



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)

**THE OWNER:**  
(Name, legal status and address)

Houston Community College

**THE ARCHITECT:**  
(Name, legal status and address)

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### ADDITIONS AND DELETIONS:

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

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

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Performance Bond, Labor and Material Payment Bond, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to propose, instructions to Proposers, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's Proposal or portions of Addenda relating to proposal requirements).

To the extent any provision in the Supplementary Conditions to these AIA Document A201-2017 General Conditions, issued by Owner, conflicts with any provision in the Supplementary Conditions issued by the Architect; the Supplementary Conditions to these AIA Document A201-2017 General Conditions issued by Owner shall control.

#### § 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 Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

## § 1.2 Correlation and Intent of the Contract Documents

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

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

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

- 1 Contract Modifications (such as Change Orders) signed by the Contractor and Owner.
- 2 The Agreement. (AIA Document A133-2017)
- 3 The Supplementary Conditions to the A201-2017 General Conditions
- 4 The General Conditions of the Contract for Construction
- 5 Addenda, with those of later date having precedence over those of earlier date
- 6 Drawings and Specifications

Should these Documents disagree in themselves, the Architect and Owner will select the appropriate method for performing the Work, to facilitating avoiding increase in the Contract cost.

§ 1.2.1.3 Relation of Specifications and Drawings: To be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the most expensive combination of quality and quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect and Owner.

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

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

## § 1.3 Capitalization

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

## § 1.4 Interpretation

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

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

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not

use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

#### **§ 1.6 Notice**

**§ 1.6.1** 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 at the corporation for which it was intended, or if delivered at or sent by certified mail, or by registered or certified mail, or by courier service providing proof of delivery, to the last business address known to the party giving notice, or if delivered by facsimile or other electronic communications to the offices of the person or corporation for which it was intended. For facsimiles or other electronic communications received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served on the next business day.

*(Paragraph deleted)*

#### **§ 1.7 Digital Data Use and Transmission**

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

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

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

#### **§ 1.9 MISCELLANEOUS OTHER DEFINITIONS**

##### **§ 1.9.1 ADDENDA, ADDENDUM**

Documents issued by the Architect prior to execution of the Owner Contractor Agreement for this Project that modify or clarify the Proposal Documents. All addenda become a part of the Contract Documents.

##### **§ 1.9.2 ALTERNATE PROPOSAL(S)**

A separate amount stated on a separate Proposal Form which, if accepted by the Owner, will be added to or deducted from the Base Proposal. If accepted, the work that corresponds to the alternate proposal will become part of the agreement between Owner and Contractor. Alternate proposals shall remain valid for the same period of time as the Base Proposal after receipt of proposals, regardless if an Owner Contractor Agreement has been executed, unless indicated otherwise herein.

##### **§ 1.9.3 APPROVED, APPROVED EQUIVALENT, APPROVED EQUAL, OR EQUAL**

The terms Approved, Approved Equivalent, Approved Equal, and Or Equal, relate to the substitution of products or systems approved in writing by the Architect. Refer to Paragraph 3.4.2, Substitution of Products and Systems, for procedures which must be followed after award of contract. The substitution procedure process to be followed prior to receipt of proposals is described in the Instructions to Bidders.

##### **§ 1.9.4 BASE PROPOSAL**

The Contractor's proposal for the Work, not including any Alternates.

##### **§ 1.9.5 CONTRACT TIME**

The period of time which is established in the Contract Documents for Substantial Completion of the Work. This period of time is subject to authorized adjustments for Calendar Day extensions of time as enumerated in the Contract Documents.

##### **§ 1.9.6 DATE OF AGREEMENT**

The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted in the first

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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 Work.

#### **§ 1.9.7 DATE OF COMMENCEMENT OF THE WORK**

The date of a written Notice to Proceed to the Contractor for a given portion of the Work. This date constitutes day zero (0) of the stated Contract Time. The Notice to Proceed will be issued after the Owner has received and validated the Contractor's Payment Bond, Performance Bond and Insurance.

#### **§ 1.9.8 DATE OF FINAL COMPLETION**

The end of construction. See AIA Document A201, Section 9.10.

#### **§ 1.9.9 DAY**

The following days are referenced in the documents:

- .1 Calendar Days. 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 by a factor of one and four-tenths (1.4).

#### **§ 1.9.10 NOTICE TO PROCEED**

A notice that may be given 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.

#### **§ 1.9.11 PROVIDE**

Whenever the word "provide" is used in these documents, it shall mean the same as "furnish and install".

#### **§ 1.9.12 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 Architect or Owner. See AIA Document A201, Section 9.8.

#### **§ 1.9.13 UNIT PRICES**

A cost for a unit of work as described in the Contract Documents. The Owner may add or deduct Unit Price work at the amounts stated on the Proposal Form and such amounts shall not be subject to additional mark up by the Contractor or his subcontractors."

### **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. All parties understand that only the Board of Trustees for the Owner acting as a body corporate has the authority to bind the Owner with respect to all matters requiring the Board's approval under current policy of the Board of Trustees for the Owner, including, but not limited to, Change Orders. Except as otherwise provided in Section 4.2.1, the Architect does not have authority to bind the Owner with respect to matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

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

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

*(Paragraphs deleted)*

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

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

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

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

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

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

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

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

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

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

If the Contractor defaults or neglects to carry out the work in accordance with the Contract Documents and fails, 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 actual cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's 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 the 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 within thirty (30) days of receipt of written notice from the Owner therefor.

### § 2.6 OWNER'S LACK OF LIABILITY TO THIRD PARTY

§ 2.6.1 The Owner is not responsible for the acts and/or omissions of, or contractually involved with, any subcontractors, suppliers of labor or materials, and/or their respective employees or agents or any other third-party claimants. Such claimants shall not constitute third party beneficiaries under this contract. The Contractor and/or his

Surety solely shall deal with, take responsibility for, and be liable to such parties under this Contract. Contractor will indemnify and defend the Owner from any legal actions against Owner for unpaid bills of subcontractors. Add Section 2.7 as follows:

## **§ 2.7 OWNER'S RIGHT TO OCCUPY THE PROJECT**

**§ 2.7.1** 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 may not yet have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents. If the Contractor determines that said occupancy may cause a delay to the completion of the project, he shall notify the Owner in writing immediately.

**§ 2.7.2** Refer to Article 11 Insurance and Bonds regarding property insurance requirements in the event of such occupancy.

**§ 2.7.3** If Contractor has not completed the obligations of the Contract Documents by the dates established by subsequent Amendments to the Agreement Between Owner and Construction Manager, the Owner shall have the right to occupy or use the entire project.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

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

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

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

**§ 3.1.4** The Contractor must be fully qualified under any state or local licensing laws for Contractors in effect at the time and at the location of the work. The Contractor is responsible for determining that all of his subcontractors and prospective subcontractors are duly licensed in accordance with the law.

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

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

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

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



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

§ 3.2.5 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.

§ 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 additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Sections 3.2.5, 3.2.6 and 3.7 before additional services are performed.

§ 3.2.7 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 substitutions of materials, shall be accomplished by appropriate Modification.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor 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 arising solely from those Owner-required means, methods, techniques, sequences or procedures, but only to the extent the Owner would be responsible for any such losses or damages under state and/or federal law.

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

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

§ 3.3.4 The Contractor is especially cautioned to coordinate the routing of mechanical and electrical items prior to commencing these operations.

§ 3.3.5 Contractor shall bear sole responsibilities for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq. On trench excavations in excess of 5 feet in depth, Contractor shall pay a qualified engineer, experienced in the engineering design and preparation of drawings and specifications for compliance with state requirements for trenching and shoring, to prepare and professionally seal detailed drawings and specifications directing Contractor in the safe execution of trenching and shoring.

§ 3.3.6 Any time that the Contractors' employees, subcontractors and their agents and employees, and other persons

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or entities performing portions of the work for or on behalf of the Contractor or any of its subcontractors are on site, the work shall be supervised by a qualified employee of the Contractor.

### § 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 materials, products, and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products, or systems provided that same meets the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

- .1 If, after award of contract, the Contractor or one of his Subcontractors, or Suppliers determines 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 the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate Modification.
- .2 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products on the Work in place of those specified only under the conditions set forth in specification referring to Product Options and Substitutions.
- .3 Requests for substitution, received by the Architect later than forty five (45) days after "Notice to Proceed" or "Date of Commencement of the Work" (whichever occurs first), may result in additional costs to the Owner. Contractor agrees to reimburse the Owner through deductive Change Order to the Contract, for all costs associated with such requests.
- .4 By making request for substitutions based on Subparagraph 3.4.2 above, the Contractor
  - .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equivalent or superior in all respects to that specified, and is suitable for the intended purpose;
  - .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
  - .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
  - .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- .5 Substitution requests shall be submitted on the forms included herein and in accordance with the process established in specification referring to Product Options and Substitutions.

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

- .1 State law prohibits possession and/or use of alcohol and tobacco products on school property at all times.
- .2 State law prohibits weapons or firearms on school property.
- .3 There shall be zero tolerance for fraternization with students, teachers and any other Owner personnel, Contractor will immediately remove any employee that violates this provision from the project.
- .4 No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.
- .5 Cell phone usage on-site is restricted except for subcontractors' supervisory personnel.

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new, unless the Contract Documents require or permit otherwise. The contractor further

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warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect cause by abuse, material alteration to the Work not executed by the Contractor, insufficient maintenance or maintenance not in compliance with written instructions therefor, operation not in compliance with written instructions therefor, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

**§ 3.5.3** In the event of failure in the Work, including a specified product, whether during construction, or the correction period (which shall be one (1) year from the Date of Substantial Completion, except where a longer period as specified), the Contractor shall take prompt and appropriate measures to assure correction or replacement of the defective Work or any portion thereof, including manufactured products, whether notified by the Owner or the Architect. Upon correction of warranty items, the Contractor shall provide the Owner and Architect with written notification of said correction. This obligation shall survive acceptance of the Work under the Construction Contract.

**§ 3.5.4** The Contractual Correction Period for this Project is one (1) year from the date of Substantial Completion, except for any extended warranties as specified within the Contract Documents. Items of Work not completed until after the deadline for Substantial Completions shall have their warranties (general and any extended warranty periods) extended by the period of time between the deadline for Substantial Completion and the actual completion of the Work. Such warranties shall be submitted to the Owner in writing, documenting such time extensions. This correction period shall not restrict or modify extended warranties called for or provided on systems, equipment or other specific portions of the Work.

**§ 3.5.5** The Contractor shall accompany the Owner and Architect for a complete reinspection of the Project approximately eleven (11) months after the Date of Substantial Completion and shall promptly complete any observed or reported deficiencies in the Work, including any uncompleted Punch List items or outstanding and incomplete warranty items. The contractor shall provide written notification to the Owner and Architect when said Punch List items and/or additional deficiencies observed have been corrected. This obligation shall survive acceptance of the Work under the Construction Contract.

### **§ 3.6 Taxes**

The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provision of Article 20.04(f) of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rental and lease of materials, supplies and equipment used or consumed in performance of the Contract may be exempted by issuing to suppliers an exemption certificate in lieu of tax. Exemption certificates comply with State Comptroller of Public Accounts Ruling No. 95-0.07. Any such exemption certificate issued in lieu of tax shall be subject to State Comptroller of Public Accounts Ruling No. 95-0.09, as amended. Failure by the Contractor or Subcontractors to take advantage of the Owner's exemption and to obtain such exemption certificate shall make him responsible for paying taxes incurred on materials furnished on the Project without additional cost to or reimbursement by the Owner.

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

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

- .1 The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
- .2 The Contractor shall pay directly all temporary utility charges (excluding permanent power), utility district/company inspection fees, temporary tap charges, and temporary water meter charges and any other similar fees assessed by jurisdictional authority having control over this Project. The Contractor shall secure and pay for all governing authorities' permit fees.
- .3 Fees payable to the Texas Department of Licensing and Regulation (TDLR) for document review relative to the Elimination of Architectural Barriers Act shall be paid by the Owner and the Architect will submit the documents to the TDLR for review and approval.

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.4 The Contractor shall pay all SWPPP related costs.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

#### § 3.7.4 Concealed or Unknown Conditions

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

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

#### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum or GMP 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 and approve in writing.

*(Paragraphs deleted)*

#### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work, including Punch List work. The superintendent and project manager shall represent the Contractor, and unless provided otherwise in Section 3.1.1, communications given to the superintendent or project manager shall be binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

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

§ 3.10.1 Within 30 days of being awarded an Amendment, the Contractor shall prepare and submit for the Owner and Architect's review, a construction schedule for the Work, with critical path clearly defined. The schedule shall not

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exceed time limits current under the Contract Documents. For further schedule requirements refer to specification section regarding project schedules in the Project Manual.

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

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

§ 3.10.4 The Contractor shall submit to the Architect, with each monthly Application for Payment; a copy of the progress schedule updated to reflect the current status of the project. The Contractor shall take whatever action necessary to assure that the project completion schedule is met.

### § 3.11 Documents and Samples at the Site

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

§ 3.11.1 The Contractor shall post all Addenda on Construction Documents prior to commencing work in the site.

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

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

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

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

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

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

- .1 If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent resubmittal. Additional service charges as outlined in 3.2.6 may be charged by the Architect in this event.
- .2 The Architect will take no action on Shop Drawings, Product Data, and Samples that have not first been

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certified, by stamped, signed notation, as having been checked and **APPROVED** by the Contractor for use in the Work, or that are not specifically required by the Contract Documents.

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

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

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

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

§ 3.12.9.1 Deviation from the requirements of the Contract Documents indicated on shop Drawings, Product Data, and Samples, does not constitute the required notification "in writing.

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.12.11 The Contractor shall submit complete Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least thirty (30) days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall

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be submitted to the Architect within four weeks of the date of the contact for construction.

**§ 3.12.12** The Contractor shall submit digital PDF's of Shop Drawings, Product Data, and similar submittals in the proper format according to the procedures stipulated within the Contract Documents. Digitally submitted Shop Drawings will be reviewed and marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or resubmittal as required. Contractor corrections or revisions shall be resubmitted to the Architect in accordance with same procedures. The digitally marked up prints will be retained by the Architect and his consultants. Samples shall be submitted directly to the Architect for review.

**§ 3.12.13** The Contractor shall provide MEP coordination drawings within a schedule mutually agreed upon by the Team and prior to installing the Work, showing how all piping, ductwork, lights, conduit, 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 at ¼ inch per foot minimum scale and shall include invert elevations and sections required to meeting intended purpose. The Contractor may propose an alternate method of accomplishing MEP coordination. If the alternate method is approved by the Team, it may be utilized.

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

**§ 3.14.3** Leave all chases, holes and openings, straight and true, of proper size, and cut them into existing work as may be necessary for the proper installation of the work. Consult with all Subcontractors concerned, regarding proper locations and size. In case of conflict between requirement for cutting and patching and any other requirement of the Work, submit request for direction before proceeding with the Work. In case of failure to leave or cut them in the proper place, openings shall be cut afterward at no expense to the Owner. No excessive cutting will be permitted, nor shall any piers or other structural members be cut without prior approval. After such work has been installed, satisfactorily and carefully fit around, close up, repair, patch, and point up all cuts. Work shall be done with proper tools by workmen of the particular trade to which work belongs and shall be done without extra expense to the Owner. No description of specific cutting, patching, digging, etc., required for the work under a Specification Section that may be required for the proper accommodation of that work to the work of other trades shall relieve the Contractor from responsibility described above.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor is responsible for mowing and trimming inside all construction areas.

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

§ 3.15.3 Prior to 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 roof, 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.

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

**§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY DEFEND AND HOLD HARMLESS THE OWNER AND ITS TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF EVERY TIER, EVEN IF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH IS CAUSED BY OR ALLEGED TO HAVE BEEN CAUSED BY THE NEGLIGENCE, FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES.**

**FOR ALL CLAIMS NOT ADDRESSED IN THE ABOVE PARAGRAPH, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER AND ITS TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES AND (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE WORK TO BE PERFORMED UNDER THIS AGREEMENT, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.**

§ 3.18.2 It is understood and agreed that Subparagraph 3.18 above is subject to, and expressly limited by, the terms and conditions of TEX. CIV. PRACT. & REM. CODE ANN. 130.001-130.005 (Vernon Supp. 1989), as amended or modified, or any successor statute. Contractor shall **not** be obligated under Subparagraph 3.18 to indemnify or hold harmless Architect or any agent, servant of employee of Architect from liability or damage that is caused by or results from:

- .1 defects in plans, designs or specifications prepared, approved or used by the Architect; or
- .2 negligence of the Architect in the rendition or conduct of professional duties called for or arising out of the Contract Documents and the plans, designs or specifications that are a part of the Contract Documents; and arises from:
  - .1 personal injury or death;
  - .2 property injury; or
  - .3 any other expense that arises from personal injury, death or property injury.

§ 3.18.3 It is agreed with respect to any legal limitations, now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the

indemnification obligation shall continue in full force and effect.

### § 3.19 PREVAILING WAGE RATES

§ 3.19.1 As required by Chapter 2258 of the Texas Government Code Title 10 Prevailing Wage Rate, no employee used in this construction may be paid less than the minimum prevailing wage rate in effect for the Owner.

§ 3.19.2 The Contractor and each Subcontractor and Sub-subcontractor shall pay to all laborers, workmen, and mechanics employed in execution of this Contract not less than rates set forth by law for each craft of type of workman or mechanic needed to execute this Contract.

§ 3.19.3 Determination of prevailing wages shall not be construed to prohibit payment of more than the rates identified.

§ 3.19.4 The Contractor shall provide the Owner with certified payroll on a monthly basis, or more frequently if required by applicable federal law.

### § 3.20 ANTITRUST VIOLATIONS

§ 3.21.1 Contractor hereby assigns to 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). The Contractor shall include this provision in his contracts with each Subcontractor and Supplier. Each Subcontractor shall include such provision in contracts with Sub-subcontractors and suppliers.

### § 3.21 THIRD-PARTY BENEFICIARY

§ 3.21.1 No person or entity shall be deemed to be a third-party beneficiary of any provision(s) of this Contract; nor shall any provision(s) hereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

§ 4.1.2 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.

### § 4.2 Administration of the Contract

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

§ 4.2.2 The Architect, 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 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. The Architect will be required to make on-site inspections as necessary to keep the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. The Architect will neither have control over or charge of, no 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 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not

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have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

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

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

**§ 4.2.6** The Architect shall have authority to reject Work that does not conform to the Contract Documents. The Architect shall be required to promptly notify the Owner of any non-conforming Work and shall reject such non-conforming Work unless the Owner objects to the rejection in writing within twenty-four (24) hours of such notification. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract documents, the Architect will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Performance of any additional inspection or testing, which would result in additional cost to the Owner, shall require advance notice to and approval of the Owner. 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, except when the Contractor's inability to perform the Work is a result of design flaw, error or omission.

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

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

**§ 4.2.8.1** Allowance Expenditure will be authorized using Allowance Expenditure Authorizations (AEA) executed by the Owner, the Owner's Program Manager (if any), the Architect and the Contractor. Work authorized by an AEA may be invoiced as it is completed.

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

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

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

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

*(Paragraph deleted)*

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Prior to such change the Contractor shall notify the Architect of his intent and reasons for such proposed changes.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the

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

#### **§ 5.4 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 that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, but only to the extent permitted by law.

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

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

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

#### **§ 6.2 Mutual Responsibility**

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

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

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

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

*(Paragraph deleted)*

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

§ 7.1.2 A Change Order shall be based on agreement among the Owner, Contractor, and Architect, except when the Contract balance is amended as a result of Owner's Right to Carry out the Work under Section 2.4.1 or the Owner's assessment of liquidated damages as allowed by the Contract Documents. A Construction Change Directive requires agreement by the Owner or the Owner's representative and Architect, and may or may not be agreed to by the Contractor; an order for a minor change may be issued by the Architect alone.

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

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

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. 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 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

## § 7.4 Minor Changes in the Work

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

## § 7.5 ALLOWABLE MARKUPS FOR CHANGES IN THE WORK

If a change in the Work will result in an increase or decrease in the Contract Sum, then the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such change in the Work).

**§ 7.5.1 Lump Sum Proposal:** In responding to a request for a proposed price for a change in the Work, or in submitting a claim, the Contractor shall furnish a lump sum proposal supported by a complete breakdown as described hereafter, indicating the estimated or actual cost to the Contractor for performance of the changed Work, including the applicable percentage of overhead and profit described hereafter. Any request for a time extension must be justified and presented in adequate detail to permit evaluation per Article 8, showing that the proposed change will extend the Contract Time. A Lump Sum Proposal for the adjustment of Work shall contain the following items:

- .1 Estimated cost, using any discount to the trades, of the materials and supplies used, which shall be itemized completely to include unit cost, quantity and total cost.
- .2 The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, may include reasonably anticipated direct wages of jobsite labor (including foremen) who will be directly involved in the change in the Work (for such time as they will be so involved). In addition to the direct wages, payroll costs including Social Security, Federal/State Unemployment Insurance and like taxes may also be included. These payroll costs shall be itemized separately; and the Contractor shall provide verifying documentation of these costs. Furthermore, any fringe benefits required by applicable union/trade agreements in connection with such direct wages may also be included if the Contractor provides verifying documentation of these benefits.
- .3 Estimated cost to the Contractor for additional construction equipment used solely on the Change Order, to include rental rates or owned equipment rates for such items of equipment while in use, which shall be itemized completely to include type(s), the number(s) of each, hourly rate, hours and total cost. Equipment which is regularly used at the job shall be used in Change Order Work at no extra charge. Rental or owned equipment rates shall be no greater than those established by the Association of General Contractors for the local area. As used herein the terms "construction equipment" and "equipment" shall include wheeled vehicles and small tools.
- .4 Estimated transportation costs for delivery and handling of materials and supplies, bringing to and removing from the site additional construction equipment and/or new items of installed equipment, if applicable, which shall be itemized separately.
- .5 Estimated off-site storage costs in excess of thirty (30) calendar days for new items of installed equipment, if applicable.
- .6 To the Contractor's, Subcontractor's or Sub-subcontractor's cost proposal for Work performed by its own forces, a cumulative total markup, for all tiers, shall not exceed fifteen percent (15%) to cover all elements of overhead and profit including, but not limited to, supervision above the level of foremen, estimating, scheduling, procurement, cleanup, temporary facilities, consumables, safety, quality control/assurance, protection, security, small tools, radios, company vehicles, home and branch office costs and expenses of any type whatsoever. The Contractor's markup on a Construction Manager-at-Risk project shall not exceed the CM Fee, and there shall be no CM Fee permitted on self-performed work or work performed by a Related Party. If any of the items included in the lump sum proposal are covered by unit prices contained in the Contract Documents, then the Owner may, if it

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requires the change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal. In this event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

.7 To the summary of the Contractor's proposed cost, the direct cost for insurance and bonds shall be added upon the Contractor providing documentation.

§ 7.5.2 In cases where changes in the Work result in a credit to the Owner, the credit shall be limited to direct costs; that is, no overhead or profit shall be applied to such costs. In cases where a change in the Work results in both credits and charges to the Owner, the Contractor will be allowed to add the overhead and profit percentages indicated in Paragraph 7.5.1 to the net charge based upon the amount by which the total charges exceed the total credits; if there is a net credit, then no overhead or profit shall be charged.

§ 7.5.3 Time and Material Proposal: If the Owner elects to have the change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the change in the Work plus the same markups for overhead and profit as set forth in Paragraph 7.5.1. The Contractor shall submit to the Owner daily time and material tickets which shall include the identification number assigned to the change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgement by the Owner that the items thereon were reasonably required for the change in the Work.

§ 7.5.4 Where changes in the Work will be funded from a contingency or allowance fund, the Contractor shall not be entitled to any markup when the Contract Sum or Guaranteed Maximum Price already includes CM Fee or markup on contingency or allowance amounts. No expenditures from contingency or allowances are permitted without an executed Contingency Expenditure Authorization (CEA) or Allowance Expenditure Authorization (AEA) executed by Owner.

## 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 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 unforeseeable causes beyond the Contractor's control, 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 Article 15.

§ 8.3.3 **No Damages for Delay.** The Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of the Owner. When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay.

§ 8.3.4 The parties hereto agree that time is of the essence of this Contract and that pecuniary damages would be suffered by the Owner if the Contractor does not substantially complete all Work called for in the Contract Document by the specified date, which damages are, by their very nature, difficult of ascertainment. 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                      Dollars (\$                      .00) per phase for each and every Calendar Day beyond the agreed date which the contractor has agreed to for Substantial Completion of the Work included in the Contract Documents. It is expressly understood that 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 substantially completed within the agreed time, or with 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 or forfeiture; said damage being caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. The liquidated damages assessed herein shall be Owner's sole remedy for time delays between the deadline for substantial completion and Contractor's achievement of substantial completion.

§ 8.3.5 Extensions of time granted for causes described herein will be granted on the basis of 1.4 Calendar Days extension for each Regular Working Day lost.

## 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.

§ 9.1.1.1 The Owner is exempt from payment of Texas State Sales Tax on materials required for the Work. Therefore, to comply with the law, the Contract Sum or GMP shall be broken down into the amount of cost for labor and the amount of cost for materials. This breakdown shall be provided by the Contractor within ten (10) days of award of Contract, or in the GMP for a Construction Manager-at-Risk project.

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

### § 9.2 Schedule of Values

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

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§ 9.2.1 General Contractor's cost for Contractor's fee, bonds and insurance, General Conditions, etc., shall be listed as individual line items.

§ 9.2.2 Schedule of Values shall break each line into materials and labor. Once approved by the Owner and Architect, it shall be used as basis for reviewing Application for Payment but not be taken as evidence of market or other value.

§ 9.2.3 Contractor's cost 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.

§ 9.2.4 On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule shall indicated line items and amounts in detail, (for example; underground, major equipment, fixtures, installation of fixtures, start up, etc.)

§ 9.2.5 Costs for subcontract work shall be listed without any addition of General Contractor's costs for overhead, profit or supervision.

§ 9.2.6 The Contractor shall include a value for the coordination documents/drawings on the schedule of values.

§ 9.2.7 The Contractor shall include a value for the correction of deficiencies noted by the Commissioning Agent and the Test, Adjust and Balance consultant on the schedule of values for each sub-contractor subject to commissioning and test, adjust and balance requirements

### § 9.3 Applications for Payment

§ 9.3.1 No later than 3 working days prior to the first Wednesday of each month, submit an itemized Application for Payment, supported by such data sustaining the Contractor's right to payment as the Owner or Architect may require, and reflecting retainage, as provided elsewhere in the Construction Documents. Information on the form shall be divided into the same last day of the month preceding, which shall also be the basis of payment or as agreed by the Owner, Contractor and Architect by verification at the site, prior to submittal.

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

*(Paragraph deleted)*

§ 9.3.2 Payments will be made on account of materials or equipment 1) incorporated in the Work; 2) suitably stored at the site; or 3) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 Surety must agree, in writing, to each request for payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the offsite storage area for confirmation.

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) and transportation to the site for those materials and equipment stored off the site. 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 and/or equipment stored off the side is an additional service of the Architect, and the Contractor shall be charged for that service. The cost for such service will be established by the Architect and is not subject to appeal.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

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**§ 9.3.4** The Contractor shall submit requests for payment in duplicate, using AIA Document G702, Application and Certificate of Payment, as the cover sheet. Continuation sheets showing in detail the amounts requested, etc., shall be submitted using AIA Document G703, Continuation Sheet, or a computerized version of these documents previously approved for use. The information provided on the continuation sheets in the Description of the Work and Scheduled Values columns shall match the corresponding information shown on the approved Schedule of Values. All blank spaces on AIA Document G702, Application and Certificate of Payment, must be completed and the signatures of the Contractor and Notary Public shall be original on each form. By submitting his application for payment, the Contractor certifies that the individual signing the application is authorized to do so.

#### **§ 9.4 Certificates for Payment**

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

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

#### **§ 9.5 Decisions to Withhold Certification**

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

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

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

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

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make progress payments in accordance with the following Section which shall be inserted as Article 5, Progress Payments, in the Owner-Contractor Agreement, AIA Document A101, 2017 Edition.

- .1 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:
- .2 Not later than twenty (20) working days following the first Wednesday of each month, ninety-five percent (95%) of the portion of the Contract Sum properly allocable to 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 of the Supplementary Conditions to the Contract for Construction), for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner. Applications for Payment shall be submitted by the first Wednesday of the month.
- .3 Upon Substantial 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 in the Contract

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. More specifically, if only five percent (5%) retainage is withheld by the Owner on payments to the Contractor, then the Contractor shall withhold only five percent (5%) retainage on payments to subcontractors; and subcontractors shall withhold only five percent (5%) retainage on payments to sub-subcontractors. 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 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary

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liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

## **§ 9.7 Intentionally Deleted.**

## **§ 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. Should the Architect determine that the Contractor's List of Items to be Completed or Corrected lacks sufficient detail or requires extensive supplementation, the list will be returned to the Contractor for revision, and inspection for determining the Date of Substantial Completion will be delayed until the List submitted is a reasonable representation of the work to be done.

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

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met:

- .1 All inspections by governmental authorities having jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect.
- .2 All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.



The following items are a partial specific list of requirements, as applicable to the Project, that must be completed **prior** to established Substantial Completion of all portions of the work (Including the Substantial Completion of the commissioning phase).

1. All fire alarm system components must be completed and demonstrated to the Owner.
2. Local fire marshal approval certificate, or similar Certificate of Occupancy from the governing agency, must be delivered to the Owner.
3. All exterior clean-up and landscaping must be complete.
4. All final interior clean-up must be complete.
5. All HVAC air and water balancing must be complete.
6. All required commissioning must be complete.
7. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
8. All communications equipment, telephone system, and P.A. systems must be complete and demonstrated to the Owner.
9. All final lockset cores must be installed and all final Owner directed keying completed.
10. All room plaques and exterior signage must be completed.
11. All Owner demonstrations must be completed including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
12. A final certificate of occupancy must be signed by the Contractor and delivered to the Owner.

**§ 9.8.7** After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of time within which to correct all deficiencies attached to the Certificate of Substantial Completion as outlined in Section 8.3.4 of these supplementary conditions. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the contractor's surety. In this report, the Contractor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.2.

- .1 Should corrective work following Substantial Completion require more than one reinspection after notification by the Contractor that corrections are complete, the cost of subsequent inspections may also be deducted from the Contract funds remaining unpaid to the Contractor.

### **§ 9.9 Partial Occupancy or Use**

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

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

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



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

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner:

- .1 Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706
- .2 Contractor's Affidavit of Release of Liens, AIA Document G706A
- .3 Contractor's, Subcontractor's, Sub-subcontractor's, and Supplier's separate releases on the prescribed forms.
- .4 Consent of Surety to Final Payment, AIA Document G707 (if applicable).
- .5 Final list of Subcontractors and Sub-subcontractors, AIA Document G805.
- .6 The Contractor and each and every Subcontractor, Sub-subcontractor and Supplier shall provide a "Certificate of No Asbestos, PCB and Lead". For the purpose of definition as used in this form, the term "potable water systems" includes, but is not limited to, those water systems for drinking fountains, all sinks and lavatories, showers, bath tubs, residential and commercial kitchen equipment, icemakers, and hose bibbs, as applicable to this specific Project.
- .7 Material Safety Data Sheets: Effective September 1, 2000, the Texas Department of Health implemented a new rule in the AHERA Regulation which requires that Material Safety Data Sheets be provided to the Owner by the Contractor on the materials incorporated into the Work which but not limited to the list below (not all of which may have been used in this specific Project):
  - .1 Floor Tiles
  - .2 Sheet Floorings
  - .3 Adhesives (Mastics)
  - .4 Suspended Ceiling Tiles
  - .5 Glued-on/Nailed-on Ceiling Tiles
  - .6 Gypsum Board
  - .7 Blown-in Insulation
  - .8 Batt/Roll Insulation
  - .9 Gaskets
  - .10 Sprayed-on/Troweled-on Surfacing Materials
  - .11 Pipe Insulation
  - .12 Pipe Fitting Insulation
  - .13 Boiler Insulation
  - .14 Flue Insulation (Vent Pipe Insulation)
  - .15 Heating/AC Ducting
  - .16 Air Handler Cloth Joint (Flex Joint)
  - .17 Air Handler Insulation

If Material Safety Data Sheets are not provided by the Contractor, then the Contractor shall be responsible for obtaining samples of the materials listed above and the required testing of the samples at no additional cost to the Owner. These Material Safety Data Sheets shall be included in the maintenance and instruction manuals.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it 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 delay or liquidated damages not imposed by the Owner when asserted as a counterclaim to a claim initiated by the Contractor;
- .3 failure of the Work to comply with the requirements of the Contract Documents;

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- .4 terms of special warranties required by the Contract Documents; or
- .5 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

§ 9.10.6 Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor thirty-one (31) days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has then been completed, the Contract fully performed, all Contract Close Out Documents have been submitted, and the Final Certificate for Payment has been issued by the Architect. The final payment will not be made until all of these conditions have been satisfied.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 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, a Subcontractor, or a Sub-subcontractor; 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 comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

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

§ 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

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### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The performance of the foregoing services by the Contractor shall not relieve the Subcontractors of their responsibilities for the safety of persons and property and for compliance with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to the conduct of the Work.

§ 10.2.10 The Contractor shall be responsible for taking all precautions necessary to protect the Work in place from any foreseeable 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 foreseeable weather conditions.

### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance 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. The Owner, Contractor and Architect shall then proceed in the same manner described in section 10.3.2.

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

*(Paragraphs deleted)*

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a governmental agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all costs and expenses thereby incurred, but only to the extent provided by law.

§ 10.3.7 As part of the construction contract close out process, and prior to receiving payment of any of the retainage, the Contractor and his subcontractors shall submit notarized statements pertaining to the above referenced hazardous materials.

### § 10.4 Emergencies

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

## ARTICLE 11 INSURANCE AND BONDS

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**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

The Owner reserves the right to review the insurance requirements during the effective period of any Contract to make reasonable adjustments to insurance coverages and limits when deemed reasonably prudent by Owner based upon changes in statutory laws, court decisions or potential increase in expense to loss.

*(Paragraphs deleted)*

**§ 11.2** The Owner requires the following minimum insurance coverages:

<b>Types of Coverage</b>		<b>Limits of Liability</b>
Commercial General Liability	General Aggregate	\$2,000,000.00
	Products/Completed	
	Operations/Aggregate	\$1,000,000.00
	Bodily Injury and	
	Property Damage (each)	\$1,000,000.00
	Contractual	\$1,000,000.00
	Personal and	
	Advertising Injury	\$1,000,000.00
	Fire Damage	\$ 500,000.00
	Medical Expense	\$ 5,000.00

**§ 11.2.1** The Owner shall be named as an additional insured on a primary and non-contributory basis using form CG 2010 10 01 or similar endorsement providing equal or greater coverage in favor of the Owner.

Coverage shall include the following:

- (a) Premises operations;
- (b) Blanket Contractual Liability;
- (c) Pollution;
- (d) Products/Completed Operations;
- (e) Broad Form Property Damage;
- (f) Independent Contractors;
- (g) Per project aggregate limit;
- (h) Provide a statement of claims against the aggregate limit with each renewal certificate;
- (i) X,C,U exclusions to be removed when underground work is performed; and
- (j) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.2** Automobile Liability Combined Single Limit \$1,000,000.00

- (a) Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by, or used on behalf of Contractor.
- (b) Owner and its officers, directors, representatives, agents and employees shall be endorsed as Additional Insureds, as their interests may appear.
- (c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.3** Workers' Compensation Statutory Limits

- (a) Coverage at Statutory Limits with All States Endorsement
- (b) Employer's Liability
 

Each Accident	\$1,000,000.00
Disease (Policy Limit)	\$1,000,000.00
Disease (Each Employee)	\$1,000,000.00
- (c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.4** Excess or Umbrella Insurance (provides coverage in excess of primary Commercial General Liability, Automobile Liability, and Worker's Compensation Coverage B limits)

- (a) Minimum coverage for the Contractor shall be one (1) times the Contract amount, subject to a minimum limit of \$1,000,000.00 and a maximum limit of \$25,000,000.00. Limits for primary policies may differ from those shown above when Excess (Umbrella) Insurance coverage is provided.
- (b) Owner and its officers, directors, representatives, agents and employees shall be endorsed as Additional Insureds, as their interests may appear.
- (c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.5** Additional Requirements for Architects, Engineers and Design Professionals (each a "Professional"):

- (a) Professional Liability policy limits shall be one (1) times compensation amount due such Professional under the Contract, subject to a minimum limit of \$1,000,000.00 and a maximum limit of \$25,000,000.00.
- (b) Professional Liability policies issued on a "claims made" basis must have a retroactive date shown on the certificate preceding date of contract. Such policies must include an Extended Reporting Period three years past completion of construction contract.
- (c) Minimum coverage for excess (umbrella) insurance for Architects, Engineers and Design Professionals shall be one (1) times compensation amount due such Professional under the Contract, subject to a minimum limit of \$1,000,000.00 and a maximum limit of \$425,000,000.00. To the extent of Commercial General Liability coverage for the Professional exceeds \$1,000,000.00, such amount may be used as a credit against the Excess (Umbrella) Insurance requirement set out in the preceding sentence.

**§ 11.2.6** Insurance Limits for Consultants hired by a Professional

- (a) Notwithstanding Section 11.1.2.1 above, Consultants shall have the following minimum insurance requirements:

(1) Worker's Compensation:	Statutory Limits	
Employer's Liability	Each Accident	\$1,000,000.00
	Disease (Policy Limit)	\$1,000,000.00
	Disease (Each Employee)	\$1,000,000.00
(2) Commercial General Liability	General Aggregate	\$1,000,000.00
	Products/Completed	
	Operation Aggregate	\$1,000,000.00
	Bodily Injury and	
	Property Damage (each)	\$1,000,000.00
	Personal and	
	Advertising Injury	\$1,000,000.00
(3) Automobile Liability	Per Person/Accident	\$1,000,000.00
(4) Professional Liability	Program Limits,	\$1,000,000.00
	If applicable	

Professional Liability policies issued on a "claims made" basis must have a retroactive date shown on the certificate preceding date of contract. Such policies must include an Extended Reporting Period three years past completion of Construction Contract.

**§ 11.3** The Owner requires that the following insurance requirements be satisfied:

- .1 No Work shall be commenced until all insurance requirements set forth in this Agreement have been approved by the Owner in writing.
- .2 All insurance policies and certificates required hereunder shall be in form and content satisfactory to the Owner.
- .3 The Owner shall be furnished an ACORD form Certificate of Insurance evidencing all policies and endorsements required by this Agreement prior to execution of the Contract and thereafter upon renewal or replacement of each required policy of insurance.
- .4 Each Insurance coverage/policy shall contain a provision that at least thirty (30) days prior written notice shall be given to the Owner in the event of cancellation, material change, or non-renewal.
- .5 Insurance shall be underwritten by a company licensed to do business in Texas, satisfactory to Owner and rated minimum A-VII by A.M. Best.
- .6 The insurance coverages specified herein shall be maintained at all times during the term of the contract and, with the exception of builder's risk coverage, shall be maintained for a minimum of one (1) year thereafter.
- .7 No deletions/exclusions from the standard coverage form are allowed without the prior written consent of the Owner.
- .8 All insurance except Professional Liability must be issued on an occurrence basis.
- .9 The Contractor shall be responsible for all deductibles; the Owner shall approve the deductibles selected.
- .10 With the exception of Excess Umbrella Coverage, the coverage afforded by each carrier must be a primary over any other applicable insurance.
- .11 In addition to certificates of insurance, copies of policy endorsements must be provided (a) listing the



Owner as Additional Insures, and (b) showing waivers of subrogation in favor of the Owner.

*(Paragraphs deleted)*

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Contractor shall provide a Performance Bond, in the penal sum equal to one hundred percent (100%) of the Contract Sum, if the formal Contract is in excess of One Hundred Thousand Dollars (\$100,000.00) and a Labor and Material Payment bond, in the penal sum equal to one hundred percent (100%) of the Contract sum if the formal contract is in excess of Twenty Five Thousand Dollars (\$25,000.00).

**§ 11.4.2** The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an attached authorized power of attorney. Such Bonds shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of a least A-X and included on the U.S. Department of the Treasury Listing of Approved Sureties (Dept. Circular 570).

**§ 11.4.3** The Performance Bond Form and the Payment Bond Form included herein shall be executed and submitted to the Architect in duplicate prior to commencement of the work. The surety companies must be acceptable to the Owner and licensed admitted carriers in the State of Texas; and the companies must appear in a current Federal Treasury list as Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring companies.

**§ 11.4.4** Each bond shall be of penal sum equal to one hundred percent (100%) of the Contract Sum and shall be compatible with the provisions of the governing authority. The Contractor shall file copies of each bond with the county clerk and furnish the Owner with a file receipt. The bonds shall remain in force throughout the warranty period of the contract. The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an authorized power of attorney attached.

**§ 11.4.5** Claims must be sent to the Contractor and his Surety in accordance with Article 5160, Revised Civil Statutes. The Owner will furnish in accordance with such Article, a copy of the Payment Bond as provided therein to claimants upon request. All claimants are cautioned that no lien exists on the funds unpaid to the contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his Surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no responsibility because of any representation by any agent or employee.

#### **§ 11.5 WORKER'S COMPENSATION INSURANCE COVERAGE**

**§ 11.5.1** Comply with the requirements of Rule 28, TAC §110.110, Reporting Requirements for Building or Construction Projects for Governmental Entities

#### **§ 11.5.2 DEFINITIONS:**

- .1** Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing service as on a project, for the duration of the project.
- .2** Duration of the project –includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3** Persons providing services on the project ("subcontractor" in §406.096)-includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity which furnishes persons to provide services on the project. "Services" include without limitation, providing hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply delivery, and delivery of portable toilets.

**§ 11.5.3** 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.

§ 11.5.4 The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

§ 11.5.5 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 governmental entity showing that coverage has been extended.

§ 11.5.6 The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1 A certificate of coverage, prior to that person beginning work on the projects so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project, and
- .2 No later than seven days after receipt by the 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.

§ 11.5.7 The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

§ 11.5.8 The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

§ 11.5.9 The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack coverage.

§ 11.5.10 The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet 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 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 shown on the current certificate ends during the duration of the project.
- .4 Obtain from each other person with whom it contracts, and provides 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 to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- .5 Retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
- .6 Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project, and
- .7 Contractually require each person with whom it contracts, to perform as required by sections (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.

§ 11.5.11 By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other actions.

§ 11.5.12 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

## **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 requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

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

§ 12.2.1.1 In the event of failure of a specified project, either during construction or the correction period, the Contractor shall take appropriate measures with the manufacturer of the product to assure correction or replacement of the defective products.

#### **§ 12.2.2 After Substantial Completion**

§ 12.2.2.1 Approximately eleven months after substantial completion, the contractor shall accompany the Owner and Architect on an "end of the one year correction period" reinspection of the Project. Additional deficiencies observed or reported shall be corrected by the Contractor. In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall 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 that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

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

### § 12.3 Acceptance of Nonconforming Work

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

§ 12.3.2 The Owner's use and/or occupancy of any or all of the Project site shall never be construed as an acceptance of Work not in conformance with Contract Documents. The Owner reserves the right to enforce provisions of the Contract unless the Owner's acceptance is provided to the Contractor in writing.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. 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 that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written

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authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

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

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

### § 13.5 Interest

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

### § 13.7 EQUAL OPPORTUNITY

§ 13.7.1 The contractor shall maintain policies of employment as follows:

- .1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

### § 13.8 COMPLIANCE WITH GOV'T CODE 552.372

The requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code, Subchapter J, may apply to this contract if it is valued at more than \$1 million. The Contractor agrees that this Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter, including the preservation of all "contracting information" (as defined in 552.003) and the provision, upon request of the Owner, of all contracting information. Contracting information includes, but is not limited to, records, communications and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance.

### § 13.9 REQUIRED CERTIFICATIONS

Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. Contractor further certifies and verifies that neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the "Contractor Companies"), boycotts Israel, and contractor agrees that Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.



## 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, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the 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 reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.4.1 or 14.4.2 exists, the Contractor may, upon seven day's written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed as of the date of the notice, plus costs of demobilization.

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

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 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,

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the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

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

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

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

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

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

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

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

**§ 14.4.3** In the case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed up to date of receipt of the notice of termination, plus costs of demobilization.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, 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, Architect, and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. Nothing herein shall require the Owner to make or file a Claim in order to assess liquidated damages provided for in the Contract Documents.

##### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

##### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within ninety (90) days after occurrence of the event giving rise to such Claim or within ninety (90) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor's sole remedy for delays shall be an increase in the Contract Time. Contractor shall not be entitled to any damages for delay.

*(Paragraphs deleted)*

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those alleging an error or omission by the Architect or those arising after expiration of the period for correction of the Work, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. If the parties are unable to agree, any claim, dispute or matters arising out of the contract between the Architect, Owner and Contractor or any combination of those parties shall be submitted to a court of appropriate jurisdiction.

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefore; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties, but subject to mediation, if both parties so agree, and subject to legal or equitable proceedings in a court having jurisdiction thereof. It is understood and agreed that, in the event that any dispute, controversy, or conflict arises during the design and construction of the Project or following its completion, the parties hereto will cooperate in good faith, if possible, to resolve the issues without resorting to litigation.

*(Paragraphs deleted)*

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

§ 15.2.8 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.

§ 15.2.9 The prevailing party in any judicial proceeding arising from the Contract Documents shall recover its reasonable and necessary attorneys' fees.

### § 15.3 Mediation

#### § 15.3.1

§ 15.3.2 The parties may mutually agree 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. Mediation shall proceed in advance of 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 of agreement of the parties or court order.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

### § 15.4 Arbitration

*(Paragraphs deleted)*

#### § 15.4.4 Consolidation or Joinder

*(Paragraphs deleted)*

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:18:51 ET on 08/05/2020.

## PAGE 1

Houston Community College

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Performance Bond, Labor and Material Payment Bond, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, 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, Directive~~ or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to ~~bid, Instructions to Bidders, propose, instructions to Proposers, sample forms, other information~~ furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's ~~bid or proposal, Proposal~~ or portions of Addenda relating to ~~bidding or proposal requirements, proposal requirements~~.

To the extent any provision in the Supplementary Conditions to these AIA Document A201-2017 General Conditions, issued by Owner, conflicts with any provision in the Supplementary Conditions issued by the Architect; the Supplementary Conditions to these AIA Document A201-2017 General Conditions issued by Owner shall control.

...

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. It 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.

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

- .1 Contract Modifications (such as Change Orders) signed by the Contractor and Owner.
- .2 The Agreement. (AIA Document A133-2017)
- .3 The Supplementary Conditions to the A201-2017 General Conditions
- .4 The General Conditions of the Contract for Construction
- .5 Addenda, with those of later date having precedence over those of earlier date
- .6 Drawings and Specifications

Should these Documents disagree in themselves, the Architect and Owner will select the appropriate method for performing the Work, to facilitating avoiding increase in the Contract cost.

§ 1.2.1.3 Relation of Specifications and Drawings: To be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the most expensive combination of quality and quantity of Work indicated. In the event of the above mentioned disagreements, the resolution shall be determined by the Architect and Owner.



...

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

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**§ 1.6.1** ~~Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and~~ 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 at the corporation for which it was intended, or if delivered at or sent by certified mail, or by registered or certified mail, or by courier service providing proof of delivery, to the last business address known to the party giving notice, or if delivered by facsimile or other electronic communications to the offices of the person or corporation for which it was intended. For facsimiles or other electronic communications received after 5:00 p.m. on a business day, or on a weekend or legal holiday on which the recipient's offices are closed, notice shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement on the next business day.

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

...

**§ 1.9 MISCELLANEOUS OTHER DEFINITIONS**

**§ 1.9.1 ADDENDA, ADDENDUM**

Documents issued by the Architect prior to execution of the Owner Contractor Agreement for this Project that modify or clarify the Proposal Documents. All addenda become a part of the Contract Documents.

**§ 1.9.2 ALTERNATE PROPOSAL(S)**

A separate amount stated on a separate Proposal Form which, if accepted by the Owner, will be added to or deducted from the Base Proposal. If accepted, the work that corresponds to the alternate proposal will become part of the agreement between Owner and Contractor. Alternate proposals shall remain valid for the same period of time as the Base Proposal after receipt of proposals, regardless if an Owner Contractor Agreement has been executed, unless indicated otherwise herein.

**§ 1.9.3 APPROVED, APPROVED EQUIVALENT, APPROVED EQUAL, OR EQUAL**

The terms Approved, Approved Equivalent, Approved Equal, and Or Equal, relate to the substitution of products or systems approved in writing by the Architect. Refer to Paragraph 3.4.2, Substitution of Products and Systems, for procedures which must be followed after award of contract. The substitution procedure process to be followed prior to receipt of proposals is described in the Instructions to Bidders.

**§ 1.9.4 BASE PROPOSAL**

The Contractor's proposal for the Work, not including any Alternates.

**§ 1.9.5 CONTRACT TIME**

The period of time which is established in the Contract Documents for Substantial Completion of the Work. This period of time is subject to authorized adjustments for Calendar Day extensions of time as enumerated in the Contract

Documents.

#### **§ 1.9.6 DATE OF AGREEMENT**

The date the Owner formally awards a Contract for Construction of the Work. This date will be inserted in 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 Work.

#### **§ 1.9.7 DATE OF COMMENCEMENT OF THE WORK**

The date of a written Notice to Proceed to the Contractor for a given portion of the Work. This date constitutes day zero (0) of the stated Contract Time. The Notice to Proceed will be issued after the Owner has received and validated the Contractor's Payment Bond, Performance Bond and Insurance.

#### **§ 1.9.8 DATE OF FINAL COMPLETION**

The end of construction. See AIA Document A201, Section 9.10.

#### **§ 1.9.9 DAY**

The following days are referenced in the documents:

- .1 Calendar Days. 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 by a factor of one and four-tenths (1.4).

#### **§ 1.9.10 NOTICE TO PROCEED**

A notice that may be given 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.

#### **§ 1.9.11 PROVIDE**

Whenever the word "provide" is used in these documents, it shall mean the same as "furnish and install".

#### **§ 1.9.12 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 Architect or Owner. See AIA Document A201, Section 9.8.

#### **§ 1.9.13 UNIT PRICES**

A cost for a unit of work as described in the Contract Documents. The Owner may add or deduct Unit Price work at the amounts stated on the Proposal Form and such amounts shall not be subject to additional mark up by the Contractor or his subcontractors."

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**§ 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 All parties understand that only the Board of Trustees for the Owner acting as a body corporate has the 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.~~ Board's approval under current policy of the Board of Trustees for the Owner, including, but not limited to, Change Orders. Except as otherwise provided in Section 4.2.1, the Architect does not have authority to bind the Owner with respect to matters requiring the Owner's approval or authorization. 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.~~

~~§ 2.2.1~~ Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. ~~The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

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

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

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If the Contractor defaults or neglects to carry out the ~~Work-work~~ in accordance with the Contract Documents and ~~fails within a ten-day period-fails~~, after receipt of ~~written~~ notice from the ~~Owner-Owner~~, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct ~~such default or neglect~~. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the ~~reasonable~~ such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the actual cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services ~~made necessary by such default, neglect, or failure~~. If ~~current and future payments 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 the 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. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15-Owner within thirty (30) days of receipt of written notice from the Owner therefor.

## § 2.6 OWNER'S LACK OF LIABILITY TO THIRD PARTY

§ 2.6.1 The Owner is not responsible for the acts and/or omissions of, or contractually involved with, any subcontractors, suppliers of labor or materials, and/or their respective employees or agents or any other third-party claimants. Such claimants shall not constitute third party beneficiaries under this contract. The Contractor and/or his Surety solely shall deal with, take responsibility for, and be liable to such parties under this Contract. Contractor will indemnify and defend the Owner from any legal actions against Owner for unpaid bills of subcontractors. Add Section 2.7 as follows:

## § 2.7 OWNER'S RIGHT TO OCCUPY THE PROJECT

§ 2.7.1 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 may not yet have expired. Such occupancy and use shall not constitute acceptance of any work not in accordance with the Contract Documents. If the Contractor determines that said occupancy may cause a delay to the completion of the project, he shall notify the Owner in writing immediately.

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

§ 2.7.3 If Contractor has not completed the obligations of the Contract Documents by the dates established by subsequent Amendments to the Agreement Between Owner and Construction Manager, the Owner shall have the right to occupy or use the entire project.

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§ 3.1.4 The Contractor must be fully qualified under any state or local licensing laws for Contractors in effect at the time and at the location of the work. The Contractor is responsible for determining that all of his subcontractors and prospective subcontractors are duly licensed in accordance with the law.

...

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

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

§ 3.2.5 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.

§ 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 additional services made necessary by such failure. The Architect will give the Contractor prior notice of intent to bill for additional services related to Sections 3.2.5, 3.2.6 and 3.7 before additional services are performed.

§ 3.2.7 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 substitutions of materials, shall be accomplished by appropriate Modification.

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



Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. Without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures, but only to the extent the Owner would be responsible for any such losses or damages under state and/or federal law.

...

§ 3.3.4 The Contractor is especially cautioned to coordinate the routing of mechanical and electrical items prior to commencing these operations.

§ 3.3.5 Contractor shall bear sole responsibilities for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq. On trench excavations in excess of 5 feet in depth, Contractor shall pay a qualified engineer, experienced in the engineering design and preparation of drawings and specifications for compliance with state requirements for trenching and shoring, to prepare and professionally seal detailed drawings and specifications directing Contractor in the safe execution of trenching and shoring.

§ 3.3.6 Any time that the Contractors' 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 are on site, the work shall be supervised by a qualified employee of the Contractor.

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§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The materials, products, and the systems covered by these specifications have been selected as a standard because of quality, particular suitability, or record of satisfactory performance. It is not intended to preclude the use of equivalent or better materials, products, or systems provided that same meets the requirements of the particular project and have been approved in an addendum as a substitution prior to the submission of bids. If prior written approval in an addendum has not been obtained, it will be assumed that the Bid is based upon the materials, products, and systems described in the Bidding Documents and no substitutions will be permitted, except as provided hereinafter.

- .1 If, after award of contract, the Contractor or one of his Subcontractors, or Suppliers determines 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 the Warranty, the Contractor shall promptly notify the Architect, in writing, providing detailed substantiation for his position. Any changes deemed necessary by the Owner and Architect, including substitution of materials and change in Contract Sum, either upward or downward, if any, shall be accompanied by appropriate Modification.
- .2 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products on the Work in place of those specified only under the conditions set forth in specification referring to Product Options and Substitutions.
- .3 Requests for substitution, received by the Architect later than forty five (45) days after "Notice to Proceed" or "Date of Commencement of the Work" (whichever occurs first), may result in additional costs to the Owner. Contractor agrees to reimburse the Owner through deductive Change Order to the Contract, for all costs associated with such requests.
- .4 By making request for substitutions based on Subparagraph 3.4.2 above, the Contractor
  - .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equivalent or superior in all respects to that specified, and is suitable for the intended purpose;
  - .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
  - .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- .5 Substitution requests shall be submitted on the forms included herein and in accordance with the process established in specification referring to Product Options and Substitutions.

...

- .1 State law prohibits possession and/or use of alcohol and tobacco products on school property at all times.
- .2 State law prohibits weapons or firearms on school property.
- .3 There shall be zero tolerance for fraternization with students, teachers and any other Owner personnel. Contractor will immediately remove any employee that violates this provision from the project.
- .4 No glass bottles shall be brought on the construction site or Owner's property by any construction personnel.
- .5 Cell phone usage on-site is restricted except for subcontractors' supervisory personnel.

...

**§ 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-new~~, unless the Contract Documents require or permit otherwise. The ~~Contractor~~ contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect ~~caused-cause~~ by abuse, ~~alterations-material alteration~~ to the Work not executed by the Contractor, ~~improper or insufficient maintenance, improper operation, insufficient maintenance or maintenance not in compliance with written instructions therefor, operation not in compliance with written instructions therefor,~~ 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.

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**§ 3.5.3** In the event of failure in the Work, including a specified product, whether during construction, or the correction period (which shall be one (1) year from the Date of Substantial Completion, except where a longer period as specified), the Contractor shall take prompt and appropriate measures to assure correction or replacement of the defective Work or any portion thereof, including manufactured products, whether notified by the Owner or the Architect. Upon correction of warranty items, the Contractor shall provide the Owner and Architect with written notification of said correction. This obligation shall survive acceptance of the Work under the Construction Contract.

**§ 3.5.4** The Contractual Correction Period for this Project is one (1) year from the date of Substantial Completion, except for any extended warranties as specified within the Contract Documents. Items of Work not completed until after the deadline for Substantial Completions shall have their warranties (general and any extended warranty periods) extended by the period of time between the deadline for Substantial Completion and the actual completion of the Work. Such warranties shall be submitted to the Owner in writing, documenting such time extensions. This correction period shall not restrict or modify extended warranties called for or provided on systems, equipment or other specific portions of the Work.

**§ 3.5.5** The Contractor shall accompany the Owner and Architect for a complete reinspection of the Project approximately eleven (11) months after the Date of Substantial Completion and shall promptly complete any observed or reported deficiencies in the Work, including any uncompleted Punch List items or outstanding and incomplete warranty items. The contractor shall provide written notification to the Owner and Architect when said Punch List items and/or additional deficiencies observed have been corrected. This obligation shall survive acceptance of the Work under the Construction Contract.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provision of Article 20.04(f) of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rental and lease of materials, supplies and equipment used or consumed in performance of the Contract may be exempted by issuing to suppliers an exemption certificate in lieu of tax. Exemption certificates comply with State Comptroller of Public Accounts Ruling No. 95-0.07. Any such exemption certificate issued in lieu of tax shall be subject to State

Comptroller of Public Accounts Ruling No. 95-0.09, as amended. Failure by the Contractor or Subcontractors to take advantage of the Owner's exemption and to obtain such exemption certificate shall make him responsible for paying taxes incurred on materials furnished on the Project without additional cost to or reimbursement by the Owner.

...

- .1 The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar utility connection charges.
- .2 The Contractor shall pay directly all temporary utility charges (excluding permanent power), utility district/company inspection fees, temporary tap charges, and temporary water meter charges and any other similar fees assessed by jurisdictional authority having control over this Project. The Contractor shall secure and pay for all governing authorities' permit fees.
- .3 Fees payable to the Texas Department of Licensing and Regulation (TDLR) for document review relative to the Elimination of Architectural Barriers Act shall be paid by the Owner and the Architect will submit the documents to the TDLR for review and approval.
- .4 The Contractor shall pay all SWPPP related costs.

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~~§ 3.8.1~~ The Contractor shall include in the Contract Sum or GMP 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. direct and approve in writing.

~~§ 3.8.2~~ Unless otherwise provided in the Contract Documents,

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

~~§ 3.8.3~~ Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

~~§ 3.9.1~~ The Contractor shall employ a competent ~~superintendent~~ superintendent, project manager 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 Work, including Punch List work.~~ The superintendent and project manager shall represent the Contractor, and unless provided otherwise in Section 3.1.1, communications given to the superintendent or project manager shall be binding as if given to the Contractor.

...

~~§ 3.10.1~~ The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and Within 30 days of being awarded an Amendment, the Contractor shall prepare and submit for the Owner and Architect's review, a construction schedule for the Work, with critical path clearly defined. The schedule shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. For further schedule requirements refer to specification section regarding project schedules in the Project Manual.

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§ 3.10.4 The Contractor shall submit to the Architect, with each monthly Application for Payment; a copy of the progress schedule updated to reflect the current status of the project. The Contractor shall take whatever action necessary to assure that the project completion schedule is met.

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

§ 3.11.1 The Contractor shall post all Addenda on Construction Documents prior to commencing work in the site.

...

- .1 If, in the opinion of the Architect, the Shop Drawings, Product Data, Samples and similar submittals are incomplete, indicate an inadequate understanding of the work covered by the submittals, or indicate a lack of study and review by the Contractor prior to submittal to the Architect, the submittals will be returned, unchecked, to the Contractor for correction of these three deficiencies and subsequent resubmittal. Additional service charges as outlined in 3.2.6 may be charged by the Architect in this event.
- .2 The Architect will take no action on Shop Drawings, Product Data, and Samples that have not first been certified, by stamped, signed notation, as having been checked and APPROVED by the Contractor for use in the Work, or that are not specifically required by the Contract Documents.

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§ 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-accepted by the Architect.

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

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

§ 3.12.9.1 Deviation from the requirements of the Contract Documents indicated on shop Drawings, Product Data, and Samples, does not constitute the required notification "in writing.

...

§ 3.12.11 The Contractor shall submit complete Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents to the Architect at least thirty (30) days prior to the date the Contractor needs the reviewed submittals returned. Where colors are to be selected by the Architect, submit all Samples in adequate time to allow the Architect to prepare a complete selection schedule. In general, all submittals requiring color selection shall be submitted to the Architect within four weeks of the date of the contact for construction.

§ 3.12.12 The Contractor shall submit digital PDF's of Shop Drawings, Product Data, and similar submittals in the proper format according to the procedures stipulated within the Contract Documents. Digitally submitted Shop Drawings will be reviewed and marked by the Architect and/or his consultants and returned to the Contractor for his use, distribution, correction or resubmittal as required. Contractor corrections or revisions shall be resubmitted to the Architect in accordance with same procedures. The digitally marked up prints will be retained by the Architect and his



consultants. Samples shall be submitted directly to the Architect for review.

§ 3.12.13 The Contractor shall provide MEP coordination drawings within a schedule mutually agreed upon by the Team and prior to installing the Work, showing how all piping, ductwork, lights, conduit, 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 at 1/4 inch per foot minimum scale and shall include invert elevations and sections required to meeting intended purpose. The Contractor may propose an alternate method of accomplishing MEP coordination. If the alternate method is approved by the Team, it may be utilized.

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

...

§ 3.14.3 Leave all chases, holes and openings, straight and true, of proper size, and cut them into existing work as may be necessary for the proper installation of the work. Consult with all Subcontractors concerned, regarding proper locations and size. In case of conflict between requirement for cutting and patching and any other requirement of the Work, submit request for direction before proceeding with the Work. In case of failure to leave or cut them in the proper place, openings shall be cut afterward at no expense to the Owner. No excessive cutting will be permitted, nor shall any piers or other structural members be cut without prior approval. After such work has been installed, satisfactorily and carefully fit around, close up, repair, patch, and point up all cuts. Work shall be done with proper tools by workmen of the particular trade to which work belongs and shall be done without extra expense to the Owner. No description of specific cutting, patching, digging, etc., required for the work under a Specification Section that may be required for the proper accommodation of that work to the work of other trades shall relieve the Contractor from responsibility described above.

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor is responsible for mowing and trimming inside all construction areas.

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§ 3.15.3 Prior to 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 roof, 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.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY DEFEND AND HOLD HARMLESS THE OWNER AND ITS TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY, THE**



**"INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF CONTRACTOR, ITS AGENTS, OR ITS SUBCONTRACTORS OF EVERY TIER, EVEN IF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH IS CAUSED BY OR ALLEGED TO HAVE BEEN CAUSED BY THE NEGLIGENCE, FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES.**

**FOR ALL CLAIMS NOT ADDRESSED IN THE ABOVE PARAGRAPH, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER AND ITS TRUSTEES, OFFICERS, AGENTS, AND EMPLOYEES AND (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, COSTS, DEMANDS, SUITS, CAUSES OF ACTION, AND DAMAGES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES, OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE WORK TO BE PERFORMED UNDER THIS AGREEMENT, BUT ONLY TO THE EXTENT OF THE NEGLIGENCE OR OTHER FAULT OF THE CONTRACTOR, ITS AGENTS, REPRESENTATIVES, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.**

**§ 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. It is understood and agreed that Subparagraph 3.18 above is subject to, and expressly limited by, the terms and conditions of TEX. CIV. PRACT. & REM. CODE ANN. 130.001-130.005 (Vernon Supp. 1989), as amended or modified, or any successor statute. Contractor shall **not** be obligated under Subparagraph 3.18 to indemnify or hold harmless Architect or any agent, servant of employee of Architect from liability or damage that is caused by or results from:

- .1** defects in plans, designs or specifications prepared, approved or used by the Architect; or
- .2** negligence of the Architect in the rendition or conduct of professional duties called for or arising out of the Contract Documents and the plans, designs or specifications that are a part of the Contract Documents; and arises from:
  - .1** personal injury or death;
  - .2** property injury; or
  - .3** any other expense that arises from personal injury, death or property injury.

**§ 3.18.3** It is agreed with respect to any legal limitations, now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

### **§ 3.19 PREVAILING WAGE RATES**

**§ 3.19.1** As required by Chapter 2258 of the Texas Government Code Title 10 Prevailing Wage Rate, no employee used in this construction may be paid less than the minimum prevailing wage rate in effect for the Owner.

**§ 3.19.2** The Contractor and each Subcontractor and Sub-subcontractor shall pay to all laborers, workmen, and mechanics employed in execution of this Contract not less than rates set forth by law for each craft of type of workman or mechanic needed to execute this Contract.

**§ 3.19.3** Determination of prevailing wages shall not be construed to prohibit payment of more than the rates identified.

**§ 3.19.4** The Contractor shall provide the Owner with certified payroll on a monthly basis, or more frequently if required by applicable federal law.

### **§ 3.20 ANTITRUST VIOLATIONS**

**§ 3.21.1** Contractor hereby assigns to 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). The Contractor shall include this provision in his contracts with each Subcontractor and Supplier. Each Subcontractor shall include such provision in contracts with Sub-subcontractors and suppliers.

### **§ 3.21 THIRD-PARTY BENEFICIARY**

**§ 3.21.1** No person or entity shall be deemed to be a third-party beneficiary of any provision(s) of this Contract; nor shall any provision(s) hereof be interpreted to create a right of action or otherwise permit anyone not a signatory party to the Contract to maintain an action for personal injury or property damage.

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**§ 4.2.2** The ~~Architect~~ Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the 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 deficiencies in the work, and (3) to determine in general if the ~~Work~~ observed work is being performed in a manner indicating that the ~~Work, work,~~ when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for documents. The Architect will be required to make on-site inspections as necessary to keep the Owner informed of the progress of the Work and as necessary to guard the Owner against defects and deficiencies in the Work. The Architect will neither have control over or charge of, no 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. Documents, except as provided in Section 3.3.1.

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**§ 4.2.6** The Architect ~~has~~ shall have authority to reject Work that does not conform to the Contract Documents. The Architect shall be required to promptly notify the Owner of any non-conforming Work and shall reject such non-conforming Work unless the Owner objects to the rejection in writing within twenty-four (24) hours of such notification. Whenever the Architect considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract documents, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the ~~the~~ provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Performance of any additional inspection or testing, which would result in additional cost to the Owner, shall require advance notice to and approval of the Owner. 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.~~ Work, except when the Contractor's inability to perform the Work is a result of design flaw, error or omission.

...

**§ 4.2.8.1** Allowance Expenditure will be authorized using Allowance Expenditure Authorizations (AEA) executed by the Owner, the Owner's Program Manager (if any), the Architect and the Contractor. Work authorized by an AEA may be invoiced as it is completed.

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**§ 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.

...

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

"Subcontractor" shall also include a person, or entity who supplies material or equipment for the Project.

...

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Prior to such change the Contractor shall notify the Architect of his intent and reasons for such proposed changes.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, but only to the extent permitted by law.

...

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

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**§ 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.

...

**§ 7.1.2** A Change Order shall be based upon on agreement among the Owner, Contractor, and Architect. Architect, except when the Contract balance is amended as a result of Owner's Right to Carry out the Work under Section 2.4.1 or the Owner's assessment of liquidated damages as allowed by the Contract Documents. A Construction Change Directive requires agreement by the Owner and Architect or the Owner's representative and Architect, and may or may not be agreed to by the Contractor. An Contractor; an order for a minor change in the Work may be issued by the Architect alone.

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## **§ 7.5 ALLOWABLE MARKUPS FOR CHANGES IN THE WORK**

If a change in the Work will result in an increase or decrease in the Contract Sum, then the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described (the right of the Owner as aforesaid shall apply with respect to each such change in the Work).

**§ 7.5.1** Lump Sum Proposal: In responding to a request for a proposed price for a change in the Work, or in submitting a claim, the Contractor shall furnish a lump sum proposal supported by a complete breakdown as described hereafter, indicating the estimated or actual cost to the Contractor for performance of the changed Work, including the applicable percentage of overhead and profit described hereafter. Any request for a time extension must be justified and presented in adequate detail to permit evaluation per Article 8, showing that the proposed change will extend the Contract Time. A Lump Sum Proposal for the adjustment of Work shall contain the following items:

.1 Estimated cost, using any discount to the trades, of the materials and supplies used, which shall be itemized completely to include unit cost, quantity and total cost.

.2 The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, may include reasonably anticipated direct wages of jobsite labor (including foremen) who will be directly involved in the change in the Work (for such time as they will be so involved). In addition to the direct wages, payroll costs including Social Security, Federal/State Unemployment Insurance and like taxes may also be included. These payroll costs shall be itemized separately; and the Contractor shall provide

verifying documentation of these costs. Furthermore, any fringe benefits required by applicable union/trade agreements in connection with such direct wages may also be included if the Contractor provides verifying documentation of these benefits.

.3 Estimated cost to the Contractor for additional construction equipment used solely on the Change Order, to include rental rates or owned equipment rates for such items of equipment while in use, which shall be itemized completely to include type(s), the number(s) of each, hourly rate, hours and total cost. Equipment which is regularly used at the job shall be used in Change Order Work at no extra charge. Rental or owned equipment rates shall be no greater than those established by the Association of General Contractors for the local area. As used herein the terms "construction equipment" and "equipment" shall include wheeled vehicles and small tools.

.4 Estimated transportation costs for delivery and handling of materials and supplies, bringing to and removing from the site additional construction equipment and/or new items of installed equipment, if applicable, which shall be itemized separately.

.5 Estimated off-site storage costs in excess of thirty (30) calendar days for new items of installed equipment, if applicable.

.6 To the Contractor's, Subcontractor's or Sub-subcontractor's cost proposal for Work performed by its own forces, a cumulative total markup, for all tiers, shall not exceed fifteen percent (15%) to cover all elements of overhead and profit including, but not limited to, supervision above the level of foremen, estimating, scheduling, procurement, cleanup, temporary facilities, consumables, safety, quality control/assurance, protection, security, small tools, radios, company vehicles, home and branch office costs and expenses of any type whatsoever. The Contractor's markup on a Construction Manager-at-Risk project shall not exceed the CM Fee, and there shall be no CM Fee permitted on self-performed work or work performed by a Related Party. If any of the items included in the lump sum proposal are covered by unit prices contained in the Contract Documents, then the Owner may, if it requires the change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal. In this event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

.7 To the summary of the Contractor's proposed cost, the direct cost for insurance and bonds shall be added upon the Contractor providing documentation.

**§ 7.5.2** In cases where changes in the Work result in a credit to the Owner, the credit shall be limited to direct costs; that is, no overhead or profit shall be applied to such costs. In cases where a change in the Work results in both credits and charges to the Owner, the Contractor will be allowed to add the overhead and profit percentages indicated in Paragraph 7.5.1 to the net charge based upon the amount by which the total charges exceed the total credits; if there is a net credit, then no overhead or profit shall be charged.

**§ 7.5.3** Time and Material Proposal: If the Owner elects to have the change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the change in the Work plus the same markups for overhead and profit as set forth in Paragraph 7.5.1. The Contractor shall submit to the Owner daily time and material tickets which shall include the identification number assigned to the change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgement by the Owner that the items thereon were reasonably required for the change in the Work.

**§ 7.5.4** Where changes in the Work will be funded from a contingency or allowance fund, the Contractor shall not be entitled to any markup when the Contract Sum or Guaranteed Maximum Price already includes CM Fee or markup on contingency or allowance amounts. No expenditures from contingency or allowances are permitted without an executed Contingency Expenditure Authorization (CEA) or Allowance Expenditure Authorization (AEA) executed



by Owner.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor; (2) separate contractor employed by the Owner, or by changes ordered in the Work; (3) Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, casualties or other unforeseeable causes beyond the Contractor's control, 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.~~

...

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ **No Damages for Delay. The Contractor has no claim for monetary damages for delay or hindrances to the work from any cause, including without limitation any act or omission of the Owner.** When the completion of the Work is simultaneously delayed by an excusable delay and a delay arising from a cause not designated as excusable, the Contractor may not be entitled to a time extension for the period of concurrent delay.

§ 8.3.4 The parties hereto agree that time is of the essence of this Contract and that pecuniary damages would be suffered by the Owner if the Contractor does not substantially complete all Work called for in the Contract Document by the specified date, which damages are, by their very nature, difficult of ascertainment. 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                          Dollars (\$                   .00) per phase for each and every Calendar Day beyond the agreed date which the contractor has agreed to for Substantial Completion of the Work included in the Contract Documents. It is expressly understood that 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 substantially completed within the agreed time, or with 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 or forfeiture; said damage being caused by additional compensation to personnel, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. The liquidated damages assessed herein shall be Owner's sole remedy for time delays between the deadline for substantial completion and Contractor's achievement of substantial completion.

§ 8.3.5 Extensions of time granted for causes described herein will be granted on the basis of 1.4 Calendar Days extension for each Regular Working Day lost.

...

§ 9.1.1.1 The Owner is exempt from payment of Texas State Sales Tax on materials required for the Work. Therefore, to comply with the law, the Contract Sum or GMP shall be broken down into the amount of cost for labor and the amount of cost for materials. This breakdown shall be provided by the Contractor within ten (10) days of award of Contract, or in the GMP for a Construction Manager-at-Risk project.

...

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



Payment. The Schedule of Values, along with a baseline Project schedule, shall be the first required submittal of the Project.

§ 9.2.1 General Contractor's cost for Contractor's fee, bonds and insurance, General Conditions, etc., shall be listed as individual line items.

§ 9.2.2 Schedule of Values shall break each line into materials and labor. Once approved by the Owner and Architect, it shall be used as basis for reviewing Application for Payment but not be taken as evidence of market or other value.

§ 9.2.3 Contractor's cost 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.

§ 9.2.4 On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule shall indicated line items and amounts in detail, (for example; underground, major equipment, fixtures, installation of fixtures, start up, etc.)

§ 9.2.5 Costs for subcontract work shall be listed without any addition of General Contractor's costs for overhead, profit or supervision.

§ 9.2.6 The Contractor shall include a value for the coordination documents/drawings on the schedule of values.

§ 9.2.7 The Contractor shall include a value for the correction of deficiencies noted by the Commissioning Agent and the Test, Adjust and Balance consultant on the schedule of values for each sub-contractor subject to commissioning and test, adjust and balance requirements

§ 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 prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. No later than 3 working days prior to the first Wednesday of each month, submit an itemized Application for Payment, supported by such data sustaining the Contractor's right to payment as the Owner or Architect may require, and reflecting retainage, as provided elsewhere in the Construction Documents. Information on the form shall be divided into the same last day of the month preceding, which shall also be the basis of payment or as agreed by the Owner, Contractor and Architect by verification at the site, prior to submittal.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall ~~Payments will~~ 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 or equipment 1) incorporated in the Work; 2) suitably stored at the site; or 3) suitably stored at some off-site location, provided the following conditions are met for off-site storage:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 Surety must agree, in writing, to each request for payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the offsite storage area for confirmation.

Payments for materials or equipment stored on or off the site shall be conditioned upon ~~compliance by the Contractor with~~ 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 ~~and or~~ equipment or otherwise protect the Owner's interest, ~~and shall include the costs of applicable insurance, storage, and transportation to the site, for such~~ including applicable insurance (naming the Owner as insured) and transportation to the site for those materials and equipment stored off the site. 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 and/or equipment stored off the side is an additional service of the Architect, and the Contractor shall be charged for that service. The cost for such service will be established by the Architect and is not subject to appeal.

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**§ 9.3.4** The Contractor shall submit requests for payment in duplicate, using AIA Document G702, Application and Certificate of Payment, as the cover sheet. Continuation sheets showing in detail the amounts requested, etc., shall be submitted using AIA Document G703, Continuation Sheet, or a computerized version of these documents previously approved for use. The information provided on the continuation sheets in the Description of the Work and Scheduled Values columns shall match the corresponding information shown on the approved Schedule of Values. All blank spaces on AIA Document G702, Application and Certificate of Payment, must be completed and the signatures of the Contractor and Notary Public shall be original on each form. By submitting his application for payment, the Contractor certifies that the individual signing the application is authorized to do so.

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**§ 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 progress payments in accordance with the following Section which shall be inserted as Article 5, Progress Payments, in the Owner-Contractor Agreement, AIA Document A101, 2017 Edition.

- .1 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:
- .2 Not later than twenty (20) working days following the first Wednesday of each month, ninety-five percent (95%) of the portion of the Contract Sum properly allocable to 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 of the Supplementary Conditions to the Contract for Construction), for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner. Applications for Payment shall be submitted by the first Wednesday of the month.
- .3 Upon Substantial 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 in the Contract

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. More specifically, if only five percent (5%) retainage is withheld by the Owner on payments to the Contractor, then the Contractor shall withhold only five percent (5%) retainage on payments to subcontractors; and subcontractors shall withhold only five percent (5%) retainage on payments to sub-subcontractors. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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### **§ 9.7 Failure of Payment**

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

...

**§ 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. Should the Architect determine that the Contractor's List of Items to be Completed or Corrected lacks sufficient detail or requires extensive supplementation, the list will be returned to the Contractor for revision, and inspection for determining the Date of Substantial Completion will be delayed until the List submitted is a reasonable representation of the work to be done.

...

**§ 9.8.6** In order for the project or a major portion thereof to be considered substantially complete, the following conditions must be met:

- .1 All inspections by governmental authorities having jurisdiction over the project must have been finalized, any remedial work required by those authorities must have been completed, and Certificates of Occupancy and similar governmental approval forms must have been issued and copies delivered to the Owner and Architect.
- .2 All work, both interior and exterior, shall have been completed and cleaned except minor items which if completed after occupancy, will not, in the Owner's opinion, cause interference to the Owner's use of the building or any portion thereof. A significantly large number of items to be completed or corrected will preclude the Architect from issuing a Certificate of Substantial Completion. The Owner and Architect will be the sole judge of what constitutes a significantly large number of items.

The following items are a partial specific list of requirements, as applicable to the Project, that must be completed **prior** to established Substantial Completion of all portions of the work (Including the Substantial Completion of the commissioning phase).

1. All fire alarm system components must be completed and demonstrated to the Owner.
2. Local fire marshal approval certificate, or similar Certificate of Occupancy from the governing agency, must be delivered to the Owner.
3. All exterior clean-up and landscaping must be complete.
4. All final interior clean-up must be complete.
5. All HVAC air and water balancing must be complete.
6. All required commissioning must be complete.
7. All Energy Management Systems must be complete and fully operational and demonstrated to the Owner.
8. All communications equipment, telephone system, and P.A. systems must be complete and demonstrated to the Owner.
9. All final lockset cores must be installed and all final Owner directed keying completed.
10. All room plaques and exterior signage must be completed.
11. All Owner demonstrations must be completed including kitchen equipment, HVAC equipment, plumbing equipment, and electrical equipment.
12. A final certificate of occupancy must be signed by the Contractor and delivered to the Owner.

**§ 9.8.7** After the date of Substantial Completion of the Project is evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of time within which to correct all deficiencies attached to the Certificate of Substantial Completion as outlined in Section 8.3.4 of these supplementary conditions. Failure of the Contractor to complete such corrections within the stipulated time will be reported to the contractor's surety. In this report, the Contractor and surety will be informed that, should correction remain incomplete for fifteen (15) days, the Owner may initiate action to complete corrective work out of the remaining Contract funds in accordance with Article 14.2.

- .1 Should corrective work following Substantial Completion require more than one reinspection after notification by the Contractor that corrections are complete, the cost of subsequent inspections may also be deducted from the Contract funds remaining unpaid to the Contractor.

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**§ 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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees and Owner:~~

- .1 Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706
- .2 Contractor's Affidavit of Release of Liens, AIA Document G706A
- .3 Contractor's, Subcontractor's, Sub-subcontractor's, and Supplier's separate releases on the prescribed forms.
- .4 Consent of Surety to Final Payment, AIA Document G707 (if applicable).
- .5 Final list of Subcontractors and Sub-subcontractors, AIA Document G805.
- .6 The Contractor and each and every Subcontractor, Sub-subcontractor and Supplier shall provide a "Certificate of No Asbestos, PCB and Lead". For the purpose of definition as used in this form, the term "potable water systems" includes, but is not limited to, those water systems for drinking fountains, all sinks and lavatories, showers, bath tubs, residential and commercial kitchen equipment, icemakers, and hose bibbs, as applicable to this specific Project.
- .7 Material Safety Data Sheets: Effective September 1, 2000, the Texas Department of Health implemented a new rule in the AHERA Regulation which requires that Material Safety Data Sheets be provided to the Owner by the Contractor on the materials incorporated into the Work which but not limited to the list below (not all of which may have been used in this specific Project):
  - .1 Floor Tiles
  - .2 Sheet Floorings
  - .3 Adhesives (Mastics)
  - .4 Suspended Ceiling Tiles
  - .5 Glued-on/Nailed-on Ceiling Tiles
  - .6 Gypsum Board
  - .7 Blown-in Insulation
  - .8 Batt/Roll Insulation
  - .9 Gaskets
  - .10 Sprayed-on/Troweled-on Surfacing Materials
  - .11 Pipe Insulation
  - .12 Pipe Fitting Insulation
  - .13 Boiler Insulation
  - .14 Flue Insulation (Vent Pipe Insulation)
  - .15 Heating/AC Ducting
  - .16 Air Handler Cloth Joint (Flex Joint)
  - .17 Air Handler Insulation

If Material Safety Data Sheets are not provided by the Contractor, then the Contractor shall be responsible for obtaining samples of the materials listed above and the required testing of the samples at no additional cost to the Owner. These Material Safety Data Sheets shall be included in the maintenance and instruction manuals.

- .2 delay or liquidated damages not imposed by the Owner when asserted as a counterclaim to a claim initiated by the Contractor;
- .3 failure of the Work to comply with the requirements of the Contract Documents;



- ~~3~~ — 4 terms of special warranties required by the Contract Documents; or  
~~4~~ — 5 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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§ 9.10.6 Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor thirty-one (31) days after Substantial Completion of the Work unless otherwise stipulated in the Certificate of Substantial Completion, provided the Work has then been completed, the Contract fully performed, all Contract Close Out Documents have been submitted, and the Final Certificate for Payment has been issued by the Architect. The final payment will not be made until all of these conditions have been satisfied.

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§ 10.2.9 The performance of the foregoing services by the Contractor shall not relieve the Subcontractors of their responsibilities for the safety of persons and property and for compliance with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to the conduct of the Work.

§ 10.2.10 The Contractor shall be responsible for taking all precautions necessary to protect the Work in place from any foreseeable 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 foreseeable weather conditions.

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. report the condition to the Owner and Architect in writing. The Owner, Contractor and Architect shall then proceed in the same manner described in section 10.3.2.

...

§ 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), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

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

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

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government governmental agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred. indemnify the Contractor for all costs and expenses thereby incurred, but only to the extent provided by law.

§ 10.3.7 As part of the construction contract close out process, and prior to receiving payment of any of the retainage,



the Contractor and his subcontractors shall submit notarized statements pertaining to the above referenced hazardous materials.

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**§ 11.1 Contractor's Insurance and Bonds** **CONTRACTOR'S LIABILITY INSURANCE**

The Owner reserves the right to review the insurance requirements during the effective period of any Contract to make reasonable adjustments to insurance coverages and limits when deemed reasonably prudent by Owner based upon changes in statutory laws, court decisions or potential increase in expense to loss.

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.2 Owner's Insurance**

**§ 11.2** The Owner requires the following minimum insurance coverages:

<u>Types of Coverage</u>	<u>Limits of Liability</u>
Commercial General Liability	General Aggregate Products/Completed \$2,000,000.00
	Operations/Aggregate Bodily Injury and \$1,000,000.00
	Property Damage (each) \$1,000,000.00
	Contractual \$1,000,000.00
	Personal and Advertising Injury \$1,000,000.00
	Fire Damage \$ 500,000.00
	Medical Expense \$ 5,000.00

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

be named as an additional insured on a primary and non-contributory basis using form CG 2010 10 01 or similar endorsement providing equal or greater coverage in favor of the Owner.

Coverage shall include the following:

- (a) Premises operations;
- (b) Blanket Contractual Liability;
- (c) Pollution;
- (d) Products/Completed Operations;

- (e) Broad Form Property Damage;
- (f) Independent Contractors;
- (g) Per project aggregate limit;
- (h) Provide a statement of claims against the aggregate limit with each renewal certificate;
- (i) X,C,U exclusions to be removed when underground work is performed; and
- (j) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

Automobile Liability	Combined Single Limit	\$1,000,000.00
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- (a) Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by, or used on behalf of Contractor.
- (b) Owner and its officers, directors, representatives, agents and employees shall be endorsed as Additional Insureds, as their interests may appear.
- (c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

Workers' Compensation	Statutory Limits
(a) Coverage at Statutory Limits with All States Endorsement	
(b) Employer's Liability	Each Accident \$1,000,000.00
	Disease (Policy Limit) \$1,000,000.00
	Disease (Each Employee) \$1,000,000.00

- (c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.4 Excess or Umbrella Insurance (provides coverage in excess of primary Commercial General Liability, Automobile Liability, and Worker's Compensation Coverage B limits)**

- (a) Minimum coverage for the Contractor shall be one (1) times the Contract amount, subject to a minimum limit of \$1,000,000.00 and a maximum limit of \$25,000,000.00. Limits for primary policies may differ from those shown above when Excess (Umbrella) Insurance coverage is provided.
- (b) Owner and its officers, directors, representatives, agents and employees shall be endorsed as Additional Insureds, as their interests may appear.
- (c) Waivers of subrogation in favor of Owner and its officers, directors, representatives, agents and employees shall be provided.

**§ 11.2.5 Additional Requirements for Architects, Engineers and Design Professionals (each a "Professional"):**

- (a) Professional Liability policy limits shall be one (1) times compensation amount due such Professional under the Contract, subject to a minimum limit of \$1,000,000.00 and a maximum limit of \$25,000,000.00.
- (b) Professional Liability policies issued on a "claims made" basis must have a retroactive date shown on the certificate preceding date of contract. Such policies must include an Extended Reporting Period three years past completion of construction contract.
- (c) Minimum coverage for excess (umbrella) insurance for Architects, Engineers and Design Professionals shall be one (1) times compensation amount due such Professional under the Contract, subject to a minimum limit of \$1,000,000.00 and a maximum limit of \$425,000,000.00. To the extent of Commercial General Liability coverage for the Professional exceeds \$1,000,000.00, such amount may be used as a credit against the Excess (Umbrella) Insurance requirement set out in the preceding sentence.

**§ 11.2.6 Insurance Limits for Consultants hired by a Professional**

- (a) Notwithstanding Section 11.1.2.1 above, Consultants shall have the following minimum insurance requirements:

(1) Worker's Compensation:	Statutory Limits	
Employer's Liability	Each Accident	\$1,000,000.00
	Disease (Policy Limit)	\$1,000,000.00
	Disease (Each Employee)	\$1,000,000.00
(2) Commercial General Liability	General Aggregate	\$1,000,000.00
	Products/Completed	
	Operation Aggregate	\$1,000,000.00
	Bodily Injury and	
	Property Damage (each)	\$1,000,000.00
	Personal and	
	Advertising Injury	\$1,000,000.00
(3) Automobile Liability	Per Person/Accident	\$1,000,000.00
(4) Professional Liability	Program Limits,	\$1,000,000.00
	If applicable	

Professional Liability policies issued on a "claims made" basis must have a retroactive date shown on the certificate preceding date of contract. Such policies must include an Extended Reporting Period three years past completion of Construction Contract.

**§ 11.3 Waivers of Subrogation** The Owner requires that the following insurance requirements be satisfied:

- .1 No Work shall be commenced until all insurance requirements set forth in this Agreement have been approved by the Owner in writing.
- .2 All insurance policies and certificates required hereunder shall be in form and content satisfactory to the Owner.
- .3 The Owner shall be furnished an ACORD form Certificate of Insurance evidencing all policies and endorsements required by this Agreement prior to execution of the Contract and thereafter upon renewal or replacement of each required policy of insurance.
- .4 Each Insurance coverage/policy shall contain a provision that at least thirty (30) days prior written notice shall be given to the Owner in the event of cancellation, material change, or non-renewal.
- .5 Insurance shall be underwritten by a company licensed to do business in Texas, satisfactory to Owner and rated minimum A-VII by A.M. Best.
- .6 The insurance coverages specified herein shall be maintained at all times during the term of the contract and, with the exception of builder's risk coverage, shall be maintained for a minimum of one (1) year thereafter.
- .7 No deletions/exclusions from the standard coverage form are allowed without the prior written consent of the Owner.
- .8 All insurance except Professional Liability must be issued on an occurrence basis.
- .9 The Contractor shall be responsible for all deductibles; the Owner shall approve the deductibles selected.
- .10 With the exception of Excess Umbrella Coverage, the coverage afforded by each carrier must be a primary over any other applicable insurance.
- .11 In addition to certificates of insurance, copies of policy endorsements must be provided (a) listing the Owner as Additional Insures, and (b) showing waivers of subrogation in favor of the Owner.

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§ 11.5 Adjustment and Settlement of Insured Loss**

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Contractor shall provide a Performance Bond, in the penal sum equal to one hundred percent (100%) of the Contract Sum, if the formal Contract is in excess of One Hundred Thousand Dollars (\$100,000.00) and a Labor and Material Payment bond, in the penal sum equal to one hundred percent (100%) of the Contract sum if the formal contract is in excess of Twenty Five Thousand Dollars (\$25,000.00).

**§ 11.4.2** The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an attached authorized power of attorney. Such Bonds shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of a least A-X and included on the U.S. Department of the Treasury Listing of Approved Sureties (Dept. Circular 570).

**§ 11.4.3** The Performance Bond Form and the Payment Bond Form included herein shall be executed and submitted to the Architect in duplicate prior to commencement of the work. The surety companies must be acceptable to the Owner and licensed admitted carriers in the State of Texas; and the companies must appear in a current Federal Treasury list as Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring companies.

**§ 11.4.4** Each bond shall be of penal sum equal to one hundred percent (100%) of the Contract Sum and shall be compatible with the provisions of the governing authority. The Contractor shall file copies of each bond with the county clerk and furnish the Owner with a file receipt. The bonds shall remain in force throughout the warranty period of the contract. The Work will not be started until the bonds and issuing companies have been accepted as satisfactory by the Owner. The original bonds will be delivered to the Owner with an authorized power of attorney attached.

**§ 11.4.5** Claims must be sent to the Contractor and his Surety in accordance with Article 5160, Revised Civil Statutes. The Owner will furnish in accordance with such Article, a copy of the Payment Bond as provided therein to claimants upon request. All claimants are cautioned that no lien exists on the funds unpaid to the contractor on such Contract, and that reliance on notices sent to the Owner may result in loss of their rights against the Contractor and/or his Surety. The Owner is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no responsibility because of any representation by any agent or employee.



## **§ 11.5 WORKER'S COMPENSATION INSURANCE COVERAGE**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner. Comply with the requirements of Rule 28, TAC §110.110, Reporting Requirements for Building or Construction Projects for Governmental Entities

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work. **DEFINITIONS:**

- .1** Certificate of coverage ("certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing service as on a project, for the duration of the project.
- .2** Duration of the project –includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.
- .3** Persons providing services on the project ("subcontractor" in §406.096)-includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity which furnishes persons to provide services on the project. "Services" include without limitation, providing hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply delivery, and delivery of portable toilets.

**§ 11.5.3** 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.

**§ 11.5.4** The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

**§ 11.5.5** 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 governmental entity showing that coverage has been extended.

**§ 11.5.6** The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- .1** A certificate of coverage, prior to that person beginning work on the projects so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project, and
- .2** No later than seven days after receipt by the 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.

**§ 11.5.7** The Contractor shall retain all required certificates of coverage for the duration of the project and for one year

thereafter.

**§ 11.5.8** The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

**§ 11.5.9** The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack coverage.

**§ 11.5.10** The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meet 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 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 shown on the current certificate ends during the duration of the project.
- .4 Obtain from each other person with whom it contracts, and provides 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 to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- .5 Retain all required certificates of coverage on file for the duration of the project and for one year thereafter.
- .6 Notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project, and
- .7 Contractually require each person with whom it contracts, to perform as required by sections (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services.

**§ 11.5.11** By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other actions.

**§ 11.5.12** The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

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**§ 12.2.1.1** In the event of failure of a specified project, either during construction or the correction period, the Contractor shall take appropriate measures with the manufacturer of the product to assure correction or replacement of the defective products.

**§ 12.2.2.1** ~~In~~ Approximately eleven months after substantial completion, the contractor shall accompany the Owner and Architect on an "end of the one year correction period" reinspection of the Project. Additional deficiencies observed or reported shall be corrected by the Contractor. In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless

the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. **§ 12.3.1** If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**§ 12.3.2** The Owner's use and/or occupancy of any or all of the Project site shall never be construed as an acceptance of Work not in conformance with Contract Documents. The Owner reserves the right to enforce provisions of the Contract unless the Owner's acceptance is provided to the Contractor in writing.

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### **§ 13.7 EQUAL OPPORTUNITY**

**§ 13.7.1** The contractor shall maintain policies of employment as follows:

- .1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

### **§ 13.8 COMPLIANCE WITH GOV'T CODE 552.372**

The requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code, Subchapter J, may apply to this contract if it is valued at more than \$1 million. The Contractor agrees that this Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter, including the preservation of all "contracting information" (as defined in 552.003) and the provision, upon request of the Owner, of all contracting information. Contracting information includes, but is not limited to, records, communications and other documents related to the bid process, contract, payments, receipts, scope of work/services, and performance.

### **§ 13.9 REQUIRED CERTIFICATIONS**

Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. Contractor further certifies and verifies that neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the "Contractor Companies"), boycotts Israel, and contractor agrees that Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

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**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 Section 14.4.1 or 14.4.2 exists, the Contractor may, upon seven days' day's written notice to the Owner Ower and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination. executed as of the date of the notice, plus costs of demobilization.

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~~§ 14.4.3 In the case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Contractor shall be entitled to receive payment for Work executed up to date of receipt of the notice of termination, plus costs of demobilization.~~

...

~~A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, 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-Owner, Architect, and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not Nothing herein shall require the Owner to make or file a Claim in order to impose liquidated damages in accordance with assess liquidated damages provided for in the Contract Documents.~~

...

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

...

~~§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall must be initiated within 21-ninety (90) days after occurrence of the event giving rise to such Claim or within 21-ninety (90) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

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~~§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor's sole remedy for delays shall be an increase in the Contract Time. Contractor shall not be entitled to any damages for delay.~~

~~§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

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

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

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~



~~§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered alleging an error or omission by the Architect or those arising after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, Work, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. If the parties are unable to agree, any claim, dispute or matters arising out of the contract between the Architect, Owner and Contractor or any combination of those parties shall be submitted to a court of appropriate jurisdiction.~~

...

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial-initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons ~~therefor~~; therefore; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution parties, but subject to mediation, if both parties so agree, and subject to legal or equitable proceedings in a court having jurisdiction thereof. It is understood and agreed that, in the event that any dispute, controversy, or conflict arises during the design and construction of the Project or following its completion, the parties hereto will cooperate in good faith, if possible, to resolve the issues without resorting to litigation.~~

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6-1.~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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~~§ 15.2.9 The prevailing party in any judicial proceeding arising from the Contract Documents shall recover its reasonable and necessary attorneys' fees.~~

~~§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 15.3.2 The parties shall endeavor may mutually agree to resolve their Claims claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution 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. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, filing unless stayed for a longer period by of agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

...

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

~~§ 15.4.1.1~~ A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

~~§ 15.4.4.1~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:18:51 ET on 08/05/2020 under Order No. 0213333691 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*