add "paid by Construction Manager."

Delete "temporary facilities"

After "hand tools not", add "included in 5.1.1 and not", and after "owned by the", add "Construction Manager or".

After "at the site", delete "whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof".

After "Rates", add "terms of rental"; after "Owner's prior", add "written"; and after "approval", add ", and shall be returned as soon as the equipment is no longer needed, or Owner shall have no responsibility for such rental charges."

.4 At the beginning of this section, add "Reasonable, necessary and actual"; delete "costs of telegrams, facsimile transmission and long-distance telephone calls"; after "delivery charges", delete "telephone at the site and reasonable petty case expenses of the site."; and add "at the site" before "office".

Section .5 shall be deleted in its entirety.

57. Paragraph 6.1.6 shall be added as follows:

.1 Add "the actual cost of" before the word "premiums" in the first line and ", at rates set by the state regulatory authority." after "bonds" in the second line.

.2 Delete in its entirety.

.4 Add "and paid by the Construction Manager" after the word "Documents"

.5 Delete all language in that section after the first semi-colon.

.6 Delete in its entirety.

.7 After "for causes", add "directly resulting from the Owner's actions or decisions."

.8 Delete in its entirety

.9 Delete in its entirety.

58. Paragraph 6.1.8.2 shall be deleted in its entirety

59. Paragraph 6.1.9 shall be amended as follows:

After "1997", add the word "or", and add "or other provisions of or amendments to this Agreement" before the period at the end of the existing sentence.

60. Paragraph 6.2.1 shall be amended as follows:

Delete the phrase "Except as provided in Section 6.1.8.2," in Section .6.

Add ". 10 Delay damages or claims."

Add ". 11 Storage costs, unless with prior written Owner approval."

Add ".12 All costs intentionally deleted in § 6.1 above, including all subsections."

61. Paragraph 6.3.1 shall be amended as follows:

At the beginning of this section add "Construction Manager shall take advantage of all available discounts, rebates and refunds for supplies, materials and equipment connected with the Work and which conform to the Contract Documents, which discounts, rebates and refunds shall accrue to the benefit of the Owner."

Place a period after "Owner" in the original first sentence and delete the remainder of that sentence.

62. Paragraph 6.4.1 shall be amended as follows:

Insert "or other representatives" after the word "accountants" in the second sentence of this section

In the last sentence, delete "three" and replace it with "twelve", and delete "final payment" and replace it with "the date of Final Completion".

63. Paragraph 7.1.3 shall be replaced with the following:

"§ 7.1.3 The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and Program Manager approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and Program Manager may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect and Program Manager shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager to the Construction Manager within forty-five (45) if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect and Program Manager) days, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code section 2251.025."

64. Paragraph 7.1.4 shall be amended by adding the following language at the end of the existing paragraph:

"Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment."

65. Paragraph 7.1.5 shall be amended as follows:

(1) Add ", less any unused Owner's contingency and unused Construction Manger's contingency," after the word "values in the second sentence of this section.

(2) Add "and Program Manger, if applicable," after the word "Architect" in the third sentence of this section; and

(3) Add “and Program Manager, if applicable” in the fourth sentence of this section after the word “Architect.”

66. Paragraph 7.1.6 shall be amended by deleting “the lesser of (1)” in the second sentence, placing a period after “completed”, and deleting the remained of the original second sentence.

67. Paragraph 7.1.7 shall be amended as follows:

.1 Replace “Section 7.3.8” with “Article 7”, add “AIA Document” before “A201TM”, and add “, as amended,” after “1997”;

.3 Delete “less retainage of 5 percent (5% )”;

.5 Add “or other representatives” after the word “accountants”;

.6 Add “AIA Document” after the word “of”, and add “, as amended” after “1997”.

Add Sections .7 and .8 as follows:

.7 Subtract retainage of five percent (5%) of the remaining amount, including the Construction Manager's Fee, of the progress payment. (Note: Under Texas law, if the retainage exceeds five percent, then the retainage shall be deposited in an interest-bearing account, and the interest earned on the retainage shall be paid to the Construction Manager upon completion of the Work. Texas Government Code section 2252.032.)

.8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201 -1997, as amended.

.2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

68. Paragraph 7.1.8 shall be amended by adding “written” after the word “prior” and adding “percent” after “( )” in the first sentence

69. Paragraph 7.1.9 shall be amended by adding “written” after the word “prior” and adding “or as otherwise provided in Section 9.3.2 of AIA Document A201-1997, as amended,” after “approval”.

70. Paragraph 7.1.10 shall be deleted in its entirety

71. Paragraph 7.2.1 shall be amended as follows:

(1) Insert “(for each Work, if multiple projects” after “Final payment” in the first sentence;

(2) In clause (1) of the first sentence, insert “(Work, if multiple projects)” before “Contract”;

(3) In clause (1) of the first sentence, replace “except for” with “including”;

(4) In clause (1) of the first sentence, delete “as provided in Section 12.2.2 of A201TM- 1997”;

(5) In clause (1) of the first sentence, add the following after “and”, “except for the Construction Manager's responsibility”;

(6) In clause (1) of the first sentence, add “, which Owner agrees in writing,” before “necessarily”;

(7) In clause (2) of the first sentence, insert “and certified” after “submitted”, insert “and approved” after “reviewed”, insert “or other representations” after “accountants” and delete “and” after the semi-colon;



(8) In clause (3) of the first sentence, add “and approved by the Program Manager, if applicable;” after “Architect”, and move the remaining language in that clause (3) to be the second sentence;

(9) Add clause (4) as follows:

“(4) Construction Manager has provided all documents required by Section 3.5.8 of AIA Document A201TM-1997, as amended; and”

(10) Add clause (5) as follows:

“Owner's Board of Trustees has voted to accept the Work and approved Final Payment.”

(11) Delete in the final sentence all original language following the word “after” and replace it with “Board approval.”

72. Paragraph 7.2.2 shall be amended as follows:

(1) Delete in .2 “withholds, in whole or in part, a final Certificate of Payment as provided in Section 9.5.1 of A201TM-1997 or other provision of the Contract Documents”, and replace it with the following language:

“or Owner disputes, refuses or withholds payment, including liquidated damages, if any.”

(2) Add the following section:

.4 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:

.1 Add, if final completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.1 0.3 of AIA Document A201 - 1997, as amended.

.2 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.

.3 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

(3) Add “, plus interest as allowed by law” at the end of the last sentence of § 7.2.2, after the word “Owner”.

73. Paragraph 7.2.3 shall be amended by adding “or other representatives” each time after the word “accountants” and by adding “, as amended” each time after “1997” in this section. :

74. Paragraph 7.2.4 shall be amended by adding “or other representatives” each time after the word “accountants” in the first sentence, adding “other dispute resolution provided in the Contract Documents,” after the word “or” in the second sentence, and replacing “60” with “thirty (30)” each time in this section.

75. Paragraph 7.2.5 shall be amended by adding “prior written” after the word “Owner’s”; replacing “and:” with “that are” after “6.1”; and deleting the last sentence of this section.

76. Paragraph 7.3 shall be added as follows:

#### “§ 7.3 LIQUIDATED DAMAGES

§ 7.3.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement

under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Contractor to substantially complete the work within the allotted times, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by additional compensation to personnel, for loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to substantially complete the Work within the designated period, or as it may be extended, shall be construed as a breach of this Agreement.

§ 7.3.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to \$500 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 7.3.3 Timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 30 days of the designated or extended date of Substantial Completion. Owner and Contractor agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of per day penalty. Owner may deduct from the Final Payment made to Construction Manager, or, if sufficient funds are not available, then Construction Manager shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 7.3.4 Such damages shall be in addition to, and not in lieu of, any other right or remedies Owner may have against Construction Manager for failure to timely achieve Final Completion. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion."

77. Paragraph 8.1 shall be amended by deleting "Section 11.1" in the first sentence and replacing it with:

"Article 11 of A201TM-1997, as amended for this Project, which may arise out of claims as set forth below, and which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations be by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable."

78. Paragraph 8.1 shall further be amended by deleting "following" in the second sentence, inserting "set forth in AIA Document A201-1997, as amended," after "limits", and adding the following:

79. Paragraph 8.1.1 through 8.1.4 shall be deleted in their entirety

80. Paragraph 8.2 shall be amended by deleting "During both phases of the Project"; changing "the" to "The"; replacing "shall" with "may"; and deleting all existing language after "insurance" and replacing it with the following:

"to protect Owner, as provided in Article 11 of AIA Document A201-1997, as amended."

81. Paragraphs 8.2.1 and 8.2.2 shall be deleted.

82. Paragraph 8.3.1 shall be replaced with the following language:

"§ 8.3.1 Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201 - 1997, Section 1 1.5, as amended."

83. Paragraph 8.3.2 shall be deleted in its entirety.

84. Paragraph 9.1.1 shall be amended by replacing "Sections 4.3 through 4.6" with "Article 4" in the first sentence of this section; adding ", as amended," after "1997"; deleting "or arbitration", and adding ", litigation, or other means of dispute resolution," after the word "mediation" at the end of the first sentence.

85. Paragraph 9.1.1 shall be further amended by adding the following as the second sentence in this section

"Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder."

86. Paragraph 9.2.1 shall be amended by adding ", as amended," after "1997".

87. Paragraph 9.2.2 shall be amended by adding the following sentence to the existing paragraph:

"If any portion of this Agreement is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Agreement shall remain in full force and effect."

88. Paragraph 9.2.3 shall be amended by adding ", as amended," after "1997"

89. Paragraph 9.2.4 shall be amended by deleting all existing language in this section after "law of the" and replacing it with the following:

"State of Texas, and mandatory and exclusive venue for any dispute shall be in state district court in the county in which the Owner's main administrative office is located. As a material consideration of the making of this Contract, the modifications to this Contract shall not be construed against the maker of said modifications,"

90. Paragraph 9.2.5 shall be amended by deleting "The" at the beginning of the first sentence and replacing it with "Once this Contract is accepted and signed by Owner's Board of Trustees, the" and by inserting ", as amended," after "1997".

91. Paragraph 10.1.1 shall be amended by inserting ", 14.1.2 and 14.1.4" after "Section 14.1.1 "; and adding ", as amended," after "1997".

92. Paragraph 10.1.3 shall be amended by deleting the words "or indemnify" in the final paragraph of the section.

93. Paragraph 10.2 shall be amended by adding ", as amended" after "1997".

94. Paragraph 10.2.1 shall be amended by adding ", as amended," after "1997".

95. Paragraph 10.2.2 shall be deleted in its entirety.

96. Paragraph 10.3 shall be amended by inserting "as amended" each time after "1997", replacing "shall" with "may", and deleting all original language beginning with "except" to the end of the section.

97. Article 11 shall be replaced with the following:

"§ 11.1 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§11.2 Contractor shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that

they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

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

§ 11.4 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

§ 11.5 Contractor shall institute a theft deterrent program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces, as charged or determined by the local authorities having jurisdiction.

§ 11.6 All sums due hereunder are payable in Port Neches, Jefferson County, Texas.

§ 11.7 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 11.8 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents. As a material consideration of the making of this Agreement, the Modifications to this Agreement shall not be construed against the maker of said Modifications.

§ 11.9 By signing this Agreement, the undersigned certifies as follows: "Under section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."

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

§ 11.11 Enumeration of Parts of the Agreement. This Agreement comprises the documents listed below.

§ 11.11.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in Paragraph 1.1 and as follows: N/A

§ 11.11.2 The Agreement is this executed 2003 edition of the Standard Form of Agreement Between Owner and Construction manager, AIA Document A121-2003, as amended.

§ 11.11.3 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201 - 1997, as amended.

§ 11.11.4 The Project Manual No. To be provided during the development of the Construction Documents, including Supplementary and other Conditions, to be provided during the development of the Construction Documents.

§ 11.11.5 The Specifications are those contained in the Project Manual to be provided during the development of the Construction Documents.

Title of Specifications exhibit:

§ 11.11.6 The Drawings developed as of the date of this Contract are as attached in Attachment 2 , and are dated unless a different date is shown below:

§ 11. 11.7 The Addenda, if any, are as follows: N/A

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 11

§ 11.1 1.8 Other documents, if any, forming part of the Contract Documents are as follows:

Insurance Requirements

List of Drawings

Amendments to General Conditions of the Contract for Construction AIA Document A201-1997

AIA Document A201-1997 General Conditions of the Contract for Construction

Amendments to the General Conditions of the Contract for Construction, AIA Document A201-1997

§ 11.12 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 11.13 The Construction Manager may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the Project, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors."

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

OWNER

Dr. Lani Randall  
(Signature)

Dr. Lani Randall, Superintendent  
Port Neches-Groves Independent School District  
(Printed name and title)

Port Neches-Groves Independent School District

2-15-08  
Date

CONSTRUCTION MANAGER

Tom B. Neild  
(Signature)

Tom B. Neild, Vice President  
H.B. Neild & Sons, Inc.  
(Printed name and title)

2/14/08  
Date

# **AIA® Document A201™ – 1997**

## **General Conditions of the Contract for Construction**

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

*(Name and location or address):*

Replacement of Port Neches Middle School and Groves Middle School  
Port Neches, Texas  
Groves, Texas

### **THE OWNER:**

*(Name and address):*

Port Neches-Groves Independent School District  
Port Neches, Texas

### **THE ARCHITECT:**

*(Name and address):*

SHW Group LLP  
20 East Greenway Plaza, Suite 200  
Houston, Texas 77046

### **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.

This document has been approved and endorsed by The Associated General Contractors of America

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter 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 other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

#### **§ 1.1.2 THE CONTRACT**

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

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### **§ 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.

**§ 1.2.2** 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 which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 CAPITALIZATION**

**§ 1.3.1** Terms capitalized in these General Conditions include those which 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**

**§ 1.4.1** 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 EXECUTION OF CONTRACT DOCUMENTS**

**§ 1.5.1** The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

**§ 1.5.2** 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.

### **§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 1.6.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or



continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.2** Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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.

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

**§ 2.2.4** Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

**§ 2.2.5** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

**§ 2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§ 2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-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 after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, 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 Contractor 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **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 term "Contractor" means the Contractor or the Contractor's authorized representative.

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

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by 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 other than the Contractor.

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the

Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

**§ 3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but 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. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

**§ 3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

### **§ 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

**§ 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.

### **§ 3.4 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.

**§ 3.4.2** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **§ 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 otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications 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.

### **§ 3.6 TAXES**

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

### **§ 3.7 PERMITS, FEES AND NOTICES**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

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

**§ 3.7.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**§ 3.7.4** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.8 ALLOWANCES**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents:

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .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 in sufficient time to avoid delay in the Work.

### **§ 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. Important

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communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract 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 Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

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

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**§ 3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

**§ 3.12.3** Samples are physical examples which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**§ 3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

**§ 3.12.10** The Contractor shall not be required to provide professional services which 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. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly 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, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

### **§ 3.13 USE OF SITE**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 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.

**§ 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 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 Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's 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 or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

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

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

**§ 3.17.1** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 4 ADMINISTRATION OF THE CONTRACT**

### **§ 4.1 ARCHITECT**

**§ 4.1.1** The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

### **§ 4.2 ARCHITECT'S 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 (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§ 4.2.2** The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and

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deficiencies in the Work, and (3) to determine in general if the Work 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 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, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** 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 Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 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 will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will 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, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

**§ 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

**§ 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.

### **§ 4.3 CLAIMS AND DISPUTES**

**§ 4.3.1** Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of 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. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ 4.3.2** Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

**§ 4.3.3** Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

**§ 4.3.4** Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

**§ 4.3.5** Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

**§ 4.3.6** If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.



**§ 4.3.7 Claims for Additional Time**

**§ 4.3.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein 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.

**§ 4.3.7.2** 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.

**§ 4.3.8 Injury or Damage to Person or Property.** If either party to the Contract 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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

**§ 4.3.10 Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**§ 4.4.1 Decision of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

**§ 4.4.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

**§ 4.4.5** The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

**§ 4.4.6** When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

**§ 4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 4.4.8** 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 prior to resolution of the Claim by the Architect, by mediation or by arbitration.

#### **§ 4.5 MEDIATION**

**§ 4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§ 4.5.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable 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.

**§ 4.5.3** 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 thereof.

#### **§ 4.6 ARBITRATION**

**§ 4.6.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

**§ 4.6.2** Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

**§ 4.6.3** A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

**§ 4.6.4 Limitation on Consolidation or Joinder.** No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. 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.

**§ 4.6.5 Claims and Timely Assertion of Claims.** 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.

**§ 4.6.6 Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **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 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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect 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 Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly 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 change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

### § 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, 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, which the Contractor, by these 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 which 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.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

## 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 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 Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

§ 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 other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor 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 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor 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.

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**§ 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so 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 Contractor's Work, except as to defects not then reasonably discoverable.

**§ 6.2.3** The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

**§ 6.2.4** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors 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**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 GENERAL**

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

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

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

### **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- .1 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** Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

### **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

**§ 7.3.4** 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.

**§ 7.3.5** A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

**§ 7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

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

**§ 7.3.7** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. 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.

**§ 7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

**§ 7.3.9** When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

## **§ 7.4 MINOR CHANGES IN THE WORK**

**§ 7.4.1** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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## **ARTICLE 8 TIME**

### **§ 8.1 DEFINITIONS**

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

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

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

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

### **§ 8.2 PROGRESS AND COMPLETION**

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **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.

### **§ 9.2 SCHEDULE OF VALUES**

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, 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 Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to

payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which 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** Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

**§ 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part 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 comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material 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 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 for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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

## § 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 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 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## § 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, 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.

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 9.9 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 as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in

the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills 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 Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, 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 Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material 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.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 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 and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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**§ 10.2.3** The Contractor shall 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 owners and users of adjacent sites and utilities.

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 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 load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** 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 report the condition to the Owner and Architect in writing.

**§ 10.3.2** 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 verify that it has been 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 such material or substance or who are to perform the task of removal or safe containment of such 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. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against 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) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

**§ 10.4** The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.6 EMERGENCIES

§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 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 date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

#### § 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

**§ 11.3.2** To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

**§ 11.3.3** The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

#### **§ 11.4 PROPERTY INSURANCE**

**§ 11.4.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which 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 value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.4.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and 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 Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 11.4.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ 11.4.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

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

**§ 11.4.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor 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.

**§ 11.4.2** Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**§ 11.4.3** Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will 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 Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.4.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.4.5** 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 11.4.7 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.

**§ 11.4.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

**§ 11.4.7** Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, 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 this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, 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 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.

**§ 11.4.8** A loss insured under 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 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.4.9** 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 in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. 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 Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.4.10** 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 loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

## **§ 11.5 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.5.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

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

### **§ 12.1 UNCOVERING OF WORK**

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

**§ 12.1.2** If a portion of the Work has been covered which 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense 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.

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.1.1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract 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 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 an 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 written 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 2.4.

**§ 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 performance of the Work.

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

**§ 12.2.3** The Contractor shall remove from the site portions of the Work which 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have 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.

#### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

**§ 12.3.1** If the Owner prefers to accept Work which 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**

**§ 13.1.1** The Contract shall be governed by the law of the place where the Project is located.

#### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect 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 such 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 an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

#### **§ 13.3 WRITTEN NOTICE**

**§ 13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 to the last business address known to the party giving notice.

#### **§ 13.4 RIGHTS AND REMEDIES**

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

**§ 13.4.2** 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 in writing.

#### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. 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 which do not become requirements until after bids are received or negotiations concluded.

**§ 13.5.2** 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 13.5.1, 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 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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.

**§ 13.5.4** 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.

**§ 13.5.5** 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.

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

### **§ 13.6 INTEREST**

**§ 13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### **§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**§ 13.7.1** As between the Owner and Contractor:

- .1** Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2** Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3** After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

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

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor 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 following reasons:

- .1** issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2** an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3** because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4** the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**§ 14.1.2** The Contractor may terminate the Contract if, 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, repeated suspensions, delays or interruptions of the entire Work

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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.

**§ 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently 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' written 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 persistently or 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 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, 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' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

## **§ 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 as described in 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.

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor 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.

**Attachment 4**

**AMENDMENTS TO GENERAL CONDITIONS OF THE**  
**CONTRACT FOR CONSTRUCTION**  
**AIA DOCUMENT A201-1997**

DATE: February 14, 2008

CONTRACT DATE: February 14, 2008

OWNER: Port Neches-Groves Independent School District  
Port Neches, Texas

CONTRACTOR: H. B. Neild & Sons, Inc.  
5950 Walden Road  
P. O. Box 22555  
Beaumont, Texas 77720-2555

PROJECT: Replacement of the Port Neches Middle School and Groves Middle  
School  
Port Neches, Texas  
Groves, Texas

WHEREAS Port Neches-Groves Independent School District (hereinafter referred to as "Owner") and Allco, Inc. (hereinafter referred to as "Contractor") desire to enter into a contract under which Contractor will perform construction services relating the above-referenced Projects on behalf of Owner;

WHEREAS Owner and Contractor have agreed to enter into AIA Document A201 -1 997 Agreement ("Contract") as the basic form for that contract; and

WHEREAS certain terms and conditions of the contract must be modified to comply with applicable laws and policies affecting Owner and Contractor on this project, Owner and Contractor hereby agree to the following amendments to the Contract.

SUPPLEMENTARY CONDITIONS  
TO THE  
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

The following supplements modify the “General Conditions of the Contract for Construction”, AIA Document A201, Fifteenth Edition, 1997. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect. The “General Conditions” are a part of these documents whether or not they are bound herein.

ARTICLE 1 - CONTRACT DOCUMENTS

1. Paragraph 1.1.1 Revise the first sentence of subparagraph 1.1.1 as set forth below:  
  
“The Contract Documents consist of the Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), Performance Bond, Labor and Material Payment Bond, the Drawings, the Specifications, all Addenda issued prior to execution of the Agreement and all Modifications thereto.”
2. Paragraph 1.1.3 THE WORK  
  
Add the following sentence to the end of paragraph 1.1.3:  
  
“The Work also includes all supplies, skill, supervision, transportation services and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the contract and all other items of cost or value needed to produce, construct and fully complete the public work identified by the Contract Documents.”
3. Paragraph 1.1.7 Delete this paragraph in its entirety.  
  
Supplement Article 1 with the following paragraphs / subparagraphs:  
  
Paragraph 1.1.8 DESCRIPTION OF PARTIES:  
  
“The following definitions apply to parties named in Contract Documents:  
  1. Owner: Port Neches-Groves Independent School District  
Avenue C  
Port Neches, TX 76567
  2. Architect: SHW GROUP LLC  
20 Greenway Plaza  
Houston, TX 77046  
Phone: (713) 877-0900
  3. MEP Engineers: DBR Engineering Consultants, Inc.  
9990 Richmond Avenue  
Houston, TX 77042

4. Civil Engineer Brooks & Sparks Engineering, inc.  
21020 Park Row  
Katy, TX 77449
5. Food Service Millunzi & Associates  
21830 Tophill Drive  
Spring, TX 77388-2954”
4. “§1.1.9 PROJECT MANUAL ADDENDA  
  
Project Manual Addenda are written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the bidding or proposal documents, including Drawing and Specifications, by additions, deletions, clarifications, or corrections Addenda will become part of the Contract Documents when the Agreement is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.”
5. “§1.1.10 APPROVED, APPROVED EQUAL, APPROVED EQUIVALENT, OR EQUAL  
  
The terms Approved and Approved Equal relate to the substitution of materials, equipment or procedure approved in writing by the Architect prior to receipt of competitive sealed proposals. Refer to Article 3.19 Substitutions for procedure which must be followed after award of contract. The substitution procedure process to be followed prior to receipt of competitive sealed proposals is described in the instruction to Proposers.”
6. “§1.1.11 ABBREVIATIONS  
  
N.I.C; or Not in contract. Indicating work not to be done by this Contractor  
By Others; or under this Agreement.  
By Owner; or  
Existing  
ADA Americans with Disabilities Act of 1990  
ADAAG Americans with Disabilities Act Accessibility Guidelines for  
Buildings &Facilities  
AIA American Institute of Architects  
ACI American Concrete Institute  
AHERA Asbestos Hazardous Emergency Response Act  
AISC American Institute of Steel Construction  
AISI American Iron and Steel Institute  
ASA American Standards Association  
ASTM American Society for Testing Materials  
AWS American Welding Society Code  
CERCLA Comprehensive Environmental Response, Compensation, and  
Liability Act  
EPA Environmental Protection Agency  
FS Federal Specification  
NBS National Bureau of Standards  
NES National Electrical Code

NIC	Not in Contract. Indicates work not to be done by this Contractor under this Agreement
OSHA	Occupational Safety and Health Administration
SPR	Simplified Practice Recommendation
UL	Underwriters Laboratories, Inc.
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute”

7. “§1.1.12 PROPOSAL DOCUMENTS

Proposal Documents consist of all documents bound into or referenced in the Project manual, the Drawings, and Addenda related thereto. The Project Manual contains the proposal and Bidding Requirements, Sample Forms, Conditions of the Contract, the specifications, and a list of Drawings, and Schedules, some of which are bound into the project Manual (Other Drawings and Schedules are bound separately). The terms "Bid" and "Construction Manager at Risk Sealed Proposal" shall have the same meaning.”

8. “§1.1.13 PROJECT CONSULTANTS

Project Consultants are defined as all parties listed in paragraph 1.1.8 above, except the Owner.”

9. “§1.1.13.1 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 other special events.”

10. “§1.1.13.2 CALENDAR DAY

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

11. “§1.1.13.3 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.”

12. “§1.1.14 MISCELLANEOUS OTHER WORDS

Provide: Whenever the word “provide” is used in these documents, it shall mean the same as “furnish and install”.”

13. Paragraph 1.2.1.1 shall be added as follows:



- “§1.2.1.1 During the course of the work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the work on the basis of the greater quantity or better quality, or the most stringent requirement, unless he shall be obtained an interpretation in writing from the Architect as to what shall govern before the submission of his proposal. 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.”
14. “§1.2.4 PRECEDENCE OF THE CONTRACT DOCUMENTS: The most recent issued document takes precedence over previous issued forms of the same Document. The order of precedence is as follows with the highest authority listed first.
- .1 The Agreement
  - .2 The Addenda
  - .3 The Supplementary Conditions
  - .4 The General Conditions of the Contract for Construction
  - .5 Drawings, and Specifications shall have equal authority. Should these Documents disagree in themselves; the Architect will select the appropriate method for performing the work at no additional increase in the Contract Cost.”
15. “§1.2.5 RELATION OF SPECIFICATIONS AND DRAWINGS: The Drawings and specifications are correlative and have equal authority and priority. Should they disagree in themselves, or with each other, base the proposals on the most expensive combination of quality and quantity of work indicated. The appropriate method of performing the Work, in the event of the above mentioned disagreements, will be made by the Architect. After award of the contract, and if necessary, an appropriate reduction in the contract will be accomplished by change order. The Work is to be furnished if shown on the Drawings and not in the Specification or vice versa.”
16. “§1.2.6 OPTIONAL MATERIALS, BRANDS AND PROCESSES: When more than one is specified for a particular item of Work, the choice shall be the Contractor’s. The final selection of color and pattern will be made from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified only products of those named manufacturers are acceptable. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment but shall be provided by the manufacturer as required for the proper functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable; however, indicated and specified performance and material requirements are minimum, and will be required in addition to standard accessories. The Architect reserves the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.”
17. “§1.2.7 STANDARD AND REQUIREMENTS  
When the Contract Documents refer to standards, building codes, manufacturers’ instructions, or other documents, unless otherwise specified, then the current edition as of

the date of execution of the Agreement by the last party to execute said Agreement shall apply. It shall be the responsibility of the Architect to address revisions, or amendments to applicable codes or standards which arise after the date of execution of the Agreement between Owner and Architect. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.”

18. Paragraph 1.5.1 shall be deleted in its entirety and replaced with the following:

“§1.5.1 To be effective, all Contract Documents requiring signatures must be signed first by the Contractor and then by the Owner’s authorized representative, after approval by Owner’s Board of Trustees. If an approved Contract Document requiring signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure to sign shall be considered a material breach of the Contract.”

19. Paragraph 1.5.2 shall be amended by adding the following at the end of the existing paragraph.

“§1.5.2 Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meanings, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner’s Scope of Work.”

20. Paragraph 1.6.1 shall be amended as follows:

Delete “other documents” in the first sentence and replace it with “instructions to Contractor.”

Delete “Instruments of Service” in the first sentence and replace it with “Construction Documents”.

In the second sentence, insert “contract” before “record.”

In the third sentence, delete “Drawings, Specifications and other documents” and replace it with “Construction Documents”, place a period after “Consultants”, and delete the rest of the sentence.

After the third sentence, add a new sentence as follows: “All ownership rights, whether common law, statutory, or other reserved rights including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect.”

In the original fourth sentence, delete “Instruments of Service” and replace it with “Construction Documents remaining in Contractor’s possession”, and delete “Architect” and replace it with “Owner”.

In the original fifth sentence, delete “Drawings, Specifications and other documents” and replace it with “Construction Documents”, and replace “and” with “or” after “Architect”.

In the original sixth sentence, change “the” to “this” before “Project”, and delete “Owner, Architect and the Architect’s consultants” and replace it with “copyright holder.”

In the original seventh sentence, replace “authorized” with “granted a limited license”, replace “Drawings, Specifications and other documents” with “Construction Documents” before “prepared”, and delete “and the Architect's Consultants”.

In the original eighth sentence, delete “Drawings, Specifications, and other documents” and replace it with “Construction Documents”.

In the final sentence, delete “the Architect or Architect's consultants”.

21. Paragraph 1.6.2 shall be added as follows:

“§1.6.2 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 otherwise exist.”

22. Paragraph 1.6.3 shall be added as follows:

“§1.6.3 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquires 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.”

Supplement Article 1 with the following paragraphs and sub-paragraph:

23. Subparagraph 1.7 shall be added as follows:

“1.7 MISCELLANEOUS OTHER DEFINITIONS”

“§1.7.1 ADDENDA, ADDENDUM

Documents issued by the Architect prior to execution of the Owner Contractor Agreement that modify or clarify the Proposal/Bidding Documents. The addenda become a part of the Contract Documents.”

24. Subparagraph 1.7.2 shall be added as follows:

“§ 1.7.2 ALTERNATIVE SEALED PROPOSALS

A separate amount stated on the Proposal Form which, if accepted by the Owner, will be added to or deducted from the Competitive Sealed Proposal. If accepted, the work that corresponds to the alternative Proposal will become part of the Agreement between Owner and Contractor. Alternative Proposals shall remain valid for a minimum period of 45 days after receipt of proposals, regardless if an Owner - Contractor Agreement has been executed, unless indicated otherwise herein.”

25. Subparagraph 1.7.3 shall be added as follows:

“§1.7.3 BASE COMPETITIVE SEALED PROPOSAL (CMAR)

The Contractor's sealed proposal for the Work, not including any Additive Alternative Proposals.”

26. Subparagraph 1.7.4 shall be added as follows:

“§ 1.7.4. CONTRACT TIME

The period of time including Anticipated Weather Days that is established in the Contract Documents for Substantial Completion of the Work. This period of time is subject to authorized adjustments for Unanticipated Weather Days and other calendar Day extensions of time as enumerated in the Contract Documents.”

27. Subparagraph 1.7.5 shall be added as follows:

“§ 1.7.5 DATE OF AGREEMENT

The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted on the first page of the Agreement between Owner and Contractor and shall be referenced in Performance Bond and Payment Bond forms. See also Date of Commencement of the Work (1.6.6).”

28. Subparagraph 1.7.6 shall be added as follows:

“§ 1.7.6 DATE OF COMMENCEMENT OF THE WORK

The date that either (1) the fully executed Agreement Between Owner and Contractor, or (2) a written Notice to Proceed is delivered to the Contractor. This date constitutes day zero (“0”) of the stated Contract Time.”

29. Subparagraph 1.7.7 shall be added as follows:

“§ 1.7.7 DATE OF FINAL COMPLETION

The date that all required construction is completed, including punch list work, for all phases of the work, as applicable. This date shall be established in the Owner - Contractor Agreement based on 60 days after substantial completion.”

30. Subparagraph 1.7.8 shall be added as follows:

“§ 1.7.8 DATE OF SUBSTANTIAL COMPLETION

Project shall have a single date of Substantial Completion. See AIA Document A201 and Section 01710 Guarantees and Certificates and Closeout.”

31. Subparagraph 1.7.9 shall be added as follows:

“DAY

The following days are referenced in the documents:

- .1 Calendar Days: The days of the Gregorian calendar. The Contract Time is established in Calendar Days and extensions of time granted for Regular Work Days lost, if any, will be converted to Calendar Days.
- .2 Holidays: The days officially recognized by the construction industry in this area as a holiday; normally limited to the observance days of New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and the day after, and Christmas Day.
- .3 Regular Work Days: All calendar days except holidays, Saturdays, and Sundays. Requests for extensions of time shall be requested on the basis of Regular Work Days, and those days, if approved; will be converted to Calendar Days by multiplying Regular Work Days by a factor of one and three-tenths.
- .4 Anticipated Weather Days: An allowance of Regular Work Days established as probable days lost due to weather delays; said allowance to be included in the Contractor's proposed Completion Time on his Proposal Form.
- .5 Weather Days: Regular Work Days when rain, flooding, snow, unusually high winds, excessively wet grounds, or similar circumstances prevent progress on major portions of the Work. The Contractor will be entitled to an extension of the Contract Time for the net additional time, if any, which results from deducting the amount of Anticipated Weather Days from the total amount of approved Weather Days.
- .6 Net Weather Days: The difference in working days between Anticipated Weather Days and Weather Days."

32. Subparagraph 1.7.10 shall be added as follows:

"§ 1.7.10 NOTICE TO PROCEED

A notice that may be given by the Architect, (with approval by the Owner) to the Contractor that directs the Contractor to start the Work. It may also establish the Date of Commencement of the Work."

33. Subparagraph 1.7.11 shall be added as follows:

"§ 1.7.11 PUNCH LIST

A comprehensive list prepared by the Contractor prior to Substantial Completion to establish all items to be completed or corrected. This list may be supplemented by the Owner and 1 or Owner's Consultants. See AIA Document A201, paragraph 9.8. Refer to Section 01710 paragraph 1.2."

34. Subparagraph 1.7.12 shall be added as follows:

"§ 1.7.12 STRUCTURE OF SPECIFICATIONS

- .1 In the preparation of the Specifications, an effort has been made to segregate the various sections of the specifications under headings, by trade. This is done only for convenience and shall not relieve the Contractor of the responsibility of furnishing every item indicated or specified whether properly segregated or not.
- .2 No responsibility, either direct or implied, will be assumed by the Owner or the Architect for omissions or duplications by the Contractor in the completion of the contract due to any alleged error in the arrangement of these specifications, nor shall any such segregation of work and materials serve to make the Architect an arbiter in defining limits to the agreements between the Contractor and his subcontractor or suppliers.
- .3 The misplacement, addition or omission of any letter, word or punctuation mark shall in no way damage the true spirit, intent, or meaning of these specifications.
- .4 Abbreviations of the names of technical organizations and societies whose specifications, standards, or criteria are included by reference or noted by initials. References are the latest editions published prior to the date of the specifications unless otherwise noted.”

35. Subparagraph 1.7.13 shall be added as follows:

“§ 1.7.13 INTERPRETATIONS OF DETAILS, METHODS, SPECIFICATIONS, ETC.

- .1 The following paragraphs are intended to govern throughout these specifications as though repeated under each separate section. These paragraphs are herein only in order to simplify the specifications and avoid repetition.
- .2 The Contractor shall be responsible for the proper working, workmanship, installation, operation, appearance and durability of items incorporated into the project. (The excuse that it was installed “as detailed or specified” and it does not function properly is not valid. If the Contractor is in disagreement with any items, details, methods, or specifications, he shall notify the Architect in writing prior to their incorporation in the work. Such matters will be clarified in writing by the Architect).
- .3 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with printed instructions of the manufacturer.
- .4 The Contractor shall execute each part of the Work in strict accordance with the Contract Documents. The Contractor and all sub-contractors shall have the qualifications and skill required to complete the work in each of the trades and specialties involved. Where there is any doubt as to the requirements or quality of the work, the Contractor shall secure instruction or clarifications from the Architect before executing the work in question.”

36. ARTICLE 2 – OWNER

37. Paragraph 2.1.1 shall be amended by deleting the second sentence in its entirety and replacing it with the following:

“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 Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or guaranteed maximum price, or agree to an extension to the date of substantial or final completion. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner’s authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner’s Board of Trustees hereby delegates to the Superintendent of Schools or designee the authority to approve changes to the work where such changes are within the Owner’s contingency or the Contractor’s contingency, and which do not exceed \$500.00, or will not increase the dates for substantial or final completion by more than \_\_\_\_ ( ) days. Any such change shall be confirmed in writing between the Contractor and Owner’s Superintendent or designee, and notice of such approved changes shall be given to the Board at its next regular meeting, except as otherwise provided in Section 4.2.1, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees. Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.”

38. Paragraph 2.1.2 shall be deleted in its entirety and replaced with the following:

“§ 2.1.2 It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements, are so erected, built, or situated, such property belongings to a political subdivision of the State of Texas. It shall be further understood that this Contract is not written for the benefit of third parties.”

39. Paragraph 2.1.3 shall be added as follows:

“§2.1.3 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the drawings, plans, specifications and other construction documents, and has no duty to notify Contractor of same. By entering into the contract documents or any agreement with an Architect, Owner does not warrant the adequacy and accuracy of any drawings, plans, specifications or other construction documents.”

40. Paragraph 2.2.1 shall be deleted in its entirety and replaced with the following:

“§2.2.1 The Owner, being of public body under the laws of the State of Texas, must have funds in the full amount of the contract on hand prior to award and execution of the contract documents.”

41. Paragraph 2.2.3 shall be amended as follows:

Add "If requested in writing by Contractor prior to the start of the Work," at the beginning of the first sentence and replace "The" with "the" following new phrase.

Add "which are known to the Owner," in the first sentence after the word "locations".

At the beginning of the second sentence, add "Other than the metes and bounds noted in the legal description of the site," replace "The" with "the following this new pahrase, and add the word "not" after "shall."

At the end of the existing paragraph add:

"Other than the metes and bounds noted in the survey, if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements."

42. Paragraph 2.2.4 shall be amended by deleting the second sentence and adding the following sentence at the end of the existing section:

"Absent such timely notification, any claim based upon lack of such information or service shall be waived."

43. Paragraph 2.2.5 shall be amended by changing the final period to a comma and adding the following:

“, up to ten (10) copies. Copies in excess of ten (10) shall be at Contractor’s sole expense.

§2.2.5 The Contractor will be furnished free of charge, twenty five (25) copies of the Drawings and Specifications for the execution of the work. Provisions for additional sets shall be made; however, the Contractor shall pay actual reproduction costs of any additional copies required or requested. The Contractor shall contact Ridgways, Inc. to purchase these sets.

44. Paragraph 2.4.1 shall be amended as follows:

Add "and other consultants" before the word "Additional" in the third sentence of the existing paragraph.

At the end of the existing paragraph, add the following:

"If at any time the first written notice is delivered to the Contractor, the contracted time for performance has already been exceeded or is within 14 days of substantial completion or final completion, then a second notice shall not be required. If the correction of the deficiencies has not commenced within seven (7) days after Contractor is provided access which would allow initiation of the work, then the Owner shall have the right to correct the work and charge against the contract sum or guaranteed maximum price for same. If payments then or thereafter due the Contractor are not sufficient to cover Owner’s costs, then the Contractor shall pay the difference to the Owner within 30 days of written demand therefore."



45. Subparagraph 2.4.2 shall be added as follows:

“§2.4.2 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails, 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 Contractor the cost of correcting such deficiencies, including compensation for Consultants' additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.”

Supplement Article 2 with the following paragraphs / subparagraphs

46. Subparagraph 2.5.1 shall be added as follows:

“§2.5.1 The Owner shall have the right to occupy or use without prejudice to the right of either party, any completed or largely completed portions of the project, notwithstanding the time for completing the entire Work or such portions that may not have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents. The Project is a two phase project.”

47. Subparagraph 2.5.2 shall be added as follows:

“§ 2.5.2 If such prior use delays the completion of the project, the Contractor shall be entitled to extension of time, which claim shall be in writing with supporting data attached.”

48. §2.5.3 Refer to Article 11 - Insurance and Bonds regarding property insurance requirements in the event of such occupancy.

### ARTICLE 3 –CONTRACTOR

49. Paragraph 3.1.1 shall be amended by adding the following language before the final period in the second sentence:

“and includes the Construction Manager, if applicable.”

50. Paragraph 3.1.4 shall be added as follows:

“§3.1.4 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the contract documents), as an inducement to the Owner to execute this contract and the final completion of the work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the work and perform its obligations under the contract documents;

- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the project is located and properly licensed by all necessary governmental, public and quasipublic authorities having jurisdiction over it, the work, or the site of the project; and
- .4 that the execution of the contract and its performance thereof are within its duly-authorized powers.”

51. §3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR

Delete paragraphs 3.2.1, 3.2.2 and 3.2.3 in their entirety and substitute the following:

“§3.2.1 Contractor shall carefully study and compare the Agreement, Conditions of the Contract, Drawings, Specifications, Addenda, and Modifications and shall at once report to the Architect any error, inconsistency, or omission he may discover. Contractor shall be liable for any damage to Owner for failure to report any error, inconsistency or mission he may discover or should have discovered, but he shall not be liable to Owner or Architect for any damage resulting from such error, inconsistency or omission which he should not have discovered or which he did discover and at once so reported. Contractor shall do no work without approved drawings and specifications.”

52. Paragraph 3.2.2 shall be amended by deleting “The” in the second sentence and replacing it with “Neither the Owner nor the”, and deleting “not” after “Contractor is”. Add the following to the end of this paragraph”

“The Contractor shall not be entitled to additional compensation for the "rework portion" of any additional work caused by his failure to carefully study and compare the contract documents prior to execution of the Work.”

53. Paragraph 3.2.3 shall be amended as follows:

Add the following at the beginning of the existing section:

“If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor’s ability to satisfactorily perform the work or to honor his warranty, or will result in a limitation of or interference with the Owner’s intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate modification.”

54. Subparagraph 3.2.4 shall be added as follows:

“§ 3.2.4 The Contractor shall make a reasonable attempt to interpret the Contract Documents before asking the Architect for assistance in interpretation. The Contractor shall not ask the Architect for observation of work prior to the Contractor's field superintendent's personal inspection of the Work and his determination that the Work

complies with the contract documents. The Contractor shall arrange meetings prior to commencement of the work of all major subcontractors to allow the subcontractor to demonstrate his understanding of the Contract documents to the Architect and to allow the subcontractor to ask for any interpretation he may require.”

55. Paragraph 3.2.5 shall be added as follows:

“§3.2.5 Prior to performing any work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, and electrical lines, including but not limited to, all buried pipelines and buried telephone cables, and shall perform any work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines during its work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the particular campuses involved in the project, and shall notify all subcontractors and sub-subcontractors of the necessity to review said surveys. Contractor shall perform any work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly defined and located in AHERA and other hazardous material surveys. Before performing any portion of the work, the Contractor shall fully investigate all physical aspects of the project site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the project site.”

56. Paragraph 3.2.6 shall be added as follows:

“§3.2.6 If, in the opinion of the Architect, the Contractor does not make a reasonable effort to comply with the above requirements of the Contract Documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed on him by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's and / or Consultants' additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Articles 3.2.5, 3.2.6, and 3.12 before additional services are performed.”

57. Paragraph 3.2.7 shall be added as follows:

“§3.2.7 The Owner shall be entitled to deduct from the contract sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information where such information was available to the Contractor from a careful study and comparison of the contract documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the contract documents and this causes the Architect or his Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the contract documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure.”

58. Paragraph 3.2.8 shall be added as follows:

“§3.2.8 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his Warranty, he shall promptly notify the Architect in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification.”

59. Paragraph 3.2.9 shall be added as follows:

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

§3.2.9.1 The location, condition, layout, drainage and nature of the project site and surrounding areas.

§3.2.9.2 Generally prevailing climatic conditions;

§3.2.9.3 Anticipated labor supply and costs;

§3.2.9.4 Availability and cost of materials, tools and equipment; and

§3.2.9.5 Other similar issues

§3.2.9.6 Prior to pouring any concrete floor slabs, the Contractor shall submit plan and section drawings, at scale of 1/4" = 1'0", of each mechanical room to the Architect. These drawings shall be fully dimensioned showing all equipment piping, ductwork, electrical panels and devices, and structure, noting particularly the clearances proposed for each item. The Contractor shall make all corrections noted by the Architect and resubmit the drawings until noted "Reviewed - No Exceptions" by the Architect to ensure coordination among the trades. Once reviewed, the Contractor may begin Work. The 1/4" scale coordination drawings shall be required prior to the Architect or Engineer reviewing any submittals relating to components affected by the coordination plans.

Contractor's application for payment requests shall not be approved once the project has started on a particular phase unless the coordination plans have been submitted and reviewed without exception. Delays on the project due to the failure of the Contractor to submit the coordination drawings shall not be grounds for substantiated delays or requests for extensions of time.”

60. §3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

Add the following paragraphs:

Paragraph 3.3.2 shall be amended by adding the following at the end of the existing paragraph:

“As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and teachers, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and staff. All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress and identification of Contractor's employees, subcontractors, and all other persons carrying out the Work. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate termination of the employment of the offending employee from all construction on any of Owner's property. Repeated termination of Contractor's or Contractor's subcontractor's forces, or one serious infraction, can result in the immediate termination of this Agreement by Owner.”

61. Paragraph 3.3.4 shall be added as follows:

“§3.3.4 The Contractor is especially cautioned to coordinate the routing of mechanical and electrical items prior to commencing these operations. Any changes to the coordination submittal shall be approved.”

62. Paragraph 3.3.5 shall be added as follows:

“§3.3.5 The Port Neches-Groves Independent School District is a tobacco-free environment. No use of tobacco products will be allowed on the property at any time. The Contractor shall post signs, in both English and Spanish, at all entrances, notify all employees, subcontractors, and suppliers of this provision. The Contractor shall take all necessary steps and precautions to ensure adherence to this policy. No food or empty containers shall be left in the building overnight.”

63. Paragraph 3.3.6 shall be added as follows:

“§3.3.6 The Contractor shall review Subcontractor 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 who 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 Paragraph 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.”

64. Paragraph 3.3.7 shall be added as follows:

“§3.3.7 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Contractor the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect to the Work shall relate to the results the Owner desires to obtain from the Work and in no way shall affect Contractor’s independent contractor status.”

65. Paragraph 3.4.1 shall be amended by inserting “qualified, careful, and efficient workers and” before the word “for” in the first line of the first sentence.

After the word “labor” in the first sentence add “eligible to work in accordance with state and federal law. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for”.

At the end of the existing section add the following:

“Before ordering any material or doing any work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those on the Drawings and other construction Documents. Any inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.”

66. Paragraph 3.4.2 shall be adding “prior written” before the word “consent”.

67. Paragraph 3.4.2.1 shall be added as follows:

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

68. Paragraph 3.4.2.2 shall be added as follows:

“§3.4.2.2 The Contractor must submit to the Architect and the Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an

affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than twelve (12) working days for review. No substitutions will be considered or allowed without the contractor's submittals of complete substantiating data and information."

69. Paragraph 3.4.2.3 shall be added as follows:

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

70. Paragraph 3.4.3 shall be amended by adding the following language at the end of the existing paragraph:

"THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NONCOMPLIANCE WITH IMMIGRATION LAWS OR REGULATIONS. Any individual found by Owner to have violated the restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance."

71. Paragraph 3.4.4 shall be added as follows:

"§3.4.4 Including, but not limited to the specific requirements of Section 10.1.1, Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor from the consequences of his own conduct."

72. Paragraph 3.4.5 shall be added as follows:

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

73. Paragraph 3.4.6 shall be added as follows:

"§3.4.6 Contractor will, at least annually, obtain criminal history record information that relates to an employee, applicant, agent or Subcontractor of the Contractor or a Subcontractor, if the person has or will have continuing duties related to the Project, and

the duties are or will be performed on Owner's property or at another location where students are regularly present. Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or a misdemeanor involving moral turpitude, from Owner's property or other location where students are regularly present. Owner shall determine what constitutes "moral turpitude" or "a location where students are regularly present."

74. Paragraph 3.4.7 shall be added as follows:

“§3.4.7 PREVAILING WAGE RATES

§3.4.7.1 Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum Wage Schedule" provided herein. Wages listed are minimum rates only. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Texas Government Code section 2258 et seq.; Texas Labor Code section 62.0512 et seq.”

§3.4.7.2 Contractor shall forfeit, as a penalty to the Owner, \$60 for each laborer, worker or mechanic employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents.

§3.4.7.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

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

§3.4.7.5 Prevailing Wage Rates: [Attach Schedule as Exhibit A].”

75. Paragraph 3.5.1 shall be amended by adding the following after the first sentence:

“§3.5.1 The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect.”

Before the original second sentence of the existing paragraph add “Material, equipment and”.

After the words “insufficient maintenance” in the original second sentence, add “(unless such maintenance is Contractor's responsibility)” and after “normal usage”, add “, but



such exclusions shall only apply after Owner has taken occupancy of the damaged or defective portion of the project.”

At the end of the existing section add the following:

“Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties associated with each particular Work within the Project, and each such individual warranty shall run from the applicable Work’s Final Completion date (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Contractor’s express warranty is in addition to, and not in lieu of, Owner’s other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturers or supplier’s approval forms for delivery to the Owner. The warranties set out in this Subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.”

76. Paragraph 3.5.2 shall be added as follows:

“§3.5.2 Contractor shall certify that the Project has been constructed in general conformance with the Architect’s or Engineer’s plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents. Contractor shall fully complete a “Certification of Project Completion” as required by 19 Texas Administrative Code section 61.103(c) (3) (F).”

77. Paragraph 3.5.3 shall be added as follows:

“§3.5.3 In the event of failure of materials, products, or workmanship, either during the construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective work or replacement of the defective items, without cost of the Owner, and whether notified by the Owner or Architect. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor’s warranty. If Contractor does not respond to Owner’s written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten days of Contractor’s receipt of Owner’s written notice, then the Owner may take measures to correct the work and Contractor will be obligated to reimburse Owner’s costs. If notice to defects covered by Contractor’s warranty is given in writing to the Contractor on a timely basis, then the obligation to provide the warranty work may extend until the warranty defect is remedied and accepted by the Owner. The provision of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.”

78. Paragraph 3.5.4 shall be added as follows:

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

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

79. Paragraph 3.5.5 shall be added as follows:

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

80. Paragraph 3.5.6 shall be added as follows:

“§3.5.6 The warranties of Contractor provided in Paragraphs §3.5.1, §3.5.3, §3.5.5, §3.5.7, and §3.5.8, shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.”

81. Paragraph 3.5.7 shall be added as follows:

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

82. Paragraph 3.5.8 shall be added as follows:

“§3.5.8 Prior to receipt of Final Payment, Contractor shall:

1. Obtain warranties, executed in duplicate by responsible subcontractors, making the date of beginning of the warranties the Date of Final

Completion; and the warranties of suppliers and manufactures, making the date of beginning of the warranties no later than the Date of Final Completion;

- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Retain warranties and bonds for simultaneous submissions to the Architect;
- .5 Bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers.
- .6 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;
- .7 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; and
- .8 Separate each warranty with index tab sheets keyed to the Table of Contents listing."

83. Paragraph 3.5.8 shall be amended added by adding the following subparagraphs:

"§3.5.8.1 In the event of failure of materials, products, or workmanship, either during construction or the warranty period (which shall be one year from the date of substantial completion, except where a longer period is specified), the Contractor shall take appropriate measures to assure correction or replacement of the defective items, whether notified by the Owner or Architect. Items of work first performed after substantial completion shall have their warranties extended by the period of time between substantial completion and the actual performance of the work.

§3.5.8.2 Refer to warranty forms included under Section 01710 Contract Close-Out, which will be required prior to final payment.

§3.5.8.3 In the event an item under warranty fails, the Contractor shall extend the original warranty period by a length of time equal to the elapsed time which occurs from the notification in writing by the Owner or a warranty claim until acknowledgement by the Owner that the claim has been resolved.

§3.5.8.4 Appropriately 11 months after Substantial Completion, the Contractor shall accompany the Owner and Architect on a complete re-inspection of the Project and be responsible for correcting any 1 all additional deficiencies observed or reported."

84. Paragraph 3.6 TAXES shall be amended by deleting the existing paragraph and replacing it with the following language:

“§3.6.1 Owner is an exempt entity under the tax laws of the State of Texas. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sales, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Failure of Contractor or any Subcontractor to obtain Certificates of Resale from their suppliers shall make the contractor or Sub-contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Contractor hereby RELEASES, INDEMNIFIES AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.”

85. §3.7 PERMITS, FEES AND NOTICES

Paragraph §3.7 shall be amended by deleting the existing sentence up to "other permits" and replacing it with the following:

“The Contractor shall be responsible for making and submitting application for the building permit. The Owner shall pay the municipality directly for the building permit and all other development "impact" fees, if any. The Contractor shall continue to be responsible for payment of.”

86. Paragraph 3.7 shall be further amended by inserting “or proposals” after “bids”, placing a period after “received,” deleting the remainder of the original sentence, and adding the following at the end of the existing section: “Such fees and expenses shall only be reimbursable to Contractor if expressly agreed to herein.”

87. Supplement Paragraph 3.7.1 with the following sub-paragraphs:

“§3.7.1.1 The Owner shall pay directly to the governing authority, the cost of all permanent utility impact fees, capital recovery fees, utility assessments and similar non-construction related fees, unless specifically indicated herein. Verify discrepancies, if any, prior to submitting competitive sealed proposals.

§3.7.1.2 The Owner shall pay all fees to the Texas Department of Licensing and Regulation (TDLR) for document review and project inspections relative to the Elimination of Architectural Barriers Act. The Architect will submit the documents to the TDLR for review and approval.

§3.7.1.3 The Contractor shall pay directly all temporary utility charges, tap charges, and water meter charges, without reimbursement from Owner. After consultation with the Owner, 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. Also after consultation with the Owner, the Contractor shall obtain all permits and approvals, and

pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor's obligations under this section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, Contractor's subcontractors, the Project, or the Owner.

§3.7.1.4 The Contractor shall be responsible for submitting Contract Documents to the governing authority for the purpose of obtaining required building permits.

§3.7.1.5 The Contractor shall be responsible for obtaining all temporary utility charges, tap charges, water meter charges and any other similar fees assessed by jurisdictional authorities having control over this project related to the actual installation of building utilities and services. The Contractor is not responsible for off site utility installation costs.

§3.7.1.6 The Contractor shall be responsible for obtaining and paying for all City and County Building Permits, plan checking fees and on-site inspection fees. The Contractor shall verify all such costs with the governing authority and include all such costs in the Base Proposal Amount.

§3.7.1.7 The Contractor shall not be granted any extra compensation for not being able to start construction while awaiting the issuance of a building permit.

§3.7.1.8 If the Contractor performs Work which he knew or should have known to be contrary to applicable laws, statutes, ordinances, building codes, local rules or regulations, without such written notice to the Owner, the Contractor shall assume full responsibility for such Work and shall bear their attributable costs and penalties.”

88. §3.7.3 Delete in its entirety

89. Paragraph 3.7.4 shall be amended as follows:

Replace “knowing” with “when Contractor knows or reasonably should have known,” in the first sentence.

Delete “and” before “rules” and before “regulations” and replace each with a comma.

Insert “and Construction Documents” after the word “regulations”.

90. Paragraph 3.7.5 shall be added as follows:

“§3.7.5 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect at once when the Owner's participation is required, and the Architect shall immediately notify the Owner. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction,

then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.”

91. Paragraph 3.8.1 shall be amended by adding the following before the final period in the second sentence:

“, unless required to do so by the terms of the Construction Documents.”

The General Contractor shall note that there are Allowances that are included in the Base Proposal as Specified in Section 01035.

92. Paragraph 3.8.2. shall be amended as follows:

“.1 Delete “and all required taxes”

.3 Add “or the Owner's Contingency, at Owner's discretion” after “Contract Sum”, delete “by Change Order” and put a period after “accordingly” in the first sentence, and replace “Change Order” with “adjustment,” in the second sentence.”

93. Paragraph 3.8.3 shall be amended by deleting “in sufficient time to avoid delay in the Work” and replacing it with “within such time as is reasonably necessary to avoid delay in the Work, if Contractor's submittal provides a reasonable amount of time for Owner's decision-making process.”

94. Paragraph 3.8.4 shall be added as follows:

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

95. Paragraph 3.9.1 shall be amended as follows:

In the first sentence, add “satisfactory to Owner” after the word “assistants”, and add “at all times” after the word “site”.

Add the following at the end of the existing section:

“Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Selection. Such superintendents shall remain full-time on the Project until all items of the punch list are completed and accepted by the Architect. Prior to execution of the Contract, the Contractor shall furnish a list to the Architect and Owner of all engineers, consultants, job-site superintendent(s), project managers, Subcontractor, sub-subcontractor and suppliers involved in Construction. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor,

Subcontractor or Sub-Subcontractor involved in the Project. 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. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architect objects to any nominated Superintendent(s) and Project Manager.”

96. Paragraph 3.9.2 shall be added as follows:

“§3.9.2 Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.”

97. Paragraph 3.9.3 shall be added as follows:

“§3.9.3 Prior to Final Completion, the Contractor shall not substitute a Superintendent(s) and Project Manager other than for death, disability leaving employ of the Contractor, or other substantial reason which cannot be avoided. Substitution of Superintendents(s) or Project Manager shall not be made without the consent of the Owner. The process and criteria described above shall be in force in the event a substitution of Superintendent or Project Manager is necessary. The Contractor shall reimburse the Owner, Architect and his consultants (on a reasonable hourly basis) for additional costs incurred due to said substitution. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architect objects to any nominated Superintendent(s) or Project Manager.”

98. Paragraph 3.9.4 shall be added as follows:

“§3.9.4 Owner shall be notified not less than 24 hours before any time that Superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, the Contractor is subject to being backcharged in the amount of \$250 for each day.”

99. Paragraph 3.9.5 shall be added as follows:

“§3.9.5 Prior to Final Completion, the Contractor shall not substitute a Superintendent(s) and Project Manager other than for death, disability, leaving the employ of the Contractor, or other substantial reason which cannot be avoided. Substitution of Superintendent(s) or Project Manager shall not be made without the consent of the Owner. The process and criteria described above shall be in force in the event a substitution of Superintendent or Project Manager is necessary. The Contractor shall reimburse the Owner, Architect and his consultants (on a reasonable hourly basis) for

additional costs incurred due to said substitution. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architect objects to any nominated Superintendent(s) or Project Manager.”

100. Delete paragraph 3.9.6 in its entirety and substitute the following:

“§3.9.6 The Contractor, within five days after the award of the Contract and prior to beginning any field operations, the Contractor shall furnish to the Owner and the Architect in writing the name and professional qualifications of the person(s) proposed by the Contractor as the Superintendent(s) and Project Manager. The Contractor shall not assign any person(s) as Superintendent(s) and Project Manager to whom the Owner or the Architect has made reasonable objection. No increase in Contract Time or Contract Sum shall be allowed in the event the Owner or Architect objects to any nominated Superintendent(s) and Project Manager.”

101. §3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

Paragraph 3.10.1 shall be amended by adding the following language at the end of the existing paragraph:

“The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.”

102. Paragraph 3.10.3 shall be amended by deleting the word “general” in the sentence.

103. Paragraph 3.10.4 shall be added as follows:

“§3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment, a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.”

104. Add the following subparagraph: 3.10.5

“§3.10.5 The Contractor shall submit to the Architect with each monthly Application for Payment, a copy of the progress schedule showing all modifications required to have the schedule reflect appropriate revisions and I actions necessary to assure that the project



completion schedule is met. This provision shall be prerequisite for approval of Applications for Payment.”

105. §3.11 DOCUMENTS AND SAMPLES AT THE SITE

Paragraph 3.11.1 shall be amended as follows:

Inserting “Field Test Records, Inspection Certificates or Records, Manufacturer's Certificates,” after “Shop Drawings” in the first sentence.

Inserting “and Owner at all times” after the first “Architect” in the second sentence.

106. Paragraph 3.11.2 shall be added as follows:

“§3.11.2 In addition to any other requirement in the Contract Documents and prior to installation, Contractor shall furnish or cause a subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work. The Contractor shall post all addenda on construction documents prior to commencing work on the site.”

107. Paragraph 3.12.4 shall be amended as follows:

Add “Construction Documents or the” before “Contract Documents” in the first line of the first sentence, the second line of the second sentence before “Documents”, the third line of the second sentence before “Documents” and the last line of the last sentence of this section.

Add “Construction” in the third sentence before “Documents”.

108. Paragraph 3.12.5 shall be amended as follows:

Add “Construction Documents or the” before “Contract Documents” in the first line of the first sentence, the third line of the first sentence and the second line of the last sentence.

109. Paragraph 3.12.6 shall be amended by adding “Construction Documents or the” before “Contract Documents” in the last line of this section.

110. Add the following subparagraph 3.12.6.1:

“§3.12.6.1 If, in the opinion of the Architect, the shop drawings indicated a lack of study and review by the Contractor is incomplete, or indicate an inadequate understanding of the work covered by the shop drawings, prior to submittal to the Architect, the shop drawings will be returned, un-reviewed, to the Contractor for correction of any / all of these deficiencies for subsequent resubmittal. Additional service charges as outlined in §3.2.6 may be charged by the Architect in this event. The Contractor shall clearly mark on all submittals any nonconforming specification or details for the Architect's review.”

111. §3.12.7 Delete in its entirety and substitute the following:

“§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 reviewed by the Architect without request for re-submittal.”

112. Paragraph 3.12.8 shall be amended as follows:

Add “Construction Documents of the” before “Contract Documents” in the second line of the first sentence of this section.

Add at the end of the last sentence: “, except for any such errors or omissions which are within Architect's statutory or contractual design responsibility.”

113. Paragraph 3.12.10 shall be amended as follows:

Add “Construction Documents or the” before “Contract Documents” in the second line of the first sentence and in the third line of the second sentence.

Delete “, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy” in the fifth sentence.

Add “Construction Documents or the” before Contract Documents in the sixth sentence.

Add at the beginning of the seventh sentence: “Unless the Contractor is providing professional services as allowed herein,” and add “Construction Documents or the” before “Contract Documents” in this same sentence.

Add the following at the end of the existing paragraph:

“A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry comprehensive general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the even that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.”

114. Add the following subparagraphs to 3.12:

“§3.12.11 The Contractor shall submit complete drawings, data and samples to the Architect at least 30 days prior to the date the Contractor needs the reviewed submittals returned. The Contractor shall be prepared to submit color samples on any key items (such as quarry tile, vinyl wall covering, etc.) within thirty (30) days after the execution of the Agreement. All color samples required for the Work shall be received within thirty (30) days of the date of approval of the Contract Sum or GMP. Once samples of all key

items are received, The Architect will finalize color selections. Color selections of key items shall NOT be done piece meal.

§3.12.12 The Contractor shall submit the number of copies of product data and samples which the Contractor and his subcontractors need for their use PLUS four additional sets for the Architect, and one additional set for each of the Owner's consultants involved with the particular section of Work. Where shop drawings are involved, submit one high quality black on white opaque print of the shop drawing for the Architect, one opaque print of the shop drawing for the Owner, and one additional opaque print for each of the Owner's consultants involved with the particular section of Work. The opaque print (one) will be reviewed and accompanied by a Submittal Comments Form signed by the Architect and/or his consultants, and returned to the Contractor for printing and distribution as required. After final review and correction of the Submittal Comments Form, the Contractor shall send two corrected sets of opaque prints to the Architect, one to the Owner, and one to each of the Owner's consultants involved with the particular section of Work.

§3.12.13 The Contractor shall provide composite drawings within six (4) weeks of execution of the Agreement showing how all piping, ductwork, lights, conduit and equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by Code, or in keeping with good construction practice. Space for all trade elements must be considered on the same drawing. Drawings shall be 1/4" per foot minimum scale and shall include invert elevations, elevation views and sections required to meet the intended purpose. Trades required to participate include, but are not necessarily limited to structural, mechanical, plumbing, fire sprinkler, electrical, data and special systems.

§3.12.14 The Architect's review of Contractors' submittals shall be limited to examination of an initial submittal and one re-submittal. 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 reimburse from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

§3.12.15 The Contractor's access to the site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the Owner prior to the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without consent by the Owner. ”

115. §3.13 USE OF THE SITE

116. Subparagraph 3.13.1 add the following to the end of the paragraph: “The Contractor's use of the site shall be unlimited except for any environmental issues.”

117. Paragraph 3.13.2 shall be added as follows:

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

118. Paragraph 3.13.3 shall be added as follows:

“The Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.”

119. Paragraph 3.13.4 shall be added as follows:

“§3.13.4 The Contractor shall use all means necessary to eliminate the public access to the Contractor's construction operations areas. Safety of the public is paramount. The Contractor is responsible for all safety at the site.”

120. Paragraph 3.13.5 shall be added as follows:

“§3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilet, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building.”

121. Paragraph 3.14.1 shall be amended by adding the following language at the end of the existing sentence.

“; provided, however, any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Construction Documents.”

122. Paragraph 3.14.3 shall be added as follows:

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

123. Paragraph 3.14.4 shall be added as follows:

“§3.14.4 The Contractor's access to the site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the Owner prior to the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without consent by the Owner.”

124. §3.15 CLEANING UP

Add the following subparagraph:

125. Paragraph 3.15.3 shall be added as follows:

“§3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish

transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.”

126. Paragraph 3.15.4 shall be added as follows:

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

127. Paragraph 3.15.5 shall be added as follows:

“§3.15.5 Prior to, and as a prerequisite for the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site. See Project Closeout Section 01710.”

128. Paragraph 3.16.1 shall be amended in the first sentence by deleting “and”, and replacing it with a comma and adding “and their designated representatives” after “Architect”.

§3.16.1 shall be further amended by adding the following: “The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.”

129. Paragraph 3.17.1 shall be amended as follows:

Delete “and” in the second sentence before “SHALL” and after “SHALL” add “WAIVE AND RELEASE CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL INDEMNIFY AND HOLD HARMLESS,”

Delete “hold” and “harmless”.

Add after "THEREOF" "; PROVIDED HOWEVER, CONTRACTOR,"; delete "but"; and after "RESPONSIBLE" in the same sentence, add "TO ARCHITECT".

Delete "OWNER OR" at the end of the original second sentence before "ARCHITECT" and after "ARCHITECT" add ", AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION."

Add in the last line of the last sentence of this section "Owner and" before "Architect" and "in writing" after "Architect".

130. Paragraph 3.18.1 shall be replaced in its entirety with the following language:

" §3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS, AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATIONS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS PARAGRAPH 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS."

131. Paragraph 3.18.2 shall be replaced in its entirety with the following language:

"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 PARAGRAPH 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 ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.”

132. Paragraph 3.18.3 shall be added as follows:

“3.18.3 THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS PARAGRAPH 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER, OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE PERFORMANCE OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM: (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 ET. SEQ.”

133. Paragraph 3.18.4 shall be added as follows:

“3.18.4 THE OWNER MAY CAUSE ANY OTHER CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SUBPARAGRAPH 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S OTHER CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SUBPARAGRAPH 3.18.1 ABOVE.”

134. Paragraph 3.18.5 shall be added as follows:

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

135. Revise the first sentence of paragraph §3.18.6 to read as follows:

“The Contractor shall defend, indemnify and hold harmless the Owner, its trustees and employees, the Architect, Architect's consultants, and their agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting there from, but only to the extent caused in whole or in

part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused by a party indemnified hereunder.”

136. Paragraph 3.19 and subparagraph §3.19.1 shall be added as follows:

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

§3.19.1 At the completion of the project, the contractor shall submit one (4) complete sets of drawings with all changes made during bidding and construction, including concealed mechanical, electrical, and plumbing items. Drafting shall be compatible (1/8" high all upper case lettering) and the Contractor shall submit these as black on white prints. The drawing shall represent all changes as constructed. The record drawings shall delete the seal of the Architect and/or Engineer and any reference to those firms providing professional services to the Owner. After approval of the back on white as built drawings the Contractor shall provide modified electronic Auto Cad documents that can be read by the Owner (e.g. Adobe pdf files) on CD ROM Disk.”

137. Paragraph 3.20 shall be added as follows:

“§3.20 REPRODUCIBLE RECORD DRAWINGS. At the completion of the Project, the Contractor shall submit one complete set of "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as Mylar, sepia, or other acceptable medium, in the discretion of the Owner. The "as built" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.”

Supplement Article 3 with the following paragraph / subparagraphs:

138. Paragraph 3.21 and subparagraph §3.21.1 shall be added as follows:

139. “§3.21 PREVAILING WAGE RATES

§3.21.1 No employee used in this construction may be paid less than the minimum wage rate provided in Article 59594 Vernon's Civil Statutes, The Texas Minimum Wage Act of 1970. Refer to Wage Rates Schedule, included herein titled Exhibit "A". The Contractor shall provide proof to the Owner that all employees, including employees of subcontractors, are paid in accordance with State of Texas statutes.”

140. Paragraph 3.22 and subparagraph §3.22.1 shall be added as follows:

“§3.22 ANTITRUST VIOLATIONS



§3.22.1 To permit the Owner to recover damages suffered; in antitrust violations, the Owner Contractor Agreement shall include the following, "Contractor hereby assigns to Owner any and all claims for overcharges associated with the Agreement which are under the antitrust laws of the United States, 15 U.S.C.A., Sec.1 et.seq. (1973)". The Contractor shall include this provision in his agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers."

#### ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

141. Paragraph 4.1.2 shall be amended by deleting "Contractor and Architect. Consent shall not be unreasonably withheld" at the end of the existing section.

142. Paragraph 4.1.3 shall be amended by deleting "against whom the Contractor has no reasonable objection" and adding the following language at the end of the existing sentence. "Owner shall notify Contractor if a new Architect has been employed by Owner."

143. Paragraph 4.1.4 shall be added as follows:

"§4.1.4 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and Contract Documents by the duties, responsibilities or activities of the Architect."

144. Paragraph 4.2.1 shall be amended as follows:

Add "as amended" in the first sentence after "Contract Documents."

145. §4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

146. Paragraph 4.2.2 shall be replaced in its entirety with the following language:

"§4.2.2 Unless defined otherwise by the Contract between the Owner and Architect the Architect or his authorized representative shall visit the site, at intervals appropriate to the stage of construction, to observe the progress, quantity and quality of the work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Construction Documents and Contract Documents and on time. A sufficient number of job site meetings from commencement of construction through Final Completion will be initiated by the Contractor and attended by the Architect. Attendees will include the Contractor's project manager and/or superintendent, and may include the Owner, Architect's project representative, the Architect, and Program Manager. The Architect, Owner and their representatives shall at all times have access to the Work. The Architect, or his authorized representative, shall be furnished the opportunity to provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative shall be furnished the opportunity to provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor

shall not close or cover said Work until said observations have occurred. Contractor will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on-site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner."

147. Paragraph 4.2.3 shall be amended by adding the following language at the end of the existing paragraph:

"The Contractor shall reimburse for compensation paid to the Architect for additional site visits made necessary by the fault, neglect or requests of the Contractor."

148. Paragraph 4.2.4 shall be amended by deleting "with each other" in the second sentence, and adding a new sentence after the second sentence: "However, Owner reserves the right to communicate directly with the Contractor. However, any communication between the Contractor and Owner shall be documented and a written copy of the communications submitted to the Architect and Program Manager."

149. Paragraph 4.2.5 shall be amended by adding "As further provided in the Contract Documents" at the beginning of the existing paragraph and replacing the "B" with "b" in the word "based".

150. Paragraph 4.2.6 shall be amended as follows:

Delete "will have authority to" in the first sentence and replace it with "shall", and add "Construction Documents and the" before "Contract Documents" in the first sentence.

Delete "have authority to request" in the second sentence and replace it with "recommend to Owner additional".

Delete "Sections §13.5.2 and §13.5.3" and replace it with "the provisions of the Contract Documents" in the second sentence.

Add "or the Owner" after "responsibility of the Architect" in the third sentence.

At the end of the existing paragraph, add the following:

"Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or nonconformance with Construction Documents or the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by

Architect. Testing or inspections required by this subparagraph shall be conducted subject to the requirements of Chapter 44 of the Texas Education Code.”

151. Paragraph 4.2.7 shall be amended as follows:

Delete “but only” after “Samples” in the first sentence.

Delete “limited” before “purpose” in the first sentence.

Delete “information given and the design concept expressed in” in the first sentence after “conformance with”.

Add “Construction Documents and the” in the first sentence “before” Contract Documents”.

Add “and all applicable laws, statutes, codes and requirements applicable to Architects’ design services” at the end of the first sentence.

Add “Construction Documents and” in the third sentence before “Contract Documents.”

Add at the end of the existing paragraph the following:

“If any submittal does not comply with the requirements of the Construction Documents or the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.”

152. Paragraph 4.2.8 shall be deleted and replaced in its entirety with the following language:

“§4.2.8. The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directive of the Owner’s approval and execution in accordance with the Construction Documents and the Contract Documents, accompanied by all supporting documentation. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, then the Architect may issue an order for a minor change in the Work, or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning (“HVAC”); root foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner’s prior written consent.”

153. Paragraph 4.2.12 shall be amended by deleting “will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith” at the end of the existing paragraph.
154. Paragraph 4.3 shall be amended by changing the heading to add “of Contractor” at the end of the title.
155. Paragraph 4.3.1 shall be amended as follows:
- Delete “one of the parties” in the first sentence and replace it with “the Contractor”. Add “or the Project or the Work” at the end of the first sentence.
- Delete the second sentence in its entirety. Delete “party making the Claim” at the end of the paragraph and replace it with “Contractor.”
- Add the following to the end of the paragraph:
- “This does not preclude other parties, i.e. Architect or Program Manager, from making a claim.”
156. Paragraph 4.3.2 shall be amended as follows:
- Delete “either party” in the first line of the first sentence and replace it with “the Contractor”.
- Add “calendar” after “21” in two places in the first sentence.
- Delete “claimant first recognizes” in the first sentence and replace it with “Contractor first knew or should have known of.”
- Delete “later” at the end of the first sentence and replace it with “earlier”
- Add titled “Notice of Claim” (hereinafter “Notice”) and sent” after “written notice” in the second sentence. Delete “other party” at the end of the existing paragraph and replace it with “Owner's designated representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice, then the Notice shall be amended at the earliest date that is reasonably possible. Any Claim or portion of a Claim by Contractor that has not been made the specific subject of a Notice strictly in accordance with the requirements of this section shall be waived. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated promptly. Contractor agrees that this is a reasonable notice requirement.”
157. Paragraph 4.3.3 shall be amended by adding “, as amended,” after “9.7.1” and after “Article 14” in the first sentence, and adding “undisputed” before “payments” and “for Work performed” after “payments.”
158. Paragraph 4.3.4 shall be amended by replacing “n” with “N” for the word “Notice” after “Contract Documents” in the fifth line of the first sentence;

Deleting “21” and replacing it with “3 business” near the end of the first sentence; and

Deleting all original language in the second sentence beginning with “if they differ” and replacing it with “report findings and a recommended resolution in writing to Owner and Contractor. If Owner's Board of Trustees and Contractor cannot agree on an equitable adjustment to the Contract Sum or Contract time, then either party may pursue alternative dispute resolution as provided for in the Contract Documents within 21 business days of the Architect's recommendation. Contractor agrees that this is a reasonable notice requirement.”

159. Paragraph 4.3.5 shall be amended in the first sentence by adding “or Guaranteed Maximum Price” after “Contract Sum” and by deleting “before proceeding to execute the Work”, and replacing it with “to Owner.”

160. Paragraph 4.3.5 shall be further by adding the flowing before the last sentence:

“The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to Owner and Contractor. If the Claim is approved by Owner's Board of Trustees, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents within 21 days of the Architect's recommendations.”

161. Paragraph 4.3.6 shall be deleted in its entirety.

162. Delete paragraph 4.3.7 in its entirety and substitute the following

“§4.3.7 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, 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, Architect and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.”

163. Paragraph 4.3.7.2 shall be deleted in its entirety and replaced with the following language:

“§4.3.7.2. Claims for extension of time because of unusual inclement weather shall be granted only when such inclement weather prevented the execution of major items 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 and/or the season or seasons of the year.”

164. Paragraph 4.3.7.6 shall be added as follows:

“§4.3.7.6 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or under Contractor's control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Only claims for extension of time shall

be considered because of hindrances or delays not the fault of either Contractor or Owner, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Board approval shall be required for any extension of time. No damage shall be paid for delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.”

165. Paragraph 4.3.7.7 shall be added as follows:

“§4.3.7.7 Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether Contractor, Owner, rain day or other. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section shall be waived.”

166. Paragraph 4.3.8 shall be amended by adding at the end of the existing paragraph the following language “Provided, however Contractor understands that, under Texas law, Owner has tort immunity.”

167. Paragraph 4.3.9 shall be amended as follows:

Delete “shall” after "unit prices" at the end of the existing paragraph and replace it with “, may, by mutual written agreement”

168. Paragraph 4.3.10 shall be amended as follows:

In the first sentence, delete “and Owner”, add an “s” to the word “waive”, and add “all” after “waive”; delete “each other” and replace it with “Owner”; and add the following at the end of the first sentence:

“including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.”

The remainder of § 4.3.10 shall be deleted in its entirety.

169. Paragraph 4.4.1 shall be amended as follows:

Delete “decision” at the end of the first sentence and replace it with “written recommendation”.

Delete “but excluding those arising under Section 10.3 through 10.5” in the first sentence.

Delete “decision” in the second sentence and replace it with “recommendation”, and delete “arbitration” from the second sentence.

Add “by the Contractor against the Owner,” after “Claims” in the third sentence.

Delete “between” before “the Contractor” and replace it with “by”, and delete “and Owner.”

Delete “decision” at the end of the second sentence and replace it with “recommendation.”

Delete the last sentence.

170. Paragraph 4.4.2 shall be amended as follows:

Delete “or more” in the first sentence.

Delete “claimant, or a response with supporting data from the other party” and replace it with “Contractor, or” in the first clause of the sentence.

Delete all language in clause (2) and replace it with “make a written recommendation to the Owner, with a copy to the Contractor.”

Delete the remainder of the sentence.

171. Paragraph 4.4.3 shall be amended by deleting all language starting with “rendering” and replacing it with “making a written recommendation”.

172. Paragraph 4.4.4 shall be amended by deleting the last sentence in this section in its entirety.

173. Paragraph 4.4.5 shall be deleted in its entirety and replaced with the following language:

“§4.4.5 Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum or Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Paragraph 4.5.”

174. Delete paragraph 4.4.6 in its entirety and replace with the following:

“§4.4.6 If a claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, such decision shall be final and binding on the parties but subject to litigation or other legal proceeding.”

175. Paragraphs 4.5, 4.5.1, 4.5.2, and 4.5.3 in their entirety and all other references to Mediation shall be deleted and replaced in their entirety with the following language:

“§4.5 MEDIATION

§4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, shall, after written recommendation by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall be a condition precedent to the initiation of any litigation arising out of such Claims.

§4.5.2 The parties shall endeavor to resolve their Claims by mediation. Requests for mediation shall be filed in writing with the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies

Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.

§ 4.5.3 The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held within the county where the Owner's main administrative office is located, unless another location is mutually agreed on by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas."

176. Paragraph 4.5.4 shall be added as follows:

"§4.5.4 Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder."

177. Paragraph 4.5.5 shall be added as follows:

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

Paragraph 4.5.6 shall be added as follows:

"§4.5.6 In any adjudication or claim under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party, as allowed by Texas Local Government Code section 27 1.159."

178. Paragraph 4.6 shall be deleted in its entirety.

#### ARTICLE 5 - SUBCONTRACTORS

179. Delete paragraphs 5.2.1, 5.2.2, 5.3.3, and 5.2.4 in their entirety and substitute the following:

"§5.2.1 The Owner's Proposal evaluation criteria includes the requirement for the Proposer / Contractor to submit with the Proposal proposed sub-contractors for selected portions of the work for which the Proposal was based. Refer to Specification section AE for required sub-contractors to be submitted with the Proposal AC. All subcontractors shall be procured in accordance with Texas Education Code sections 44.03 1 through 44.041, as applicable. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Construction Documents and Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.



§5.2.2 As soon as practicable after Award of the Contract but no later than 10 days prior to the submittal date for the Contractor's first Application for Payment, Contractor shall furnish to the Owner and Architect in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. Where Subcontractors or subcontractors have been listed in the Specifications or in an Addendum as a Listed Subcontractor the proposed entity shall be one of those firms listed, unless agreement has been reached to accept a proposed Substitute Subcontractor as listed on the Proposal Form Regarding proposed persons or entities to perform portions of the Work where no Listed Subcontractors have been listed or approved by Addendum, the Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no objection. Failure of the Contractor to submit the subject names in a timely manner will delay processing of the Contractor's Application for Payment.

§5.2.3 The Contractor shall not contract with a proposed person or entity to which the Owner or Architect has made a timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made an objection under the provisions of paragraph 5.2.1.

§5.2.4 If the Owner or Architect has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required in paragraph 5.2.1.

§5.2.5 Prior to such substitution the Contractor shall notify the Architect of his intent and reasons for such proposed substitutions. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes objection to such change.

§5.2.6 The Contractor shall submit the list of proposed Subcontractors on AIA Document G805. The Contractor may obtain blank copies from the Architect.

§5.2.7 The Contractor and sub-contractors are required to visit the site and completely familiarize himself with the existing conditions prior to the submission of Proposal(s). No additional increase in the Contract amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Construction Documents and Contract Documents.”

180. Paragraph 5.3.1 shall be amended as follows:

Add “written” in the first sentence after “appropriate”

Delete "written where legally required for validity” in the first sentence.

Add as the second sentence: "The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except as provided below."

181. Paragraph 5.3.2 shall be added as follows:

"§5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor."

182. Paragraph 5.3.3 shall be added as follows:

"§5.3.3 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 subcontract. 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."

183. Paragraph 5.4.1 shall be amended by:

Deleting "a" in the first sentence and adding "any unperformed" before "portion of the Work."

Deleting "the Owner for cause pursuant to Section 14.2" and replacing it with "either party in accordance with Article 14, or abandonment of the Project by the Contractor."

Deleting the "and" at the end of .1,; and

".3 the subcontractor provides bonds as required by law of the prime contractors, and by Owner."

184. Paragraph 5.4.2 shall be deleted in its entirety and replaced with the following:

"§5.4.2 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable."

185. Add the following subparagraph §5.4.3:

"§5.4.3 The Drawings and Specifications have been organized to facilitate work required by various trades; however, each Subcontractor shall formulate their bid and provide their respective work based on a complete set of Contract Documents. No allowance for time or cost shall be made by the Owner for a subcontractor who bases their scope of work on a partial set of Contract Documents."

186. Add the following paragraph

"§5.5 NOTICE OF SUBCONTRACTOR DEFAULT

§5.5 Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor."

187. §6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

Paragraph 6.1.1 shall be amended by deleting the last sentence and replacing it with "The Owner reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work."

"§6.1.1 Delete the last sentence "If the Contractor claims... make such Claim as provided in Paragraph 4.3."

188. Paragraph 6.1.3 shall be amended as follows:

Delete the first and second sentences and replacing them with "Contractor shall cooperate with other separate contractors to ensure that the Work remains on schedule."

Add "between the Owner and Contractor" after "mutual agreement" in the original third sentence.

189. Paragraph 6.1.4 shall be deleted in its entirety

190. Paragraph 6.2.1 shall be amended as follows:

Replace "MUTUAL" with "CONTRACTOR" in the title.

Add prior to the first sentence, the following sentence:

"It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of Work performed in by any of the Owner's separate contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's separate contractors."

In the second sentence, add "site access and" after "reasonable" and add "or staging" after "storage."

At the end of the existing paragraph, add "Contractor shall be responsible for coordination between Contractors' subcontractors and Owner's separate contractors. Contractor shall review Owner's contract with Owner's separate contractors and become familiar with the requirements and scope of services contained therein."

191. Paragraph 6.2.2 shall be amended as follows:

Add “in writing” after “report” in the first sentence.

Add “and Owner” after “Architect” in the first sentence.

Add at the end of the first sentence after “execution and results” the following:

“and shall promptly report in writing to the Architect and Owner if Owner’s separate contractors fail in any way to timely perform their services or negatively impact Contractor’s schedule or ability to perform the Work.”

192. Paragraph 6.2.3 shall be amended by deleting the last sentence.

193. Paragraph 6.2.3.1 shall be added as follows:

“§6.2.3.1 If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner or the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.”

194. Paragraph 6.2.3.2 shall be added as follows:

“§6.2.3.2 If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.”

195. Paragraph 6.2.3.3 shall be added as follows:

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

196. Paragraph 6.2.4 shall be amended by adding “, as amended” at the end of the existing paragraph.

197. Paragraph 6.2.5 shall be amended by adding “, as amended” at the end of the existing paragraph.

198. Paragraph 6.3.1 shall be amended as follows:

Add “then” after “rubbish”.

199. Paragraph 7.1.3 shall be amended as follows:

Add “Construction Documents and the” before “Contract Documents” in the first sentence.

Add the following language at the end of the existing paragraph:

“Contractor shall not make any claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a Change in the Work. No claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price shall be valid unless so ordered or directed.”

200. Paragraph 7.1.4 shall be added as follows:

“§7.1.4 The total Contractor mark-up for overhead, profit or fee for work performed by the Contractor's own forces shall not exceed 10 percent of the cost of the Change in the Work. The total Contractor mark-up for overhead, profit or fee for supervision of work performed by subcontractors' forces shall not exceed 4 percent of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit or fee for work performed by the subcontractor's forces shall not exceed 10 percent of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractor, regardless of who performs the work, exceed 14 percent of the total cost of the Change in the Work.”

201. Paragraph 7.2.1.2 shall be amended by adding “or Guaranteed Maximum Price” after “Contract Sum”.

202. Paragraph 7.2.3 shall be added as follows:

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

203. Paragraph 7.2.4 shall be added as follows:

“§7.2.4 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price, unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.”

204. Paragraph 7.3.3 shall be amended as follows:

After “agreed upon”, add “(additional mark-ups for overhead, profit and fees will not be allowed)”.

After “percentage fee”, add “, subject to the limitations of paragraph 7.1.4”.

After “7.3.6”, add “, subject to the limitations of paragraph 7.1.4”.

205. Paragraph 7.3.6 shall be amended as follows:

After "Contract Sum" in the first sentence, add "then the adjustment shall be determined by the Architect on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:"; delete the existing language beginning with "the method and the adjustment" and ending with "shall be limited to the following."

1. Before "costs of labor" add "actual"; before "unemployment", delete "'old age and"; and after "insurance", delete "fringe benefits required by agreement or custom"
2. Before "costs of materials", add "actual"; after "cost of transportation", add "used in performing the change in the Work"; and delete "whether incorporated or consumed"
3. In the first sentence, add "actual" before "rental"; add "rented from third parties" after "equipment" delete "whether rented from the Contractor or others"; and add "and" at the end of the clause.
4. Before "costs of premiums", add "actual"; before "permit fees", add "and"; delete "and sales, use or similar taxes"; and delete "and after work";

206. Delete 7.3.6.5 in its entirety and add the following at the end of the Section:

"The Contractor shall keep and present in such form as the Architect or Owner may prescribe, an itemized account of the items listed above, together with appropriate supporting documentation."

207. Paragraph 7.3.7 shall be amended as follows:

Add "plus the Contractor's allocated percent of profit and overhead" after "net cost" in the first sentence.

Delete the second sentence in its entirety.

208. Paragraph 7.3.8 shall be deleted in its entirety

209. Paragraph 7.3.9 shall be renumbered as 7.3.8.

210. Paragraph 7.4.1 shall be amended as follows:

Add prior to the existing first sentence "With the prior written approval of the Owner's representative"; and change "The" to "the" before Architect in the first sentence.

At the end of the first sentence, delete "the intent of after" inconsistent with and add "Construction Document or the" before "Contract Documents".

At the end of the existing paragraph, add "Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment."

211. Paragraph 7.4.2 shall be added as follows:

“§7.4.2 Allowance balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.”

212. §7.5 MINOR CHANGES IN THE WORK

§7.5.1 Delete the words “or extension of the contract time”.

Supplement to Article 7 with the following paragraphs / sub-paragraph:

213. §7.6 ALLOWABLE MARKUPS FOR CHANGES IN THE WORK

“§7.6.1 In Subparagraphs 7.2.2, 7.3.3, 7.3.6 the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor for work performed by the Contractor's own forces, a maximum make up of 10 percent of that cost.
- .2 For the Contractor for work performed by the Contractor's Subcontractor(s), 5 percent of the amount due the Subcontractor (s).
- .3 For each Subcontractor of Sub-subcontractor involved, for work performed by that Subcontractor's or Sub-subcontractor's own forces, 10 percent of the cost.
- .4 For each Subcontractor for work performed by the Subcontractor's Sub-subcontractor's, 5 percent of the amount due the Sub-subcontractor(s).
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all competitive proposals of contractors, Subcontractors, and Sub-subcontractors, (except those so minor that their propriety can be seen by inspection) shall be accompanied by a complete and detailed work sheet showing itemization of costs including labor, materials and other costs.”

#### ARTICLE 8 - TIME

214. Paragraph 8.1.1 shall be amended by replacing “Substantial” with “Final” before “Completion” at the end of the sentence.

215. Paragraph 8.1.2 shall be amended by replacing “is the date established in the Agreement” with “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 (or Amendment Number 1 if Contractor is a Construction Manager at Risk) 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.
216. Paragraph 8.1.3 shall be amended by adding the following at the end of the existing sentence: "The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.8. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion."
217. Paragraph 8.2. I shall be amended by replacing "confirms" with "stipulates" in the second sentence after the word "Contractor".
218. Paragraph 8.2.2 shall be amended by deleting the second and third sentences.
219. Paragraph 8.2.3 shall be amended by replacing "Substantial" with "Final" before "Completion" in this sentence.
220. Paragraph 8.2.4 shall be added as follows:
- "§8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the Date of Final Completion."
221. §8.3 DEFINITIONS
- §8.3.1 Delete this subparagraph and substitute the following:
222. Paragraph 8.2.4 shall be added as follows:
- "§8.2.4 Unless agreed otherwise, the date inserted on the Agreement form and the Date of Commencement of the Work shall be as follows:
- "The date inserted on the first page of the Agreement form will be the date the Owner formally awards the Contract. As soon as feasible after receipt of Construction Manager at Risk Proposals, the Architect will present Agreement forms to the Contractor for his review and signature; the Contractor will be allowed a maximum of five (5) days from the date the prepared Agreements are presented to him to 1) obtain the required bond forms and insurance certificates and 2) return the executed Agreement and supporting documents to the Architect for transmittal to the Owner for his final review and execution.
- The Date of Commencement of the Work is the date that either (1) the fully executed Agreement or (2) a written Notice to Proceed is delivered to the Contractor and constitutes day "0" (zero) of the stated Completion Time."
223. §8.3 DELAYS AND EXTENSIONS OF TIME
- Paragraph 8.3.1 shall be amended as follows:



Delete “or by labor disputes, fire, unusual delay in deliveries, unavailable casualties or other causes beyond the Contractor's control” and replace with “fire, governmental actions” after the second “Work” in the first sentence.

Add “in writing” after “authorized”.

Delete “pending mediation and arbitration”.

Add “and Owner” after the second and third “Architect” in the section.

224. Paragraph 8.3.2 shall be amended by adding “as amended” at the end of the sentence.

225. Paragraph 8.3.3 shall be replaced in its entirety with the following language:

“§ 8.3.3 This Agreement does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather or acts of God. Contractor agrees that the only possible compensation for any delay is an extension of time.”

Add the following Subparagraph:

226. Paragraph 8.2.4 shall be added as follows:

“§8.3.4 The following is a requirement of the Contract and will be included in the Agreement between the Owner and Contractor under Time of Completion stated in the Base Proposal.

The Work to be performed under this Contract shall be commenced within 7 days of notice to proceed and all work shall be substantially completed by the date stated in the Sealed Proposal.

The sum of \$500.00 per calendar day is to be paid in consideration of all actual costs such as rental costs, storage, additional supplies, labor, overtime, and especially disruption of the school programs and lost administration time, which are incapable of ready determination. It is therefore expressly agreed as a part of the consideration inducing the Owner to execute this Contract that the Owner may deduct from the final payment made to the Contractor a sum equal to \$500.00 per day for each and every calendar day beyond 30 days after Substantial Completion which the Contractor shall require for achieving completion of the Punch List attached to the Substantial Completion Certificate. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages, which will be sustained by the Owner in the event that the work is not completed within the agreed time, or within the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damage being caused by additional compensation to personnel, for loss of interest on money and other miscellaneous increased costs, all of which are difficult to ascertain.

Failure to complete punch list corrections and close-out project 60 days after the scheduled Substantial Completion date will result in additional liquidated damages being assessed in the amount of \$500.00 per day. If the Contractor is delayed through no fault of the Owner, and Final Completion is not achieved 30 days after 30 days given to complete the Substantial Completion Punch list the Contractor will be assessed the liquidated damages amount for each day past such date and will be deducted from the, final payment to Contractor.”

227. Paragraph §8.3.5 shall be added as follows:

“§8.3.5 Extensions of time granted for causes described herein will be granted on the basis of one Regular Working Day extension for each Regular Working Day lost (i.e. 7 calendar days extension will be granted after 5 regular working days are lost except as modified by the provisions contained herein related to Anticipated Weather days).”

228. Paragraph §8.3.6 shall be added as follows:

§8.3.6 Each Proposer shall include in his proposed construction schedule as stated on his Proposal as "Contract Time" an allowance of Anticipated Weather Days in accordance with following: Number of anticipated Weather Days (These are regular working days)

January	5	July	4
February	5	August	4
March	5	September	5
April	4	October	4
May	7	November	6
June	7	December	5

229. Paragraph §8.3.7 shall be added as follows:

“§8.3.7 Weather Days shall pertain to such items as rain, flooding, snow, unusually high winds, excessively wet grounds, or the like which prevent progress on major portions of the work which may be affected by such weather on regular working days only. If such situations occur on more than the number of Anticipated Weather Days as stated above, and if those additional days prevent the Contractor from performing critical portions of the scheduled work, extensions of time caused by inclement weather may be requested as enumerated hereinafter. If the inclement weather is rain related, the rain at the site must have been in excess of 0.50 inch in 24 hours.”

230. Paragraph §8.3.8 shall be added as follows:

“§8.3.8 At the beginning of each month the Contractor shall submit a status report for the preceding month, showing 1) the scheduled number of Anticipated Weather Days for the particular month, 2) the actual Weather Days requested; and 3) the Net Weather Days (plus, minus, or no change). At times deemed appropriate by the Architect or when requested in writing by the Contractor, the Contract Time will be adjusted by Change Order if the total of Net Weather Days is substantially greater than 0. Unused Anticipated Weather Days may be accumulated during the Contract Time and may be used to offset

Actual Net Weather days in other months. If the Contractor fails to submit said monthly status report, it will be assumed that none of the Anticipated Weather Days were used for that month and that they shall accumulate for possible future offset against Net Weather Days; however, if at the end of the project all Anticipated Weather days have not been used, the contract completion time will not be reduced. An example of the monthly schedule to be submitted is as follows:

Month	Anticipated Weather Days (Regular)	Actual Weather Days (Regular) Requested	Net Weather Days (Regular)
January	5	11	6
February	5	0	-5
March	5	2	-3
April	4	2	-2
May	7	12	5
June	7	11	4
Total	33	38	5

Using this example (and assuming that all requested days were approved) there were 5 Net Weather Days (regular) for the six months of the project and the extension of Contract Time would be 7 calendar days.”

231. Paragraph 9.1.1 shall be amended by adding the following language at the end of the existing paragraph:

“In the event that the Project is a Construction Management at Risk Project, then any use of the term "Contract Sum" in the Contract Document shall be interpreted to mean “Guaranteed Maximum Price”.”

232. Paragraph 9.2.1 shall be amended as follows:

At the beginning of the first sentence replace “Before the First Application for Payment” with “Within 15 days of establishing the Guaranteed Maximum Price (if the Contractor is a Construction Manager at Risk) or before the first Application for Payment, whichever is applicable.”

Add “acceptable to Owner, that is” after “schedule of values” in the first sentence.

Add “and” before “prepared” in the first sentence.

At the end of the existing paragraph add “The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and (3703, Application and Certificate for Payment. If the Contractor is a Construction Manager at Risk, then the Contractor's Fee and general conditions shall be specifically shown.”

Delete “pending mediation and arbitration.”

Add “and Owner” after the second and third “Architect” in the section.

Replace “shall” with “may” after Contract time.”

233. Add paragraph 9.2.2 and subparagraphs as follows:

“§9.2.2 In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703 or other similar forms approved by the Architect, and shall include the following:

§9.2.2.1 General Contractor's costs for Contractor's fee, bonds and insurance, mobilization, record documents, O&M manuals, etc., shall be listed as individual line items.

§9.2.2.2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

§9.2.2.3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example; underground, major equipment, fixtures, installation of fixtures, start up, etc.)

§9.2.2.4 Costs for subcontract Work shall be listed without any additional General Contractor's costs for overhead, profit or supervision.

§9.2.2.5 Where payment for stored materials may be requested prior to installation, material and labor shall be listed as separate line items.”

234. §9.2.2.6 Refer to Specification section 01027 for additional description and requirements.

235. §9.3 APPLICATIONS FOR PAYMENT

236. §9.3.1 Delete 9.3.1 in its entirety and substitute the following:

“§9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Prior to this submittal, the Contractor shall contact the Architect's Field Department for on-site review of the proposed application. Upon approval by the Architect's Field Department, the Application for Payment shall be notarized and submitted to the Architect.”

237. Paragraph 9.3.1.1 shall be replaced in its entirety with the following language:

“§9.3.1.1 Contractor agrees that, for purposes of Texas Government Code Section 225 1.042, 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 Certificate for Payment shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code section 225 1.042.”

238. Paragraph 9.3.1.2 shall be amended as follows:

Replace “does not intend to pay to a” with “has not been invoiced by a”.

Replace “such Work has been performed by others whom the Contractor intends to pay” with “Contractor has self-performed the Work”.

Add the following subparagraphs to 9.3.1:

239. Paragraph §9.3.1.2 Included shall be data required to support the Contractor's right to payment as may be required by the Owner or Architect, such as copies of requisitions from subcontractors and material suppliers, and reflecting retainage, if provided for elsewhere in the contract documents.
240. §9.3.1.3 Until Final Completion and Contract Close-Out, the Owner shall pay ninety five percent (95%) of the amount due the Contractor on account of progress payments, except retainage will be five percent (5%) for the amount due the Contractor for contractor's fee on account of progress payments.

241. §9.3.2 Delete this subparagraph in its entirety and substitute the following:

“§9.3.2 Payments will be made on account of materials or equipment 1) incorporated in the Work; 2) suitably stored at the site; and/or 3) suitably stored at some off-site location provided the following conditions are met for offsite storage:

§9.3.2.1 The location must be agreed to, in writing, by the Owner and Surety.

§9.3.2.2 The location must be a bonded warehouse.

§9.3.2.3 The Contractor's Surety must agree, in writing, to each request for Payment.

§9.3.2.4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area.

§9.3.2.5 Transportation of the off-site stored materials to the site shall be made by common carrier; thereby eliminating any contractual relationship with the Owner.

§9.3.2.6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance, naming the Owner as insured. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment. The Contractor acknowledges that the review of materials stored off site is an additional service of the Architect and shall be charged for that service. The cost for that service will be established by the Architect and is not subject to appeal.”

242. Add the following subparagraphs to 9.3:

“Paragraph 9.3.3 shall be amended by adding the following language at the end of the existing paragraph:

“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.”

243. Paragraph 9.3.4 shall be added as follows:

“§9.3.4 Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate for Payment, 1992 Edition. All blanks in the form must be completed and signatures of Contractor and Notary Public shall be original on each form. By submitting his application is authorizing, the Contractor certifies that the individual signing the application for payment is authorized to do so. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate. Additionally, if the Contractor prepares his application for payment utilizing "Excel" spreadsheet software, he shall submit a duplicate CD or DVD disk with each application for payment to facilitate the Architect's review of the application”

244. Paragraph 9.3.5 shall be added as follows:

“§9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition; 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; that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; 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 performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including but not limited to, Texas Penal Code sections 32.46, 37.09 and 37.10, and may justify termination of Contractor's Contract with Owner.”

245. Add the following subparagraphs to 9.3.5:

“§9.3.5.1 The Architect will affix his signature to the same form described in Paragraph 9.3.4 to signify his certification of payment provided the application is otherwise satisfactory.”

246. §9.4 CERTIFICATES FOR PAYMENT

Paragraph 9.4.1 shall be amended as follows:

Delete “either” in the first line of the first sentence and replace it with “return the Payment Application to the Contract as provided in Section 9.3.4; certify, sign and”

Delete the comma after “properly due” in the third line of this section.

At the end of the existing paragraph, add “Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code section 2251.042 *et. seq.*”

247. Paragraph 9.4.2 shall be amended as follows:

Delete in the first sentence of this section “based on the Architect's evaluation of the Work and the date comprising the Application for Payment, that” and replace it with “that the Architect has observed the progress of the Work; determined that”.

Delete in the first sentence “and that, to the best of the Architect's knowledge, information and belief” and replace it with “in the Architect's professional opinion; determined that”

Add “Construction Documents and the” before each “Contract Documents” in the section.

Add “; and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion” after “Contract Documents” in the first sentence.

Add “in writing to the Owner” after “Architect” at the end of the second sentence.

Add “unless” after “data” in clause (3).

Add at the end of the existing paragraph: “Examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.”

248. Paragraph 9.4.3 shall be added as follows:

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

249. Paragraph 9.5.1 shall be amended as follows:

Delete “or” at the end of subsection .6 and add “or” at the end of subsection .7

Add subsection ".8 failures to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time."

250. Paragraph 9.5.3 shall be added as follows:

“§9.5.3 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damage. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1 or this Section.”

251. §9.6 PROGRESS PAYMENTS

§9.6.1 Delete this subparagraph and substitute the following:

“§9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make progress payments in accordance with the following subparagraph, which shall be inserted as Article 5 Progress Payments in the Owner-Contractor Agreement, AL.4 Document A101, 1997 Edition. Based upon the applications for payment and supporting documents submitted to the Architect by the Contractor and certification of the amount payable by the Architect, the Owner shall make progress payments on account of the contract sum to the Contractor as provided in the contract documents for the period ending the last day of the month as follows:

- .1 Not later than twenty-five (25) days following the end of the period covered by the Application for Payment, ninety-five percent (95%) of the portion of the Contract Sum properly allocable to subcontracts, labor, materials, and equipment incorporated in the work and ninety-five percent (95%) of the portion of the contract sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing (subject to the conditions listed in Article 9.3.2), less the aggregate of previous payments made by the Owner.
- .2 Upon Final Completion of the entire work, a sum sufficient to increase the total payments to ninety- five percent (95%) of the contract sum, less such amounts as the Architect shall determine for all incomplete work and unsettled claims as provided for in the Contract Documents.”

252. Paragraph 9.6.2 shall be replaced in its entirety with the following language:

“§9.6.2 In compliance with Texas Government Code section 2251.022, the Contractor shall within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment, Contractor'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 subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder,



and if the Owner so requests, shall provide copies of such Subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractor or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner."

253. Paragraph 9.6.4 shall be amended by deleting from the first sentence "except as may otherwise be required by law" and adding after the first sentence: "Action on the part of the Owner to require Contractor to pay a Subcontractor shall not impose any liability on Owner."

254. Paragraph 9.6.7 shall be replaced in its entirety with the following language:

"§9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors or materials properly provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor of which payment was made by the Owner."

255. Paragraph 9.6.8 shall be added as follows:

"§9.6.8 Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor."

256. §9.7 FAILURE OF PAYMENT:

Paragraph 9.7.1 shall be amended as follows:

"§9.7.1 In the first sentence, delete the language beginning with "If the Architect" and ending with "Application for Payment, or", and replace it with "Pursuant to Texas Government Code section 225 1.05 1."

Change "If" to "if" in the original third line of the section.

In the original second line of the first sentence after the second "Contractor" on that line, add "any payment certified by the Architect which is undisputed, due and owing."

Delete "within seven days"; after "the date", add "the payment is due under the Contract Documents"; and delete the original language beginning with "established in the" through "arbitration".

In the original fourth line of the first sentence, delete "may".

In the first sentence, replace "seven" with "ten (10)", and after the next "Architect", add "that payment has not been made and the Contractor intends to suspend performance for nonpayment, may."

In the first sentence, before "amount owing", add "undisputed."

Delete the second sentence beginning with “The Contract Time” and ending with “Contract Documents”.

257. §9.7.1 shall further be amended by adding the following at the end of the section:

“If the Owner provides written notice to the Contractor that: 1 ) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents or the Construction Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.”

Delete the phrase "or awarded by arbitration" in the first sentence of the paragraph.

258. Paragraph 9.7.2 shall be added as follows:

“§9.7.2 If the Architect does not issue a Certificate for Payment within seven days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) business days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional business days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.”

259. Paragraph 9.7.3 shall be added as follows:

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

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

260. §9.8 SUBSTANTIAL COMPLETION

261. Paragraph 9.8.1 shall be amended as follows:

Add “and the Construction Documents” after “Contract Documents”.

Add after “use”: “all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within 30 days.”

262. §9.8.1 Add the following subparagraphs:

“§9.8.1.1 All conditions for Substantial Completion, including liquidated damages, shall apply to the date of Substantial Completion. Refer to Section 01710 Paragraph 1.2

§9.8.1.2 The following items are a partial list of requirements, as applicable to the Project, which must be completed prior to establishment of a Substantial Completion date.

- 01 All work as identified in each section of the Specifications must be complete.
- 02 All fire alarm system components must be completed and demonstrated to the Owner.
- 03 Local fire marshal approval certificate must be delivered to the Owner.
- 04 Health Department approval and certificate must be delivered to Owner.
- 05 All HVAC Water Balancing must be complete.
- 06 All HVAC Testing and Balancing must be complete.
- 07 All energy management systems and controls must be complete, fully operational and demonstrated to the Owner.
- 08 All final lockset cores must be installed and all final Owner directed keying completed.
- 09 All room plaques must be complete.
- 10 All Owner demonstrations must be completed or scheduled, including HVAC equipment, plumbing equipment, and electrical equipment, all life safety systems, and any special systems.
- 11 A final Certificate of Occupancy must be signed by the governing authority and delivered to the Owner.
- 12 City County approvals and compliance certificates must be delivered to the Owner.
13. All final exterior clean-up must be complete and landscaping.
- 14 All final interior clean up must be complete.
- 15 All State Insurance Board Certificates shall be furnished related to windstorm and flood.”

263. Paragraph 9.8.2 shall be amended by adding at the end of the existing paragraph “and the Construction Documents.’

264. Paragraph 9.8.3 shall be amended as follows:

Add "Construction Documents or the" before "Contract Documents."

After "intended use" in the second sentence, add "then the Architect shall so notify the Contractor and Owner in writing, and."

At the end of the existing paragraph, add: "Except with the consent of the Owner, the Architect shall perform no more than two inspections to determine whether the Work or a designed portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections."

265. Paragraph 9.8.4 shall be amended as follows:

In the first sentence after "Architect will", add "sign and issue Owner's", and delete "prepare" before "Substantial Completion."

Replace the first "Substantial" with "Final" in the last sentence.

Delete at the end of the existing paragraph "thereof unless otherwise provided in the Certificate of Substantial Completion."

266. §9.8.5 Add the following subparagraphs:

"§9.8.5.1 After the date of Substantial Completion of the project as evidenced by the Certificate of Substantial Completion, 1992 Edition, the Contractor will be allowed a period of thirty (30) days, unless extended by Contractors mutual agreement or provision of the Contract, within which to complete all work and correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion. (Refer to CB-15 Paragraph 8.3.4.03) Failure by the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In the report of the deficiency the Contractor and surety will be informed that, should correction remain incomplete for thirty (30) additional days, the Owner will initiate action to complete corrective work out of the remaining contract funds in accordance with Article 14-2. Additional costs of the Owner, Architect, and other consultants incurred because of the Contractor's failure to complete the correction of deficiencies within thirty (30) days after the date of Substantial Completion, unless extended by mutual agreement or provision of the contract, will be deducted from the funds remaining to be paid to the Contractor. Should corrective work following Substantial Completion require more than one re-inspection after notification by the Contractor that corrections are complete; the cost of subsequent inspections shall also be deducted from funds remaining unpaid to the Contractor.

§9.8.5.2 Upon receipt of an acceptable Contractor's punch list, the Contractor's Superintendent shall accompany the Architect, his Consultants and the Owner (at his discretion) during their inspections and the preparation of verbal or written additions to the Contractor's punch list. The Contractor's Project Manager or Superintendent shall record or otherwise take notes of all supplementary items and incorporate into the Final Punch List. A typed, addition to the supplements to the punch list will be made by the Contractor. This procedure will produce a

Final Punch List that has the Contractors, Architects, Consultants and Owner's comments incorporated in only one list.

§9.8.5.3 The Contractor's Project Manager or Superintendent shall have been in attendance during the inspections of the Architect and his Consultants and will have been expected to take his own notes for addition to the Final Punch List."

267. §9.8.6 Delete in its entirety and substitute with the following:

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

268. §9.8.7 Add the following subparagraph:

"§9.8.7.1 After the date of Substantial Completion of the project as evidenced by the Certificate of Substantial Completion, 1992 Edition, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to complete all work and correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion. (Refer to CB-15 Paragraph 8.3.4 03) Failure by the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In the report of deficiency the Contractor and surety will be informed that, should correction remain incomplete for thirty (30) additional days, the Owner will initiate action to complete corrective work out of the remaining contract funds in accordance with Article 14.2. Additional costs of the Owner, Architect, and other consultants incurred because of the Contractor's failure to complete the correction of deficiencies within thirty (30) days after the date of Substantial Completion, unless extended by mutual agreement or provision of the contract, will be deducted from the funds remaining to be paid to the Contractor. Should corrective work following Substantial Completion require more than one re-inspection after notification by the Contractor that corrections are complete; the cost of subsequent inspections shall also be deducted from funds remaining unpaid to the Contractor."

269. §9.9 PARTIAL OCCUPANCY OR USE

Delete the third sentence of paragraph 9.9.1

270. Paragraph 9.9.1 shall be amended as follows:

Delete "at any stage when such portion is designed by separate agreement with the Contractor," in the first sentence.

In the first sentence, delete "11.4.1.5" and replace it with "11.4.3"; add "that" after "provided"; delete "and Contractor have" after "Owner"; change "accepts" to "accepted" after "owner"; delete "assigned to each of them for payments, retainage, if any," after "responsibilities"; add "for" before "security"; add "resulting from such occupancy, use or installation," after "Work" and add "property and liability" before "insurance"; and delete "and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents" after "insurance."

Add at the end of the existing paragraph "Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work."

271. Paragraph 9.9.2 shall be amended as follows:

In the first sentence after "occupancy", add a comma, delete "or" before "use", and add "or installation" after "use".

272. Paragraph 9.9.3 shall be amended as follows:

Add "in writing" in the first sentence before "partial".

Add "or installation of furnishings and equipment" after the first "Work" in the first sentence.

At the end of the existing paragraph add: ", nor shall it constitute evidence of Substantial Completion or Final Completion."

273. Paragraph 9.9.4 shall be added as follows:

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

274. §9.10 FINAL COMPLETION AND FINAL PAYMENT

Paragraph 9.10.1 shall be amended as follows:

Add "prepare, sign, and issue Owner's Certificate of Final Completion and" after the second "promptly" in the first sentence.

Delete "issue" before "final Certificate" and after "Payment"; delete "stating that to the best of the Architect's knowledge, information and belief, and" replace it with "certifying to the Owner that".

Add "and the Construction Documents" after "Contract Documents"; and add "including all retainages," after "entire balance".

At the end of the existing paragraph add "Final payments shall be made by the Owner in accordance with Owner's regular schedule for payments."

275. Paragraph 9.10.2 shall be amended as follows:

Add "using AIA Document G706" after "(1)".

Delete "a certificate evidencing" after "(2)" and replace it with "evidence satisfactory to Owner."

Add “using AIA Document G707” after “(4)”

Delete “if required by the Owner,” after “(5)” Add “AIA Document G705A; notarized subcontractor's lien releases; and” before “receipts” in “(5)”.

At the end of the existing paragraph add “In addition, the following items must be completed and received by the Owner before Final Payment will be due:

§9.10.2 .1 Written certifications required by § 10.7, §10.8, and §10.9;

§9.10.2.2 Final list of subcontractors (AIA Document G805);

§9.10.2.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at [www.tea.state.tx.us/school.finance/facilities/cert~2004.pdf](http://www.tea.state.tx.us/school.finance/facilities/cert~2004.pdf);

§9.10.2.4 Contractor’s warranties, organized as required elsewhere in the Contract Documents”

§ 9.10.5 Maintenance and Instruction Manuals and

§ 9.10.6 Record drawings and “as built” drawings in sepia form and a required elsewhere in the Contract Documents.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contract with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor within thirty (30) days after the Owner’s Board of Trustees has voted to accept the Work and approve Final Payment.”

276. Add paragraph §9.10.7 and the following to subparagraphs:

“§9.10.7 Upon the completion of the Punch List attached to the Certificate of Substantial Completion the Contactor shall have 30 days to reach Final Completion. (Refer to CB-15 paragraph 8.3.4 04). Prior to final payment and in addition to other final closeout items specified, the Contractor shall submit in duplicate to the Architect the following completed forms:

- 01 Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706.(modified)
- 02 Contractor's Affidavit of Release of Liens, AIA Document G706A.(modified)
- 03 Contractors, Subcontractors and suppliers separate Lien Releases on the prescribed forms with signature and notary seal on the same sheet of paper.
- 04 Consent of Surety to Final Payment, AIA Document G707.
- 05 General Contractor's guarantee - notarized.
- 06 Subcontractor's guarantees - notarized.
- 07 Special extended warranties and guarantees - notarized.
- 08 Notarized affidavit from each subcontractor or supplier who furnished material incorporated into the Work stating that no asbestos building materials were used.
- 09 Submit in a binder, all MSDS sheets from each material manufacturer.

- 10 Maintenance and instruction manuals. Three (3) sets of each bound in a three inch (3") 'D-slant' ring binder.
- 11 Record Drawings. Reproducible black on white prints as approved by the Owner, and Auto Cad Electronic Disks & CD.
- 12 Final list of subcontractors (AIA Document G805).
- 13 Refer to Specification section 01710 for additional close-out requirements
- 14 Note: The forms required in items 01 through 08 above shall each be furnished with original signatures and all blanks filled in.

Documents identified as affidavit must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index.

277. Add paragraph §9.10.8 as follows:

“§9.10.8 The Owner may accept certain portions of the Work as being complete prior to acceptance of the entire project. If certain areas, phases are accepted by the Owner as being complete, and if the Contractor has completed all of the close-out requirements for final payment of that portion of the Work, then the Owner may release retainage for the area, phase, or portion of the Work. Amounts of retainage shall be agreed upon by the Owner and Contractor prior to final acceptance of the pertinent portion of the Work.

Final payment, constituting the entire unpaid balance of the Contract Sum shall be paid by the Owner to the Contractor thirty (30) days after substantial completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion provided the work has been completed, the contract fully performed, and Final Certificate of Payment has been issued by the Architect, partial release of retainage will not be considered.”

278. Add paragraph §9.10.9 and the following subparagraph:

“§9.10.9 Final payment, constituting the entire unpaid balance of the Contract Sum, as adjusted by Change Order, shall be paid by the Owner to the Contractor thirty (30) days after Owner's receipt of the Final Certificate of Payment issued by the Architect; provided all Work has been completed, the Contract fully performed, and all Close-Out procedures and documentation is complete. Partial release of retainage, if any, prior to Final Payment shall be at the sole discretion of the Owner

§9.10.9.1 Acceptance of Final Payment by the Contractor, a Subcontractor or Material 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.”

#### ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

279. Paragraph 10.1.1 shall be amended by adding the following language at the end of the existing paragraph: “and shall conform to all provisions of the “Manual of Accident Prevention in Construction”, published by the Associated General Contractors of America, Inc. latest edition and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration (“OSHA”) 29 USC Section 651 et. seq. and all amendments thereto. However, the Contractor's duties herein shall not relieve any Sub-contractor or any other person or



entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from 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.”

280. Paragraph 10.1.2 shall be added as follows:

“§10.1.2 Contractor's employees, agents, Sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs, or act in contravention of warnings on medication while performing the Work or on Owner' premises.”

281. Paragraph 10.1.3 shall be added as follows:

“§10.1.3 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace, while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, 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 any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed 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 person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on any alcohol or drug test.”

282. Paragraph 10.1.4 shall be added as follows:

“§10.1.4 Contractor will comply with all applicable federal, state, and local drug and alcohol-related laws and regulations (e.g. Department of Transportation regulations, Drug-Free Workplace Act). Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a concealed weapon, and Contractor agrees that Contractor's representatives, employees, agents and subcontractors will abide by same.”

283. Paragraph 10.2.1 shall be amended as follows:

Add “, school personnel, students, and other persons on Owner's premises” in section .1 after “Work”.

Add “including the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility” at the end of section .1.

Add “other buildings, fencing,” before “trees” in section .3.

Add “athletic fields, facilities and tracks,” after “walks” in section .3.

## §10.2 SAFETY OF PERSONS AND PROPERTY

284. Paragraph 10.2.3 shall be amended as follows:

Add “installing fencing” in the first sentence before “posting danger”.

At the end of the existing paragraph add “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.”

285. Paragraph 10.2.4 shall be amended as follows:

Delete “explosives or other” in the first line.

At the end of the existing paragraph delete the period and add “, 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.”

286. Paragraph 10.2.5 shall be replaced in its entirety with the following language:

“§10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in §10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under §10.2.1.2 and §10.2.1.3. The foregoing obligations of the Contractor are in addition to the obligations under Paragraph 3.1 8.”

287. Paragraph 10.2.8 shall be added as follows:

“§10.2.8 The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.”

288. Paragraph 10.2.9 shall be added as follows:

“§10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damage are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.”

289. Paragraph 10.2.10 shall be added as follows:

“§10.2.10 Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.”

290. Paragraph 10.3.1 shall be replaced in its entirety with the following language:

“§10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, then the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. In the event the Contractor encounters on the site material reasonably believed to be hazardous materials, as such term is understood and defined by CERCLA and other applicable environmental laws, codes, rules or regulations, including but not limited to asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. In the event the Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the job site provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop Work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.”

291. Paragraph 10.3.2 shall be replaced in its entirety with the following language:

“§10.3.2 Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such materials or substances are found to be present to verify that they are or have been rendered harmless. If the Contractor has a reasonable objection to a person or entity proposed by Owner to conduct the testing, then Owner shall propose another to whom the Contractor has no reasonable objection. When the Materials or substances are determined to be or have been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion.”

292. Add the following subparagraph §10.3.3:

“§10.3.3 The Contractor shall be responsible for taking all precautions necessary to protect the work in place from any freezing weather conditions which could cause any potential damage to portions or all work in place. The Contractor shall be responsible for performing all repairs and / or replacement of any work that results from freezing weather conditions.”

293. 10.3 HAZARDOUS MATERIALS

Delete subparagraph 10.3.2 in its entirety and substitute the following:

“§10.3.2 If requested in writing by the Contractor, the Owner shall obtain the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the even such material or substance is found to be present, to verify that is has been rendered harmless. If requested in writing by the Contractor or Architect, 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 such material or substance or who are to perform the task of removal or safe containment of such 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.”

294. Paragraph 10.3.3 shall be replaced in its entirety with the following language:

“§10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, AS PROVIDED FOR IN PARAGRAPH 3.1 8.”

295. Paragraph 10.4 shall be amended by deleting “unless such materials or substances were required by the Contract Documents.”

296. “Paragraph 10.5 shall be replaced in its entirety with the following language: “(Left blank intentionally)”.”

297. Paragraph 10.6.1 shall be amended by deleting the second sentence beginning with “Additional compensation” and ending with “Section 4.3 and Article 7.”

298. Paragraph 10.6.2 shall be added as follows:

“§10.6.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.”

299. Paragraph 10.7 shall be added as follows:

“§ 10.7 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

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

300. Paragraph §10.7.2 shall be added as follows:

“§10.7.2 Final Payment shall not be made until this written certification has been received.”

301. Paragraph 10.8 shall be added as follows:

§10.8 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

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

302. Paragraph 10.8.2 shall be added as follows:

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

303. Paragraph 10.9 shall be added as follows:

“§10.9 HAZARDOUS MATERIALS CERTIFICATION

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

304. Add the following paragraphs / subparagraphs:

“§10.10 ASBESTOS, LEAD OR PCBs CONTAINING MATERIALS

§10.10.1 The Contractor and each subcontractor, sub-subcontractor and suppliers prior to final payment, shall submit an original notarized statement on their letterhead certifying “to the best of their information, knowledge, and belief asbestos, asbestos containing materials, and PCBs have not been used or incorporated into the Work and lead or lead bearing materials have not been incorporated into potable water systems.” For the purpose of definition as used in this statement, the term “potable water systems” includes, but is not limited to, those water systems for drinking fountains, all sinks, showers, bath tubs, residential and commercial kitchen equipment, ice machines, and hose bibs, as applicable to the project.

§10.10.2 To the best knowledge of the Owner, the Architect and his consultants, no products or materials containing asbestos or polychlorinated biphenyl (PCB) or other toxic substances have been specified for this project. No products or materials containing asbestos or PCB are to be incorporated in this project. In the event the Contractor or his Sub-contractors become aware that any products or materials specified, ordered,

scheduled for or already incorporated in the work on this project, contain asbestos, or PCB, the situation shall be reported immediately to the Owner and Architect in writing. An acceptable, equal substitute for the product or material in question shall be proposed by the Contractor and the product or material in question, if already onsite or incorporated in the work, shall be removed from the site immediately and returned to the supplier or manufacturer.”

305. Article 11 shall be added as follows:

#### ARTICLE 11 - INSURANCE AND BONDS

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

§11.02 Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of the required insurance policies, declarations and endorsements themselves. In addition, Contractor shall also provide: 1) a duly-executed Owner's Certificate of Insurance; 2) a duly-executed ACORD Certificate of Insurance, Form 25-S with the following modifications in the “Cancellation” Section: delete (line through) the words “endeavor to”; place the number “30” in the blank; and delete the words "but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives", or 3) a duly-executed ACORD Certificate of Insurance, Form 27, such form to be modified if necessary to include liability coverage. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements as they are provided to Contractor.

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

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

§11.0.5 All insurance required herein shall be primary insurance as respects the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of

subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged. Aggregate limits on any policy shall be not less than twice the per accident or per occurrence limits of the policy.

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

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

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

306. §11.1.1 shall be amended as follows:

After the first "Contractor", add "and the Contractor's Subcontractors"; after "purchase", delete "from"; delete the original language beginning with "in a company" and ending with "located"; delete the second "Contractor" and replace it with "them and the Owner"; delete "set forth below"; delete "and for which the Contractor may be legally liable" delete "the" before the next "Contractor"; delete "a" before "Subcontractor" and replace it with "any"; place a comma after "liable" and add "including the following" before the semi-colon.

"Add after "performed" in subsection .1 the following: ", including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (see §11.1.2.1 and §11.1.5)."

Add in subsection .8 add "the Contract Documents, including under" after "obligations under" and add "and after "3.18".

Add a new subsection as follows: ".9 Claims for damages to the Work itself, through builder's risk insurance, pursuant to Section 11.4".

307. Paragraph 11.1.2 shall be amended as follows:

Delete "whether" after "Coverages," in the second sentence.

308. §11.2 CONTRACTOR'S LIABILITY INSURANCE

Delete paragraph 1 1.1.1 in its entirety and substitute the following:

"§11.2.1 Refer to Section BD - Insurance Certificates & Bonds."

309. §11.2.2 Delete reference to "Subparagraph 11.1.1" and insert "Section BD - Insurance Certificates and Bonds."

310. §11.2.3 Delete reference to “Subparagraph 1 1.1.1” and insert “Section BD - Insurance Certificates and Bonds.”

311. §11.4 PROPERTY INSURANCE

Delete paragraph 11.4.1 and subparagraphs 11.4.1.1, 11.4.1.2, 11.4.1.3, 1 1.4.1.4, and 11.4.1.5 in their entirety.

Delete paragraphs 11.4.2, 11.4.3, 11.4.4, 11.4.5, 11.4.6, 11.4.7, 11.4.8, 11.4.9, and 11.4.10 in their entirety.

312. Paragraph 11.2.7 shall be added as follows:

“§11.2.7 All Risk Builders’ Risk Insurance. If Contractor is a Construction Manager at Risk, then, as specified in each Amendment Number One, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.4.”

313. Paragraph 11.1.3 shall be amended as follows:

Add “and Architect” before “prior” in the first sentence.

Delete “with reasonable promptness in accordance with the” and replace it with “to the Owner and Architect in writing within five (5) days of”.

314. Paragraph 11.1.4 shall be added as follows:

“§11.1.4 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.”

315. Paragraph 11.1.5 through 11.1.5.14 shall be added as follows:

“§11.1.5 Texas Workers' Compensation Insurance. A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84) showing statutory workers' compensation insurance coverage for the Contractor's employees providing services on a Project is required for the duration of the Project.

§11.1.5.1 Duration of the Project includes the time from the beginning of the Work on the Project until Contractor's work on the Project has been completed and accepted by the Owner.

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



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

§11.1.5.4 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.

§11.5.5 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the Contract.

§11.5.6 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.

§11.1.5.7 The Contractor shall obtain from each person providing services on the Project and provide it to the Owner.

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

No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

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

§11.1.5.9 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten 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.

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

§11.1.5.11 The Contractor shall contractually require each person with whom it contracts to provide services on the Project, to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code section 401.011(44) for all of its employees providing services on the Project for the duration of the Project.

- .2 Provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project.
- .3 Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .4. Obtain from each other person with whom it contracts, and provide to the Contractor:
  - .1 A certificate of coverage, prior to the other person beginning work on the Project, and
  - .2 A new certificate of coverage showing extension of coverage, prior the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter.
- .6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

§11.1.5.12 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing 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 property reporting of classification codes and payroll amounts and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

§11.1.5.13 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§11.1.5.14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery or renewed on or after January 1, 1996."

28 Tex. Admin. Code § 10.1 10(i).

316. Paragraph 11.2 shall be amended by replacing “Liability” in the title with “AND ARCHITECT’S”.
317. Paragraph 1 1.2.2 shall be added as follows:
- “§11 2.2 The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date on which Owner begins to occupy or use any completed or partially-completed portions of the Work. If Owner occupies or uses any completed or partially-completed portion of the Work at any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work, pursuant to Paragraphs 9.9.1 and 11.4.3. To the extent of overlap between Owner’s property insurance and Contractor’s builder’s risk insurance, Contractor’s builder’s risk shall be primary.”
318. Paragraph 11.2.3 shall be added as follows:
- “§11.2.3 Architect shall be responsible for purchasing and maintaining the Architect’s liability and worker’s compensation insurance as provided in the Contract between Owner and Architect governing the Project.”
319. Paragraph 11.3.1 shall be amended as follows:
- Delete § 11.1.1.2 through § 1.1.1.5 and replace it with §11.1.
320. Paragraph 11.3.2 shall be amended as follows:
- Add “and are within the policy limits” in the first sentence after the first “insurance”.
321. Paragraph 11.4 shall be amended by deleting “PROPERTY” in the heading and replacing it with “BUILDER’S RISK”.
- Paragraph 1 1.4.1 shall be amended as follows:
- Delete all original language in the first two lines of the original sentence up to “builder’s” and replace it with the following: “Contractor shall obtain, at its expense, a”.
- After “policy”, add “, including boiler and machinery insurance”
- After “Contract Sum” in the first sentence, add “(or, if applicable, Guaranteed Maximum Price).”
322. Paragraph 11.4.1.1 shall be amended by adding after “mischief” the following: “lightning, hurricane, hail, explosion, riot, civil commotion, smoke, damage caused by aircraft or land vehicles, damages to materials stored on or off site or in transit.”. Add at the end of the existing section: "Owner shall be a named insured under the policy or policies.”
323. Paragraphs 11.4.1.2, 1 1.4.1.3, and 1 1.4.1.4 shall be deleted in their entirety.

324. Paragraph 11.4.1.5 shall be renumbered as “11.4.3” and shall follow new section “11.4.2”.
325. Paragraph 11.4.2 shall be deleted in its entirety and replaced as follows:
- “§11.4.2 For any claim made against the builder's risk insurance, the deductible shall not exceed \$2,500 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$5,000.”
326. Original Paragraphs 11.4.3, 11.4.4, 11.4.5 and 11.4.6 shall be deleted in their entirety.
327. Original Paragraph 11.4.7 shall be renumbered “11.4.4” and shall follow new § 11.4.3. Said section shall be amended to add the following sentence at the end of the section: “The foregoing waiver afforded the Architect, his agents, and employees shall not extend to the liability imposed by §3.18.3.”
328. Original Paragraph 11.4.8 shall be renumbered as “11.4.5” and shall follow new § 11.4.4. Said section shall be amended by deleting the first sentence and replacing it with the following: “The Owner as fiduciary shall have power to adjust and settle a loss with the insurer or insurers.”
329. Original Paragraph 11.4.9 shall be renumbered as “11.4.6” and shall be amended by deleting the first two sentences.

It shall be further amended by putting a period after “reach” in the original third sentence and deleting the rest of the original sentence. It shall be further amended by deleting “after notification of a Change in the Work in accordance with Article 7” and replacing it with “under the insurance proceeds.”

330. Original Paragraph 11.4.10 shall be deleted in its entirety.
331. Paragraph 11.5.1 shall be amended by deleting “The Owner shall have the right to require”; changing “the” to “The”; deleting “to” and replacing it with “shall”; after “furnish” adding “separate payment and performance”; placing a comma after “thereunder”; deleting “as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract”; and adding the following:
- “each bond to be a total amount equal to 100% of the Contract Price, or Guaranteed Maximum Price, whichever is applicable. The performance bond shall also include an amount necessary to reimburse Owner its reasonable and necessary attorneys fees (pursuant to Texas Local Government Code section 271.159) and litigation costs incurred in claims arising under the performance bond, and liquidated damages arising under the Contract Documents, in an amount not to exceed five (5) percent of the Cost of the Work. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager At Risk contract is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager At Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager At Risk executes the Contract, unless the Construction Manager At Risk furnished a bid bond or other financial security acceptable to the

District to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum price is established). All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code section 3503.001 et seq. and Texas Government Code, Chapter 2253, or their successors. The surety company shall have a rating of not less than "A VII" according to the latest posted ratings or the A.M. Best Web Site, [www.ambest.com](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsure's who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsure's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating;; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion."

332. Paragraph 1 1.5.3 shall be added as follows:

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

Paragraph 11.5.4 shall be added as follows:

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

333. Paragraph 11.5.5 shall be added as follows:

"§11.5.5 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bond shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner, within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security."

334. Paragraph 12.1.1 shall be amended by adding “or Owner's” after the first “Architect's” and adding “or Owner” after “Architect.”
335. Paragraph 12.1.2 shall be amended by adding “or Owner” after “Architect” in the first sentence.
336. Paragraph 12.2.1.1 shall be amended by adding "Work" after “Architect or” and adding “or Construction Documents” after “Contract Documents.”
337. Paragraph 12.2.2.1 shall be amended as follows:
- Add a comma after “thereof .”
- Delete “or after the date for commencement of warranties established under Section 9.9.1,” in the first sentence.
- Add “Construction Documents or the” before “Contract Documents’ in the first sentence.
- Delete the third sentence of the original section.
- Replace “it in accordance with Section 2.4.” with the following language;
- “the Work as provided in 12.2.2.1.1. Nothing contained in this Section 12.2 is intended to limit or notify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.”
338. Paragraph 12.2.1.2 shall be added as follows:
- “§12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or non-conforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.”
339. Subparagraph 12.2.2.1.1 shall be added as follows:
- “§12.2.2.1.1 If Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor' expenses. If the Contractor does not pay all costs incurred by Owner within ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting cost and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractors should have borne; then the Contractor shall pay the difference to the Owner.”
340. Paragraph 12.2.2.3 shall be amended by deleting the word “not”.

341. Paragraph 12.2.6 shall be added as follows:

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

342. Paragraph 12.2.7 shall be added as follows:

“§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 provision of this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.”

343. Paragraph 12.2.8 shall be added as follows:

“§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 Construction Documents or the Contract Documents, then an equitable deduction from the Contract Sum or Guaranteed Maximum Price 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.”

344. Add paragraph §12.2.9 AFTER SUBSTANTIAL COMPLETION

“§ 12.2.9 The “prompt” correction of defective work by the Contractor after receipt of Warranty Claim notification from the Owner as described above shall be defined as follows:

- 01 The Contractor shall make written response to the Owner within twenty-four (24) hours of receipt of the Warranty Claim acknowledging receipt of the claim and providing the proposed schedule to conduct corrective work. Corrective work shall not interfere with the Owner's normal operation and use of the Work, unless expressly approved by the Owner.
- 02 For corrective work which is not a life safety issue or which will not, by the nature of the defect, cause subsequent damage to the building or other Work, corrective work shall be completed within fourteen (14) days.
- 03 For corrective work which by its nature may cause subsequent damage to the building or other Work, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days. The Contractor shall appropriately complete all corrective work relative to subsequent damage caused by a Warranty Claim.

- 04 For corrective work which affects services to, and ordinary use of the Building, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days.
- 05 The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control."

345. Paragraph 13.1.1 shall be replaced in its entirety with the following language;

"§13.1.1 The Contract shall be governed by the laws of the State of Texas. Mandatory and exclusive venue and jurisdiction for any disputes shall be in State District Court in Jefferson County, or, if no county is specified, then where the Owner's main administrative office is located."

346. Paragraph 13.2.1 shall be amended as follows:

Delete "Except as provided in Section 13.2.2.," at the beginning of the second sentence and capitalize "neither".

Delete "as a whole" in the second sentence and replace it with "in whole or in part,"

347. Paragraph 13.2.2 shall be replaced in its entirety with the following language:

"§13.2.2 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."

348. Paragraph 13.3.1 shall be amended by deleting "or" after "intended," in the first sentence and adding the following language before the final period in the Section.

“, or if sent by electronic facsimile transmission to the last business number known to the party giving notice, with electronic confirmation of receipt.”

349. Paragraph 13.5.1 shall be amended as follows:

After "approvals" in the second sentence, add “, which shall be included in the Cost of the Work.”

Delete the third and fourth sentences and replace them with the following: “Provided however, Owner shall bear all costs of inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the Owner. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may observe such procedures.”

350. Paragraph 13.5.2 shall be amended as follows:

Delete “the Architect will, upon written authorization from the Owner, instruct the



Contractor to make arrangements for" and replace it with "then the Owner will provide or contract for" in the first sentence.

Delete the remainder of the sentence after "inspection and or approval".

Add at the end of the existing paragraph: "Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections."

351. Paragraph 13.5.3 shall be amended by adding a comma after the second "failure"; adding "; but not limited to," before "those of repeated procedures"; and adding a comma after "services and expenses" in the last line of this paragraph.

352. Paragraph 1 3.5.4 shall be amended as follows:

Delete ", unless otherwise required by the Contract Documents,"

Add the following language before the final period in this Section:

" , with a copy to the Owner."

353. Paragraph 13.6.1 shall be amended as follows:

Add "Undisputed" before "Payments" at the beginning of this Section and replace the capital "P" with a lowercase "p" in the word "payments".

Delete the remainder of the first sentence after "such rate as" and replace it with:

"provided by Texas Government Code section 2251.025. Any such payment shall be deemed overdue on the thirty-first day after Owner receives Architect's invoice or 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 day after Owner receives Architect's invoice or 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."

354. Paragraph 1 3.7 shall be deleted in its entirety.

355. Paragraph 13.8 shall be added as follows:

#### "§13.8 EQUAL OPPORTUNITY IN EMPLOYMENT

§13.8.1 The Contractor and the Contractor's Subcontract shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractors nondiscrimination policies."

§13.8.2 The Contractor and the Contractor's Subcontractor shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified

applications will receive consideration for employment without regard to race, religion, age, disability, sex, or national origin.”

356. Paragraph 13.9 shall be added as follows:

“§13.9 RECORDS

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

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

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

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

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

357. Paragraph 13.10 shall be added as follows:

“§13.10 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION

§13.10.1 Neither Architect nor Contractor shall use the image or likeness of Owner' Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorse Architect or Contractor's services, without Owner's prior written consent.

§13.10.2 Neither Architect nor Contractor shall disclose any confidential information which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.”

358. §13.11 Additional requirements regarding testing laboratory services are enumerated hereinafter in Specification Section 01400.

359. §13.12 INTEREST

Add the following paragraphs:

“§13.13 Refer to Specification Section 01800-Special Owner Requirements for additional requirements to be included as part of the Contract.

§13.14 The Owner shall have the right to examine copy, and/or audit the books and other records in possession of the Contractor relating to this Contract at any time deemed necessary by the Owner.”

360. Paragraph 14.1.1 shall be amended as follows:

Delete “30” in the first line of the first sentence and replace it with “Ninety (90).”

Delete “any of” at the end of the paragraph before the subsections and replace it with “only.”

Add “or” at the end of subsection .2.

In subsection .3 delete “on a” before “Certificate of Payment” and replace it with “of undisputed sums due on an approved”.

Change the final semi-colon in subsection .3 to a period and delete “or” after it.

Delete subsection .4 in its entirety.

361. Paragraph 14.1.3 shall be amended as follows:

Add “then, after the applicable time period” after “exists” in the first sentence.

Replace “seven” with “twenty (20)” before “days” in the first sentence.

Add “unrecoverable” after “proven” in the third line of this paragraph.

Delete “, including reasonable overhead, profit and damages” at the end of the paragraph and replace it with “incurred to the date of termination.”

362. Paragraph 14.1.4 shall be amended as follows:

Replace “60” with “ninety (90)” in the first line of this paragraph.

Add “then” after the second “Work”.

Replace “seven” with ‘twenty (20)’ before “additional days.”

363. Paragraph 14.2.1 shall be amended by adding the following subsections:

- “.5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .7 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents,”

364. Paragraph 14.2.2 shall be amended as follows:

Delete “upon certification by the Architect that sufficient cause exists to justify such action,” and replace it with ‘, subject to any prior rights of the surety’ and place a comma after the first “may.”

365. Paragraph 14.2.3 shall be amended as follows:

At the end of the existing paragraph add the following language:

“Any further payments shall be limited to amounts earned to the date of termination.

366. Paragraph 14.2.4 shall be amended as follows:

Delete “unpaid balance exceeds.”

Delete the remainder of the first sentence after “waived,” and replace it with: “exceed the unpaid balance of the Contract Sum, then the Contractor and/or its surety shall pay the difference to the Owner.”

Delete the second sentence.

In the original third sentence, delete “Contractor or” and “, as the case may be,”; delete the commas before and after “upon application”; place a period after ‘application’; delete “and a”; and replace “this” with “This”.

367. Paragraph 14.2.5 shall be added as follows:

“§14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of

its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum."

368. Paragraph 14.2.6 shall be added as follows:

"§14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law."

369. Paragraph 14.3.2 shall be amended as follows:

Delete "shall" and replace it with "may" after "Contract Time."

Add "by mutual agreement," after "adjusted" in the first line.

370. Paragraph 14.4.1 shall be amended by adding the following language at the end of the existing paragraph:

"Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination."

371. Paragraph 14.4.3 shall be amended as follows:

Delete the remainder of the sentence beginning at "by "reason of such termination", and replace it with "prior to notice of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed."

372. Paragraph 14.4.4 shall be added as follows:

"§14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's

remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4".

Add the following:

EXECUTED this day of February 15, 2008

OWNER:

Dr. Lani Randall

CONTRACTOR:

H.B. Weill & Sons Inc

Port Neches-Groves

Independent School District

By: Dr. Lani Randall

By: H.B. Weill

Title: Superintendent

Title: Vice Pres "

373. §14.5 TERMINATION BY THE OWNER FOR CAUSE

Add the following Paragraph:

374. §14.5.1 Contractor hereby assigns the Owner any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1 ET.SEQ. (1973).

Add the following Paragraph:

375. §14.6 TERMINATION BY THE OWNER FOR CONVENIENCE

Delete subparagraph 14.7 in its entirety and substitute the following:

376. §14.7 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Subparagraph 14.1.3.

377. Add the following Article:

"ARTICLE 15 - LABOR STANDARDS

§15.1 PREVAILING WAGE RATES

Contractor shall follow the attached Prevailing Wage rates adopted by the Port Neches-Groves Independent School District an officer, agent, or employee of a public body is not liable in a civil action for any act or omission implementing or enforcing this Chapter unless the action was made in bad faith (Paragraph 2258.002).

Prevailing Wage Rates (see Exhibit "A")

Building Construction Trades and Heavy and Highway

Building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings where heavy and highway construction wages shall be paid.

Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.

The hourly rate for legal holidays and overtime work shall not be less than one and one-half (1½) times the base hourly rate.

The rates are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) Apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew. The lowest allowable rate shall be the rate for laborers, no exceptions.

Welders receive the rate prescribed for the craft performing the operation to which the welding is incidental.

REPER TO EXHIBIT "A" WAGE RATE SCHEDULE ATTACHED  
15.4 WORKER CLASSIFICATION DEFINITIONS

Asbestos Worker	Worker who removes & disposes of asbestos materials
Carpenter	Worker who builds wood structures or structures of any material which has replaced wood. Includes rough & finish carpentry, hardware & trim
Carpet Layer / Floor Installers	Worker who installs carpet and/or floor covering – vinyl tile
Concrete Finishes	Worker who floats, trowels and finishes concrete
Data Communication / Telecom Installer	Worker who installs data/telephone cable & associated equipment & accessories
Drywall Installers; Ceiling Installers	Worker who installs metal framed walls & ceilings, drywall coverings, ceiling grids and ceilings
Electricians	Skilled craftsman who installs or repairs electrical wiring & devices. Includes fire alarm systems & HVAC electrical controls.
Elevator Mechanics	Craftsman skilled in the installation & maintenance of elevators
Fire proofing Installer	Worker who sprays or applies fire proofing materials
Glazier	Worker who installs glass, glazing and glass framing
Heavy Equipment Operators	Includes, But not limited to, all Cat

	tractors, all derrick-powered, all power operated cranes, back-hoe, back-filler, power operated shovel, winch truck, all trenching machines
Insulators	Worker who applies, sprays or installs insulation
Ironworkers	Skilled craftsmen who erects structural steel framing & installs structural concrete Rebar
Laborer/Helper	Worker qualified for only unskilled or semi-skilled work. Lifting, carrying materials 7 tools, hauling, digging, clean-up
Lather/Plasterer	Worker who installs metal framing lath. Worker who applies plaster or lathing, installs associated accessories
Light Equipment Operator	Includes but not limited to, air compressors, truck crane driver, flex plane, building elevator, form grader, concrete mixer (less than 14 cf), conveyer
Mason	Craftsmen who works with masonry products, stone, brick, block or any material substituting for those materials and accessories
Metal Building Assembler	Worker who assembles pre-made metal buildings
Millwrights	Mechanic specializing in the installation of heavy machinery, conveyance, wrenches, dock levelers, hydraulic lifts & align pumps
Painters / Wall Covering Installers	Worker who prepares wall surfaces & applies paint and/or wall coverings, tape 7 bedding
Pipe Fitters	Trained worker who installs piping systems, chilled water piping & hot water (boiler) piping, pneumatic tubing controls, chillers, boilers & associated mechanical equipment
Plumber	Skilled craftsman who installs domestic hot & cold water piping, waste piping, storm system piping, water closets, sinks, urinals, and related work
Roofer	Worker who installs roofing materials, Bitumen (asphalt & coal tar) felts, flashings, all types roofing membranes & associated metals
Sheet Metal Worker	Worker who installs sheet metal products; roof metal, flashings & curbs, ductwork, mechanical equipment and associated metals



Sprinkler Fitter	Worker who installs fire sprinkler systems & fire protection equipment
Terrazzo Worker	Craftsmen who places & finishes Terrazzo
Tile Setter	Worker who prepares wall and/or floor surfaces & applies ceramic tiles to these surfaces
Waterproofers / Caulker	Worker who applies water proofing material to buildings. Products include sealant, caulk, sheet membrane, liquid membranes, sprayed, rolled or brushed.

Or by any Subcontractor under him. Owner may withhold additional funds as appropriate when confronted with wage rate violations.

378. §15.2 The Owner may request random samples of Contractor's and Sub-contractor's payrolls without warning. The District may conduct random employee interviews across various trades, on site, with no warning.
379. §15.3 Wage Rates issued herein shall remain in effect for the duration of this Contract.
380. Add the following Article:

“ARTICLE 16 – INSPECTION AND AUDIT

§16.1 Contractor's records shall be subject to audit and such records shall include but not be limited to accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders. Bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's work for the Owner. All of the foregoing, hereinafter referred to as “records,” shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of:

- (a) Contractor compliance with contract requirements,
- (b) compliance with Owner's business ethics policies,
- (c) compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of its payees.

Other specific records subject to audit include all information, materials and data of every kind and character such as documents, subscriptions, recordings, computerized information, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include

those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this contract. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Contractor agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

§16.2 The Owner or its designee shall be entitled to audit all of the Contractor's records for a period of three years after final payment or a longer period if required by law.

§16.3 Contractor shall require all payees (including those entering into lump sum subcontractors and lump sum major material purchase orders), to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Requirements to include flow-down audit provisions in contracts with payees will apply to Subcontractor's, Sub-subcontractors, material suppliers, etc. when working under any type of contract including lump sum agreement, unit price agreements, time and material agreements, cost plus agreements, or other agreements. Contract will cooperate fully and will cause all payees to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data required by this article of the contract.

§16.4 Owner agent or its authorized representative shall have access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of the Contract, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

§16.5 If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges (of any nature) by the Contractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, in addition to repayment or credit for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (no to exceed 90 days) from presentation of Owner's findings to Contractor."

381. Add the following Article:

"ARTICLE 17 – BUSINESS ETHICS

§17.1 During the course of pursuing contracts with Owner and while performing contract work accordance with this Agreement, Contractor agrees to maintain business ethics standards which are aimed at avoiding any real or apparent impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with the Owner."