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AIA® Document A133™ – 2019

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

AGREEMENT made as of the « _____ » day of « _____» in the year «202_ »
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

«Alamo Community College District (sometimes, Alamo Colleges, Alamo Colleges District, ACCD or District »« »
«2222 N. Alamo Street, Room E105»
«San Antonio, Texas 78215»

and the Construction Manager:
(Name, legal status, address, and other information)

«»«»
« »
«Email:
«Phone: | Fax: »

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

«»
« Texas 78»

The Architect:
(Name, legal status, address, and other information)

« »
« »
« »
«Email: »
«Phone: | Fax: »

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

L & B 04927/0067/L2200706.DOCX/5

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

«»

§ 1.1.2 The Project's physical characteristics and location:

«See Page 1 above and Contract Documents.»

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price:
(Provide total and, if known, a line item breakdown.)

« Is not to exceed $»

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

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.1 Design phase milestone dates, if any:

« 10% Construction Documents on
50% Construction Documents on
95% Construction Documents on »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

«

Final Completion date must occur within 30 days or less of the Substantial Completion Date. »

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

«Construction Manager must (i) timely achieve substantial and final completion and (ii) comply with all the scheduling requirements in the Contract Documents.»

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« See Alamo Colleges Design Standards »

§ 1.1.6.1 Intentionally omitted.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.8 The Owner identifies the following Designated Representative in accordance with Sections 2.1.3 and 4.2:
(List name, address, and other contact information.)

«»
««2222 N. Alamo Street»
«San Antonio, Texas 78215»
«Telephone: (210) 485-_____»
«Email: »

§ 1.1.9 The persons or entities, in addition to the Owner's representatives and Program Manager, if applicable, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

«Architect listed on page 1 above and other persons or entities that Owner or Architect may designate or identify from time to time. »

§ 1.1.10 Intentionally Omitted.

§ 1.1.11 The Architect's Designated representative:

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(List name, address, and other contact information.)

«»
« »
« »
«Email: »
« Telephone: | Fax: »

§ 1.1.12 The Construction Manager (sometimes, referred to as "Contractor") identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

« »
« »
« »
« »
« Email »
« Telephone: | Fax: »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

« **Construction Manager's staffing plan or proposal is attached hereto at Attachment G To Exhibit A; and if it is not attached, it must be provided for the Owner's review and approval (i) within ten (10) days of the execution and (ii) prior to any application for payment for preconstruction services.** »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

«The Construction Manager shall comply with (i) all applicable state, local and federal law; (ii) the District's procurement requirements, applicable for this Project; and (iii) the requirements of the Contract Documents. »

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 . Both parties recognize that the Initial Information may materially change and, in that event, the Owner and the Construction Manager may appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner may adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The Construction Manager's representative shall not be changed without ten (10) days' prior written notice to the Owner.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The **Contract Documents** consist of this A133-2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of Work Plus a Fee with a Guaranteed Maximum Price, as amended (A133-2019 or Agreement), A201–2017, as amended General Conditions of the Contract for Construction (A201-2017), (Supplementary and other Conditions, as amended), all sections of the Construction Documents (including but is not limited to the Project Manual, Drawings, Specifications) Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, Contractor's proof of payment, payment and performance bonds and insurance (proof, policies and declarations) all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's written acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will

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also include the documents described and contained in the signed Guaranteed Maximum Price Amendment and revisions prepared by the Architect and authorized by the Owner, as described in Section 3.2.8, if any. The Contract Documents represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification or Guaranteed Maximum Price Amendment, is inconsistent with this Agreement, this Agreement shall govern. Any reference to AIA Document A201-2017 in this Agreement shall be construed as the AIA Document A201-2017, as amended. Likewise, any reference to the AIA Document A133-2019, the reference refers to A133-2019, as amended. Any reference to any AIA document shall be construed to mean the District's amended version of the AIA Document only. Due to the District's position as a public entity, it makes amendments to all the AIA Documents

§ 2.1.1 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201–2017, as amended.. The Contract Documents and any revision, amendment, or modification to the AIA Standard Form of the Agreement shall be valid, binding and enforceable only if signed by Construction Manager and the Authorized Representative of Owner's Board of Trustees

§ 2.1.2 Authorized Representative
The Board of Trustees, through the **Owner's Authorized Representative**(s), defined herein, has exclusive authority to: approve the Construction Manager's Guaranteed Maximum Price proposal; enter into, amend; or issue a change order or construction change directive over a Board defined amount; or approve changes in the scope of the Work. **The Owner designates the following individuals as the Authorized Representatives, which are authorized to sign documents on behalf of the Board of Trustees – Chancellor, Vice Chancellor for Facilities & Facility Services or their designee**.

§ 2.1.3 Designated Representative
The Owner designates the **Designated Representative(s)** identified at Section 1.1.8 of this Agreement to act on its behalf, as provided in paragraph 4.2 of this Agreement. In addition, the Owner's Designated Representative(s), is authorized to: approve in writing the utilization of specific forms to substitute for any form specified for or provided for in the Contract or the Contract documents; suspend the contract; or terminate a contract; and take any other action not specifically delegated to the Owner's Authorized Representative. Designated Representative may, in its sole discretion, seek guidance or approval of a proposed action from Owner or Owner's Authorized Representative.

§ 2.2 Relationship of the Parties
The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner to perform the Work defined in the Contract Documents, in accordance with the Owner's requirements and construction cost limitations. The Construction Manager shall, during Pre-construction, Construction, and Post-Construction (warranty and other services) phases, furnish efficient construction administration, management services, and supervision; furnish construction services, if allowed in accordance with law; furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner and Construction Manager shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, Construction Manager's subcontractors, and other persons or entities employed by the Owner for the Project.

§ 2.2.1 Owner Construction Manager Meeting. The Construction Manager shall meet with the Owner in order for Owner to outline, beyond what is stated in the Contract Documents, the process and form for collecting information required for documentation of payment requests, including guidelines for proper reporting and categorization of costs; process, timing and quality of responses to Owner and Auditor inquiries; templates to document calculation of labor burden and other costs; and other procedural discussions. The Construction Manager shall comply with Owner's request.

§ 2.3 General Conditions of the Contract for Preconstruction and Construction
§ 2.3.1 For the Preconstruction and Construction Phase, AIA Document A201™–2017, as amended General Conditions of the Contract for Construction (A201-2017), which is incorporated herein by reference, shall apply to the extent applicable. The term "Contractor" as used herein or in A201–2017, as amended shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
The Construction Manager's Preconstruction Phase responsibilities are generally set forth in Sections 3.1 and 3.2 of the A133-2019, and in the applicable provisions of A201-2017, as amended. The Construction Manager's Construction

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Phase responsibilities are generally set forth in Section 3.3 of the A133-2019, and in the applicable provisions of A201-2017, as amended. The Owner and Construction Manager may agree in writing, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager identifies as a representative authorized to act on behalf of the Construction Manager with respect to the Project, the persons identified on page 1 and Section 1.1.12 of this Agreement.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall not incur any preconstruction costs or expenses prior to the Owner's issuance of a Notice to Proceed with the Preconstruction Phase. The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The recommendations and advice of the Construction Manager concerning design alternatives and potential cost savings shall be subject to the review and approval of the Architect, Owner and the Owner's professional consultants. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price Amendment. The Construction Manager is not required to ascertain that the Drawings and Specifications (but shall review) are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly review and report to the Architect and Owner any nonconformity, error, or omission discovered by, or that should have reasonably been discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.1.1 The Construction Manager or Contractor is not responsible for the consequences of design defects in and does not warranty the adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the Construction Manager or Contractor by a person other than the Construction Manager's or Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier. However, the Construction Manager or Contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the Owner and Architect the existence of any known defect in the plans, specifications, or other design documents that is discovered by the Construction Manager or Contractor, or that reasonably should have been discovered by the Construction Manager or Contractor using ordinary diligence, before or during construction. Ordinary diligence means the observations of the plans, specifications, or other design documents or the improvement to real property that a Construction Manager or Contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work in this Agreement (including preconstruction and construction services) and under normal circumstances. Ordinary diligence does not require that the Construction Manager or Contractor engage a person licensed or registered under Title 6, Occupations Code. A disclosure under this subsection is made in the Construction Manager's or Contractor's capacity as a Construction Manager or Contractor and not as a licensed professional under Title 6, Occupations Code. A Construction Manager or Contractor who fails to disclose a defect as required shall be liable for the consequences of defects that result from the failure to disclose. Except as provided by Section 59.052, of the Texas Business and Commerce Code, the preceding portion of this paragraph does not apply to the portion of a contract, if any, between an Owner and a Construction Manager or Contractor under which the a Construction Manager or Contractor agrees to provide input and guidance on plans, specifications, or other design documents to the extent that: (1) the a Construction Managers' or Contractor's input and guidance are provided as the signed and sealed work product of a person licensed or registered under Title 6, Occupations Code; and (2) the work product is incorporated into the plans, specifications, or other design documents used in construction of this project.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction, which shall satisfy Owner's time requirements;

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prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or other Owner approved protocol, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 During the Preconstruction Phase, the Construction Manager shall review the Contract Documents to ascertain whether the components of the plumbing, electrical and mechanical systems may be constructed without interference with each other, or with the structural or architectural components of the Project, or with existing systems. In the event that conflicts between the systems are discovered, the Construction Manager shall promptly notify the Owner and Architect in writing. In addition, Construction Manager shall: (a) provide a preliminary evaluation of ACCD's Design and Construction Standards and the construction cost limitation, each in terms of the other; (b) review and understand the standards and requirements in ACCD Design and Construction Standards, which are incorporated herein, and perform all services in accordance with those standards and requirements; (c) review the Construction Documents for compliance with all applicable laws, rules and regulations and with the ACCD Design and Construction Standards in conjunction with Architect.

§ 3.1.3.5 Notwithstanding any provision of AIA Document A201–2017, General Conditions of the Contract for Construction, as amended, to the contrary, the Construction Manager shall not be entitled to additional compensation for any delay or disruption to the Work arising from any conflict between the mechanical, electrical, and plumbing systems with each other, or with the structural or architectural components of the Work, or with the Construction Documents or with the Alamo Colleges Design and Construction Standards, or with existing or proposed systems, if such conflicts should have been discovered during the Preconstruction Phase by the Construction Manager through the exercise of ordinary diligence, and the Owner and Architect were not informed of such conflicts as required. This provision shall apply only with respect to conflicts appearing in the Drawings and Specifications provided for the Construction Manager's review prior to Owner's acceptance of the Guaranteed Maximum Price proposal. Construction Manager may be entitled to additional compensation for any delay or disruption to the Work arising from any conflict in the design documents to the extent it was not discoverable through a review of the documents during the preconstruction phase, but only to the extent that contingency funds are available.

§ 3.1.4 Project Schedule – Initial and Monthly Update Requirements

In addition to the Project Schedule requirements in the A201–2017, as amended, the Construction Manager shall also prepare no later than ten (10) days following the issuance of the Notice to Proceed with Preconstruction Services. The Construction Manager shall prepare and update monthly a Project schedule for the Architect's review and the Owner's acceptance. Contractor must submit its monthly Project Schedule in an electronic format and paper format using the Primavera P6 Project Planning software. The Construction Manager shall obtain: (1) the Architect's written approval for the portion of the Project schedule relating to the performance of the Architect's services; and (2) the Owner's written approval for the portion of the Project schedule relating to the performance of any requirements of the Owner. The Project schedule must coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' or Contractor's services, and the Owner's responsibilities; and identify items that affect the Project's timely completion, and critical path. The Project schedule updates shall include at least the following: submission of the Guaranteed Maximum Price proposal including the Owner's 60 day review period; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; dates of Substantial Completion and Final Completion; and the occupancy requirements of the Owner. If an updated Project schedules indicates that previously approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of the Owner, shall implement necessary corrective action. The Project Schedule requirement, in accordance with this provision and the other Project Schedule requirements in the Contract Documents continue until Final Completion.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager

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shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications so as to facilitate the proposal of a Guaranteed Maximum Price Proposal when all elements of the Drawings and Specifications are at least (90) ninety percent complete, unless mutually agreed otherwise by the Architect, Owner and the Construction Manager.

§ 3.1.6 Cost Estimates - Initial and Monthly Update Requirements

§ 3.1.6.1 In addition to the other cost estimate requirements, the Construction Manager shall also prepare, no later than ten (10) days following the issuance of the Notice to Proceed with Preconstruction Services. for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques based on the preliminary design and other design criteria prepared by the Architect, available at that time. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. Cost estimates must be based upon unit prices for labor, materials, equipment and overhead and profit in Construction Specifications Institute 50 Division Master-Format for each portion of the Work.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update monthly an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided monthly for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action and/or cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget. The Preconstruction Cost Estimates must be submitted with the Project Schedule on a monthly basis until the Owner approves the Guaranteed Maximum Price Proposal or the Contract is terminated.

§ 3.1.6.3 If a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall advise the Owner and work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 If not attached hereto, the Construction Manager must provide a staffing plan for Preconstruction Phase services for the Owner's review and approval within 10 days of the execution of this Agreement.

§ 3.1.10 All cost estimates must include cost of work, general conditions cost, allowances, Construction Manager preconstruction fee and Construction Manager Construction fee.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 The Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval. The plan shall include identification of any contemplated self-performed work.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Government Code Section Chapter 2269, Subchapter F, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect or Owner will promptly reply in writing to the Construction Manager if the Architect or Owner know of

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any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's written acceptance, a procurement schedule for items or services that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items or services prior to the establishment of the Guaranteed Maximum Price, the Owner shall authorize the procurement of the items or services on at an actual cost basis plus an agreed upon fee and on terms and conditions acceptable in writing to the Owner who shall execute an amendment to the Contract Documents confirming responsibility to pay for any items procured prior to the establishment of the Guaranteed Maximum Price. Upon the establishment of the Guaranteed Maximum Price, the cost and scope shall be reflected as a price reduction in a Guaranteed Maximum Price Amendment. Upon the establishment of the Guaranteed Maximum Price, the Owner may assign all contracts for these items to the Construction Manager, and the Construction Manager shall thereafter accept responsibility for them. Request to procure items or services prior to the establishment of the Guaranteed Maximum Price shall be presented in substantial the same from as a Guaranteed Maximum Price Proposal and Amendment.

§ 3.1.13 Compliance with Laws and Policies

The Construction Manager and its Subcontractors must comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. In addition, Construction Manager and its Subcontractors must comply with the: (a) the Alamo College Design and Construction Standards; (b) Allowable General Conditions Cost Line Items, unless explicitly waived; (c) Constructability Implementation Program; (d) Proposal for Pre-Construction Phase Services; (e) CMR Estimated Construction Budgets; and (f) the Internship Program Parameters all of which are attached hereto or incorporated herein by reference. If the aforementioned documents are not attached, the Construction Manager shall nonetheless comply with the latest version of the aforementioned document as approved and provided by the Owner.

§ 3.1.14 Other Preconstruction Services

Other Preconstruction Phase services to be provided by the Construction Manager, if any are referenced below or referenced in an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

«On a monthly basis the Construction Manager must provide: a monthly task report showing work performed; cost of work performed; schedule and cost updates; and an invoice.

In addition, Owner requires that the preconstruction services include:

1. performing BIM modeling and establishing and implementing a plan for clash and quality control, for review and approval by Owner (This is required unless explicitly excluded by Owner.);
2. visiting the Project site to become sufficiently familiar with the existing facilities, systems and site conditions to insure that the Project as designed will functionally interface with the existing conditions;
3. reviewing the survey, environmental and all reports and investigations provided by Owner or Architect and become sufficiently familiar with all of the components having or likely to have an impact on the Project to make decisions and render advice to Owner regarding the Project and the need, if any, for additional studies, reports, or investigations;
4. providing recommendations and information to the Project Team regarding site usage and site improvements, building systems and equipment, and methods of delivery of materials, systems, and equipment, construction feasibility; selection and availability of materials and labor; time requirements for installation and construction; assignment of responsibilities for safety precautions and programs, temporary Project facilities; equipment, materials and services for common use of Construction Manager and Owner's separate contractors, if any; cost factors, including costs of alternative materials or designs, preliminary budgets, and possible cost savings; recognizing and tracking the requirements and assignments of responsibilities are included in the proposed drawings and specifications and other Contract Documents, and any other matters necessary to accomplish the Project in accordance with the CPM Milestone Schedule and Project Construction Estimate, the Construction Cost Limitation, and/or the GMP Amendment, as applicable;

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5. designing, implementing and conducting a constructability program to identify and document Project cost and schedule savings opportunities;

6. preparing a "Constructability Report" identifying items that, in Construction Manager's opinion, may negatively impact on the construction and/or cost of the Project. The Constructability Report must address the overall coordination of Project drawings, specifications and details and identify discrepancies that may generate Change Orders or claims once Project construction commences. The Constructability Report must be updated at least monthly during the Pre-Construction Phase; and

7. identifying labor, equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items. »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 When all elements of the Construction Documents are at least 90 per cent complete unless there is another time mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the contingencies described in Section 3.2.4 below, the general conditions costs and the Construction Manager's Fee described in Section 6.1.2 below. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. If the quality or scope identified in the proposal are unacceptable or exceeds the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements. The Construction Manager may but is not required to propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

§ 3.2.1.1 Schedule of Values and for Construction. The Guaranteed Maximum Price proposal shall include an updated Project Schedule and a Schedule of Values. A detailed Project Schedule incompliance with Section 3.10 of A201-2017, as amended and the Contract Documents is required with the Guaranteed Maximum Price proposal unless there is not sufficient time to do so, in which a summary schedule, described in the Guidelines for the Preparation of the Guaranteed Maximum Price Proposal at Tab 7, may be permitted with the Owner's written permission. In all cases, the Project Schedule must include Owner's Float (measured from the date of the Notice to Proceed for Construction to Substantial Completion), show the Milestone Dates and show the relationships between tasks. The total Owner Float indicated on the Master Project Schedule shall be no less than 10% of the total Construction Phase duration (NTP to Substantial Completion and shown in calendar days). The Guaranteed Maximum Price proposal must include a detailed estimated Cost of Work- Schedule of Values, which must include a breakdown of labor, materials, equipment, overhead and profit using the Construction Specifications Institute 50 Division Master-Format for each portion of the Work in the Project.

§ 3.2.2 The Guaranteed Maximum Price proposal must remain valid without escalation for at least ninety (90) days after submittal and at least forty five (45) days after GMP approval by Owner. To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.

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

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work based upon unit prices for labor, materials, equipment and estimated overhead and profit in Construction Specifications Institute 50 Division Master-Format for each portion of the Work; the contingencies set forth in Section 3.2.4; general conditions costs; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion (and the number of calendar days from NTP) upon which the proposed Guaranteed Maximum Price is based;

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.5 The date of Final Completion (and the number of calendar days from NTP) upon which the proposed Guaranteed Maximum Price is based, which date shall be no more than 30 days after the date of Substantial Completion;

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

.7 A Guaranteed Maximum Price Proposal Package shall also comply with the Guidelines for the Preparation of the Guaranteed Maximum Price Proposal ("Guidelines"), which is incorporated by reference, attached hereto and entitled as the Guaranteed Maximum Price Proposal Form. If the Guidelines are not attached, Construction Manager shall use the Guidelines approved and provided by Owner; and

.8 Itemized General Conditions Costs that are included in the list of "General Conditions Cost Line Items" found in the Guidelines.

§ 3.2.4 Contingencies In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager may include a contingency for the Construction Manager's use, subject to Owner's approval, to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order as a separately-identified contingency amount (the "**Construction Contingency**"). The Construction Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be required. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the issuance of a Certificate of Substantial Completion, at which time it is automatically transferred to Owner's Contingency. All supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price may also include a separately-identified contingency amount, an "**Owner's Contingency**," which is defined as a contingency fund within the Guaranteed Maximum Price established by the Owner for the Owner's exclusive use. Monies from Owner's Contingency may be spent in the discretion of Owner's Representative, which shall be in writing, and without additional Board of Trustees approval. Any unused Owner's Contingency shall accrue to the Owner.

§ 3.2.4.1 The Guaranteed Maximum Price proposal shall be limited to two contingencies (owner and construction) a total of which is two (2) percent of the Guaranteed Maximum Price and allocated evenly between the Owner and Contractor, unless otherwise agreed to by Owner in the Guaranteed Maximum Price Amendment. Additionally, Construction Manager Fee is not permitted for the use of any contingency (Construction or Owner) due to errors or omissions in construction, cost to fix defective work, or other cost caused by or attributable to Construction Manager or its subcontractors of any tier.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. If the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. As soon as feasible after Architect's preliminary review and preliminary approval of the Guaranteed Maximum Price proposal, the Construction Manager will prepare, sign and submit the Guaranteed Maximum Price proposal to the Owner

§ 3.2.6 The Owner shall be allowed not less than sixty (60) days after receipt of the Construction Manager's signed Guaranteed Maximum Price Amendment to review and take action on the Amendment. Unless the Owner's Authorized Representative accepts the Guaranteed Maximum Price Amendment in writing within sixty (60) days after District's receipt, the power of acceptance shall expire, and the Amendment will not become effective. Upon the request of the Owner, the parties may negotiate revisions to a Contractor-submitted Guaranteed Maximum Price proposal either before or after the sixty (60) day review period expires, after which the revised version may be re-submitted by Contractor to Owner for an additional sixty (60) day review period. To become effective, following acceptance of a Guaranteed Maximum Price proposal, the Owner shall sign and execute the Guaranteed Maximum Price proposal; thus, creating the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based including but not limited to an itemized list of approved cost for the General Conditions, the Contract Time, Project Schedule and Schedule of Values.

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§ 3.2.7 The Construction Manager shall not incur any cost other than for preconstruction services prior to the execution of the Guaranteed Maximum Price Amendment. The Construction Manager shall not incur any costs or expenses within the Guaranteed Maximum Price Proposal or Amendment prior to the Owner's issuance of a Notice to Proceed with the Construction Phase.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment, if any. The Owner shall request the Architect to promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any taxes from which Owner is exempt.

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

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 The date of commencement of the Work shall mean the date of commencement of the Construction Phase, as provided in Section 8.1.2 of A201–2017, as amended. The Construction Manager shall not incur any costs or expenses within the Guaranteed Maximum Price Proposal or Amendment, or related to construction prior to the Owner's issuance of a Notice to Proceed with the Construction Phase.

§ 3.3.1.2 The Construction Manager or Contractor is not responsible for the consequences of design defects in and does not warranty the adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the Construction Manager or Contractor by a person other than the Construction Manager's or Contractor's agents, contractors, fabricators, suppliers, or its consultants, of any tier. However, the Construction Manager or Contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the Owner and Architect the existence of any known defect in the plans, specifications, or other design documents that is discovered by the Construction Manager or Contractor, or that reasonably should have been discovered by the Construction Manager or Contractor using ordinary diligence, before or during construction. Ordinary diligence means the observations of the plans, specifications, or other design documents or the improvement to real property that a Construction Manager or Contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work in this Agreement (including preconstruction and construction services) and under normal circumstances. Ordinary diligence does not require that the Construction Manager or Contractor engage a person licensed or registered under Title 6, Occupations Code. A disclosure under this subsection is made in the Construction Manager's or Contractor's capacity as a Construction Manager or Contractor and not as a licensed professional under Title 6, Occupations Code. A Construction Manager or Contractor who fails to disclose a defect as required shall be liable for the consequences of defects that result from the failure to disclose. Except as provided by Section 59.052, of the Texas Business and Commerce Code, the preceding portion of this paragraph does not apply to the portion of a contract, if any, between an Owner and a Construction Manager or Contractor under which the a Construction Manager or Contractor agrees to provide input and guidance on plans, specifications, or other design documents to the extent that: (1) the a Construction Managers' or Contractor's input and guidance are provided as the signed and sealed work product of a person licensed or registered under Title 6, Occupations Code; and (2) the work product is incorporated into the plans, specifications, or other design documents used in construction of this project.

§ 3.3.2 Administration

§ 3.3.2.1 For all proposals, the Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals seeking the subcontractor(s) who provides the best value for the performance of all major element of the Work other than the minor work (<$100,000) included in the General Conditions. The advertising and solicitation must occur during the Construction Phase after the effective date of Guaranteed Maximum Price Amendment. Construction Manager shall seek proposals that provide for payment in an amount equal to the Cost of the Work plus an agreed overhead and profit (as opposed to "lump-sum"). Owner, in its sole discretion, may approve alternative procurement methods and timing, in writing and prior to publication. At least

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fourteen (14) days prior to publication, Construction Manager must provide Owner with its proposed solicitation documents and identify in writing which work bid package it may seek to self-perform a portion or all the Work, if any. Owner may review and propose edits to the solicitation documents used for competitive purchasing prior to its publication to ensure that it is consistent with Owner's contracting goals and policies for the Project, which proposals shall not be unreasonably rejected. In opening all proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not involved in the selection process and also an employee of the Construction Manager, architect, engineer, or Owner. The Construction Manager shall review, evaluate and determine, with the advice of the Architect, which proposals it recommends for acceptance. Along with its written recommendation, Construction Manager shall provide Owner with its evaluation, ranking and other data requested by Owner, for each proposal (hereafter "Evaluation Data"). Owner shall have no more than fourteen (14) days following receipt of all the Evaluation Data to reject Construction Manager's recommendation. Pursuant to Texas Government Code Chapter 2269.256(b), if during the course of recommending proposals, the Construction Manager reviews, evaluates and recommends to Owner a bid or proposal from a subcontractor, but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time, and/or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager incurs because of the Owner's requirement that another bid or proposal be accepted. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager. If Owner does not timely reject the recommended proposal and require another bid or proposal to be accepted, Construction Manager may contract with its recommended subcontractor. All bids or proposals shall be made available to the Owner on request.

§ 3.3.2.1.1 For scope of work bid packages typically performed by subcontractors, Construction Manager may "self-perform" such work provided they comply with Article 3, herein and the Construction Manager determines, with the advice of the Architect, that the Construction Manager's bid or proposal provides the best value for the Owner. But a Construction Manager that seeks to perform portions of the work itself must: (i) advise the Owner at least fourteen (14) days prior to publication of the solicitation documents; and (ii) submit its bid or proposal for those portions of the work to the Owner at least two (2) Work Days in advance of bid due date and in the same manner as all other subcontractors. The Evaluation Data to be supplied for any self-performed work shall prominently note the self-performed component, include a detailed statement of evaluation criteria and its application to the proposals received, and be supported by the receipt of and comparison with at least three (3) independent qualified interested trade subcontractor bidders. Any subcontract for self-performed work will provide for payment in an amount equal to the Cost of the Work for that subcontract, plus an agreed overhead and profit (as opposed to "lump-sum") and will not exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for self-performed work will be consistent with the terms and conditions of this Agreement and the Contract Documents, with the possible exception of the agreed upon fee for the work. All savings under any such subcontract for self-performed work shall be added to Owner's Contingency to be used on the Project and with any remaining contingency funds returned to Owner upon completion of the Project. For the purpose of defining "self-performed work" subject to this contract provision, any division of Construction Manager, or any separate Construction Manager or subcontractor that is partially owned or wholly owned by the Construction Manager or any of their employees or employee's relatives will be considered a related party entity and will be subject to this provision regarding self-performed work. No self-performed work will be allowed to be performed on a lump-sum basis other than as approved by Owner at Owner's sole discretion. If Construction Manager's proposal is selected, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. If such payments to Construction Manager are included in the Cost of the Work, the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.

§ 3.3.2.1.2 Fees on Self-Performed Work.

1. The maximum overhead and profit payable to the Construction Manager on self-performed work for scope of work bid packages typically performed by subcontractors, including but not limited to concrete and steel erection scopes, will be 10 % on the contractually defined reimbursable cost of self-performed labor, labor burden, materials, and equipment for scopes of work that are competitively bid.

2. No self-performed work fees will apply to the cost of any sub-subcontracted work if the Construction Manager subcontracts 75% or more of the total cost of work (including labor, materials, and

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equipment) of a self-performed work package to other trade contractors; unless after the evaluation of the bids the parties agree otherwise in writing with supporting data.

3. Scopes of work for which three (3) competitively complete bid proposal are sought but not received, including, but not limited to rough carpentry, daily clean-up, temporary enclosures and other work typically characterized as "miscellaneous items" or "general requirements" may be self-performed with a maximum overhead and profit of 5% on the contractually defined reimbursable cost of self-performed labor, labor burden, materials, and equipment.

4. However, costs and fees associated with self-performed General Conditions as defined or described herein, are specifically excluded as provided in Section 6.1.5.5 of this Agreement.

5. All self-performed work must be conducted on a "time and material basis" (T&M) unless otherwise agreed to.

6. **Process to document self-performed work.** Any self-performed cost of work or general condition that is determined to be best value by Construction Manager must be submitted to the Owner with a best value recommendation for Owner's review and analysis. Any self-performed cost of work must be specifically noted and identified on the post GMP Amendment approved Schedule of Values. For self-performed cost of work type items (including minor self-performed work), Contractor must designate a separate division within the applicable Construction Specifications Institute 50 Division Master-Format used on the Schedule of Values labeled Self-Performed Cost of Work after GMP Amendment approval. During the buyout phase, the Owner's Designated Representative is solely authorized to approve self-performed work. Each approved self-performed work subcontract / buyout will be on a "not to exceed basis" and otherwise in compliance with the Contract Documents. The approved "not to exceed" self-performed work amounts shall be transferred into the Self Performed Cost of Work Division as awarded. After all self-performed buyouts / subcontract are awarded, Construction Manager's self-performed work may not exceed the total of the "not to exceed" Owner awarded subcontracts / buyouts for self-performed work and a list summarizing the same will be created by Construction Manager and provided to Owner with each pay application.

§ 3.3.2.2 Contractor, Subcontractors and Suppliers shall comply with the Owner's Small Business Enterprise Program ("SBE"), which is incorporated by reference, attached hereto and entitled as the Guidelines on Utilization of Small Business Enterprise ("SBE Guidelines"). The SBE Guidelines shall be included in all solicitations for contractors, subcontractors and suppliers and all respondents (including Construction Manager, if self-performing) shall submit a completed SBE Subcontracting Plan in the form provided in the SBE Guidelines. Moreover, a completed SBE Subcontracting Plan Prime Contractor Payment Reporting must be completed with each Application for Payment. The Alamo Colleges District requires information related to the contract to be provided electronically in accordance with ATTACHMENT H TO EXHIBIT A – GUIDELINES ON UTILIZATION OF SMALL BUSINESS ENTERPRISE at any time before, during, or after contract award. Information related to contractor access of the system will be provided to a designated point of contact with each contractor upon award of the contract. The B2Gnow Management System is web-based and can be accessed through an internet address which will be provided to the Contractor and Contractor's Subcontractors.

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

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

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

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

.4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023.

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.5 Information regarding the terms and conditions of any Owner Controlled Insurance Program.

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

§ 3.3.2.2.2 Weekly Meetings. In addition to the meeting requirements elsewhere in the Contract Documents, the Construction Manager shall schedule and conduct weekly or otherwise regularly scheduled meetings at which Owner, Architect, Construction Manager, and appropriate Subcontractors attend to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect. The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to Owner's Board of Trustees, at Owner's request, at no additional cost to Owner.

§ 3.3.2.2.3 If not already provided, no later than ten (10) days after the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect an updated construction schedule for the Work and a submittal schedule in accordance with the Contract Documents, Section 3.10 of A201–2017, as amended and the Owner's occupancy requirements.

§ 3.3.2.3 Intentionally Omitted.

§ 3.3.2.4 Intentionally Omitted..

§ 3.3.2.5 Monthly Cost Control
The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved in writing by Owner, and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above and the Contract Documents.

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

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work.

.2 The special shoring requirements, if any, of the Owner and shall also take reasonable precautions in response to any geotechnical information obtained by Owner for use by the Construction Manager in the design of the trench safety system.

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

§ 3.3.2.7 Subcontractor Default. Per Texas Government Code, § 2269.257, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements. Construction Manager shall be paid for its own performance in accordance with § 3.3.2.1.1 and § 6.2.1 herein.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness.

§ 4.1.2 Intentionally Omitted.

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§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, which may include (1) the budget for the Contract Sum, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Contract Sum, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.
The Owner may furnish information, surveys reports or services. All documents provided under Article 4 or otherwise by Owner shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Construction Manager may use the information at its own risk and shall use customary precautions relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by Owner, Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work and which Construction Manager should have been discovered by (i) calling 811 or (ii) the exercise of reasonable diligence; and (iii) reviewing the Construction Documents or other documents provided by Owner or Architect to the Construction Manager.

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

§ 4.1.4.2 If timely requested, the Owner may furnish surveys, as provided in Section 2.3.4 of AIA A201-2017, as amended.

§ 4.1.4.3 Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work and are requested by the Architect or Construction Manager and approved in writing by the Owner, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.1.6 Intentionally Omitted.

§ 4.2 Owner's Designated Representative
In addition to the authority described in § 2.1.3 of this Agreement, Owner's Designated Representatives are to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize or reject expenditures within the contingencies.

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

§ 4.3 Architect
The Construction Manager's services shall be provided in conjunction with the services of an Architect. Owner shall authorize the Architect to provide those services requested by the Construction Manager that must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the work, provided the requested services do not result in an increase in the Architect's fee. Any requested services, which will result in an increase in the Architect's fee must be approved in advance and in writing by Owner.

§ 4.4 Inspection and Testing

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Pursuant to Texas Government Code § 2269.058, the Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Work by Owner.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services generally described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

«**a fee not to exceed $_____**»

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«See **Attachment G To Exhibit A** for rates for Preconstruction Phase Services »

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «twelve » («12 ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services may be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Subject to compliance with the Contract Documents, payments for services shall be made monthly in proportion to services performed and invoices shall be prepared on a form approved by the Owner and must contain the information required by Owner including Project Schedules, Cost Estimates, Monthly Reports and other required matters.

§ 5.2.2 Payments are due and payable within «forty-five» («45 ») days of receipt of the Construction Manager's invoice from the Architect. Undisputed amounts unpaid more than « forty-five» («45») days after the receipt of the Construction Manager's invoice shall bear interest in accordance with Texas Government Code Section 2251.025.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum (less any deductions authorized under the Contract Documents and less any unused contingencies) in current funds for the Construction Manager's successful performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The **Contract Sum is** the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee plus the actual and verifiable general conditions costs, the total of which shall not exceed the Guaranteed Maximum Price Amendment.

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

« The fee shall be calculated as a percentage of the Cost of the Work (does not include General Condition costs or contingencies), and not as a percentage of the Contract Sum. No Construction Manager's fee shall be paid on (i) the Construction Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work, or (ii) as provided in § 3.3.2.1.1 (self-performed work) herein. **The percentage of Cost of Work for the fee is ___% »**

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

« By increasing or decreasing the fee in proportion to the changes in the Cost of Work, as defined in Section 6.1.2 above.»

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

«See AIA Document A201-2017, as amended, Section 7.1.4. »

§ 6.1.5 General Conditions Costs General conditions (costs to be reimbursed) must be delineated separately on a per-item basis in the Guaranteed Maximum Price Amendment. District is only obligated to reimburse Construction Manager for General Conditions cost in an amount not to exceed the total amount of the per-item costs for the general conditions on the Project and delineated separately on a per-item basis in the Guaranteed Maximum Price Amendment. The General conditions costs on a Project, subject to reimbursement by Owner, are listed on Owner's Allowable General Conditions Cost Line Items at Exhibit A, Attachment C, except as may be otherwise specified in this Subsection 6.1.5, and must include the following: on-site Project Manager, if required; on-site Project and Site Superintendents, if required; on-site Assistant Superintendents, if required; minor work (<$100,000) that may be included in the general conditions as allowed by Texas Government Code § 2269.255; office trailer expenses; on-site sanitary facilities; project sign; safety/first aid; on-site technology; temporary water, power and utilities; fencing; SWPPP measures; Traffic control measures; temporary laydown or protection; project site office supplies and office equipment; plan reproduction; construction photographs; dumpsters (site and field office); final clean-up; equipment rental; fuel; small tools; drinking water; permit fees; and items described in more detail below. To the extent there is a conflict between the approved general conditions set forth in the A133-2019, as amended and in the Guaranteed Maximum Price Amendment, as approved by the Owner, the Guaranteed Maximum Price Amendment, as approved by the Owner shall control only if the Guaranteed Maximum Price Amendment explicitly states that a specific item and cost are approved for deviation from Section 6.1.5 et seq. Allocation of a cost or item as a general condition cost shall be subject to the sole discretion of the Owner.

§ 6.1.5.1 Rental rates for Construction Manager-owned equipment shall (i) not exceed «ninety» percent («90 » %) of the standard rental rate paid at the place of the Project (ii) shall be delineated separately in the Guaranteed Maximum Price Amendment; and (iii) subject to the Owner's prior written approval.

§ 6.1.5.2 Actual wages or salaries paid to each of the Construction Manager's supervisory and administrative personnel when stationed at the site must be delineated separately in the Guaranteed Maximum Price Amendment and subject to the Owner's prior written approval. If a labor burden is approved by and/or to be paid by Owner, the Guaranteed Maximum Price Amendment, must explicitly disclose all costs and components of the labor burden on **ATTACHMENT E TO EXHIBIT A and such burden must not exceed thirty-five (35) percent.**

§ 6.1.5.3 Actual Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries, for Construction Manager's on-site Project Manager, on-site Project and Site Superintendents, on-site Assistant Superintendents, and Construction Manager's supervisory and administrative personnel when stationed at the site must be delineated separately in the Guaranteed Maximum Price Amendment and subject to the Owner's prior written approval.

§ 6.1.5.4 Actual rental charges for temporary facilities, machinery, equipment and hand tools not included below and not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal must be delineated separately in the General Conditions portion of the Guaranteed Maximum Price Amendment and subject to the Owner's prior written approval.

§ 6.1.5.4.1 Actual costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on

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the reasonable and verifiable cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall be at rates at or below fair market value.

§ 6.1.5.4.2 The total rental cost of any machinery, equipment or hand tool may not exceed the purchase price of said machinery, equipment or hand tool. Rates of Construction Manager-owned equipment and quantities of equipment shall (i) be reasonable and verifiable at the place of the Project (ii) not exceed «ninety» percent («90 » %) of the standard rental rate paid at the place of the Project (iii) be delineated separately in the General Conditions portion of the Guaranteed Maximum Price Amendment; and (iv) subject to the Owner's prior written approval.

§ 6.1.5.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal, including final clean-up and including dumpsters rented for demolition, clearing, grubbing and other activities shall be included in General Conditions portion of the Guaranteed Maximum Price Amendment.

§ 6.1.5.5 Prohibited General Condition Costs. The General Conditions Cost in Section 6.1.5 herein or in the Guaranteed Maximum Price Amendment must not include the following: any payment for overhead or profit; any markup on actual costs; indirect costs; telephone and/or cell phone bills for any personnel; bonus(es) or other (monetary and nonmonetary) incentives above salary, wages or other compensation; any services, materials or cost incurred prior to the issuance of a Notice to Proceed for Construction; facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; any home office accounting, audit, legal and data processing fees and expenses; any travel; alcohol, any snacks, meals, or food; any lodging; any general condition cost attributable to incomplete or defective Work; gifts, raffles, prizes, any overtime costs; and any software licenses and fees; and any fees, penalties or charges for late payments or failed inspections. Cost for Construction Manager's vehicles and gas to the Project are not reimbursable within the Contract Sum. The total rental cost of any machinery, equipment or hand tool may not exceed the purchase price of said machinery, equipment or hand tool.

§ 6.1.5.6 General conditions (costs to be reimbursed) delineated on a per-item basis separately in the Guaranteed Maximum Price Amendment, are as a maximum cost not to be exceeded, collectively, and must include the following: (i) the actual costs for premiums for that portion of insurance, if any, and bonds required by the Contract Documents that can be directly attributed to this Contract; and (ii) actual costs for fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to obtain.

§ 6.1.5.7 For Subcontractor insurance and bonds. For Subcontractor insurance and bonds, permitted under the Contract Documents including SDI, CCIP or OCIP that can be directly attributed to this Contract. If Construction Manager budgets for, provides for, invoices, allocates or accrues any costs for subcontractor bonds or insurance, the District will pay the actual reasonable and verifiable subcontractor bond or insurance cost and conduct a true-up (reconciliation) for actual costs, if necessary, prior to final payment. In order for Owner to pay, the said subcontractor's bond or insurance cost must (i) be listed as a separate division item on the schedule of values (ii) approved in writing during subcontract buyout phase with the cost specifically identified in writing on District's subcontractor buyout forms; and (iii) be supported by sufficient documentation.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

«§ 6.1.6.1 TIME IS OF THE ESSENCE IN ALL PHASES OF THE WORK INCLUDING SUBSTANTIAL AND FINAL COMPLETION. IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY AND BETWEEN OWNER AND CONSTRUCTION MANAGER THAT TIME IS OF THE ESSENCE IN THE SUBSTANTIAL COMPLETION AND FINAL COMPLETION OF THE PROJECT AND OWNER SHALL SUSTAIN ACTUAL AND DIRECT DAMAGES AS A RESULT OF CONSTRUCTION MANAGER'S FAILURE, NEGLECT OR REFUSAL TO ACHIEVE SAID DEADLINES. SUCH ACTUAL AND DIRECT DAMAGES ARE, AND WILL CONTINUE TO BE, IMPRACTICABLE AND EXTREMELY DIFFICULT TO DETERMINE. EXECUTION OF THIS AGREEMENT UNDER THESE SPECIFICATIONS SHALL CONSTITUTE AN AGREEMENT BY OWNER AND CONSTRUCTION MANAGER THAT THE AMOUNTS STATED BELOW ARE THE ESTIMATED VALUE OF THE COSTS AND ACTUAL AND DIRECT DAMAGES CAUSED BY FAILURE OF CONSTRUCTION MANAGER TO SUBSTANTIALLY COMPLETE THE WORK WITHIN THE ALLOTTED TIMES, THAT SUCH SUMS ARE LIQUIDATED DIRECT DAMAGES AND SHALL NOT BE CONSTRUED

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AS A PENALTY, AND THAT SUCH SUMS MAY BE DEDUCTED FROM PAYMENTS DUE CONSTRUCTION MANAGER IF SUCH DELAY OCCURS. IT IS EXPRESSLY UNDERSTOOD THAT THE SAID SUM PER DAY IS AGREED UPON AS A FAIR ESTIMATE OF THE PECUNIARY DAMAGES WHICH WILL BE SUSTAINED BY THE OWNER IN THE EVENT THAT THE WORK IS NOT COMPLETED WITHIN THE AGREED TIME, OR WITHIN THE AGREED EXTENDED TIME, IF ANY, OTHERWISE PROVIDED FOR HEREIN. SAID SUM SHALL BE CONSIDERED AS LIQUIDATED DAMAGES ONLY AND IN NO SENSE SHALL BE CONSIDERED A PENALTY, SAID DAMAGES BEING CAUSED BY, BUT NOT LIMITED TO, ADDITIONAL COMPENSATION FOR PERSONNEL, ATTORNEYS FEES, ARCHITECTURAL FEES, ENGINEERING FEES, PROGRAM MANAGEMENT FEES, INSPECTION FEES, STORAGE COSTS, FOOD SERVICE COSTS, TRANSPORTATION COSTS, UTILITIES COSTS, COSTS OF TEMPORARY FACILITIES, LOSS OF INTEREST ON MONEY, AND OTHER MISCELLANEOUS INCREASED COSTS, ALL OF WHICH ARE DIFFICULT TO EXACTLY ASCERTAIN. FAILURE TO COMPLETE THE WORK WITHIN THE DESIGNATED OR AGREED EXTENDED DATES OF SUBSTANTIAL OR FINAL COMPLETION, SHALL BE CONSTRUED AS A BREACH OF THIS AGREEMENT.

§ 6.1.6.2 IT IS EXPRESSLY AGREED AS A PART OF THE CONSIDERATION INDUCING THE OWNER TO EXECUTE THIS AGREEMENT THAT THE OWNER MAY DEDUCT FROM PAYMENTS MADE TO THE CONSTRUCTION MANAGER A SUM EQUAL TO $ to be negotiated on a per project basis PER DAY FOR EACH AND EVERY ADDITIONAL CALENDAR DAY BEYOND THE AGREED DATE OF SUBSTANTIAL COMPLETION.

§ 6.1.6.3 TIMELY FINAL COMPLETION IS AN ESSENTIAL CONDITION OF THIS AGREEMENT. CONSTRUCTION MANAGER AGREES TO ACHIEVE FINAL COMPLETION OF THE AGREEMENT WITHIN 30 DAYS OF THE DESIGNATED OR EXTENDED DATE OF SUBSTANTIAL COMPLETION. OWNER AND CONSTRUCTION MANAGER AGREE THAT SHOULD CONSTRUCTION MANAGER FAIL TO ACHIEVE FINAL COMPLETION OF THE AGREEMENT BY THE DEADLINE, OWNER SHALL BE DAMAGED TO A GREATER DEGREE BY SUCH DELAY. CONSTRUCTION MANAGER AND OWNER AGREE THAT THE AMOUNT OF LIQUIDATED DAMAGES FOR EACH CALENDAR DAY FINAL COMPLETION IS DELAYED BEYOND THE DATE SET FOR FINAL COMPLETION SHALL BE INCREASED TO THE SUM OF $ to be negotiated on a per project basis PER DAY. OWNER MAY DEDUCT FROM PAYMENTS MADE TO CONSTRUCTION MANAGER, OR, IF SUFFICIENT FUNDS ARE NOT AVAILABLE, THEN CONSTRUCTION MANAGER SHALL PAY OWNER THE AMOUNTS SPECIFIED PER DAY FOR EACH AND EVERY CALENDAR DAY THE BREACH CONTINUES AFTER THE DEADLINE FOR FINAL COMPLETION OF THE WORK.

§ 6.1.6.4 If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.»

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

« LIQUIDATED DAMAGES, TERMINATION AND THE VARIOUS WITHHOLDINGS PERMITTED UNDER THE AGREEMENT SHALL BE OWNER'S EXCLUSIVE REMEDY FOR CONTRACTOR'S DELAY IN ACHIEVING [SUBSTANTIAL/FINAL] COMPLETION WITHIN THE ALLOTTED OR AGREED EXTENDED TIMES FOR [SUBSTANTIAL/FINAL] COMPLETION; HOWEVER, IF CONTRACTOR CHALLENGES THE ENFORCEABILITY OF THE LIQUIDATED DAMAGE PROVISION OF THIS AGREEMENT OR IF THE LIQUIDATED DAMAGE PROVISION IS FOUND TO BE UNENFORCEABLE; OWNER IS ENTITLED TO ACTUAL DAMAGES.»

§ 6.2 Guaranteed Maximum Price

§ 6.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time as approved by Owner. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement or additional compensation by the Owner. Should the final audited Contract Sum be less than the Guaranteed Maximum Price, then the difference between the Contract Sum and the Guaranteed Maximum Price shall be considered as savings to the Owner, and Owner shall have no obligation to pay same to the Construction

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Manager. Construction Manager shall also consider as savings to the Owner all unused funds from any Contingency account or allowance. The Construction Manager shall not participate in any savings; all savings shall be credited to Owner.

§ 6.2.1.1 Subcontract Buyouts and Agreements. As each subcontract or purchase order is awarded (buyout), by Construction Manager including self-performed work any projected savings/losses will be added to a bookkeeping holding account/category called buyout savings/losses account/category. Each movement of Buy-Out savings/losses dollars to, or from, the holding account/category should be memorialized by the Construction Manager on a tracking log. Buyout Savings/Losses Accounts/Categories are to be used to cover buyout losses and at the discretion of the Owner's designated representative, buyout savings shall be added to the Owner and/or Contractor Contingency. Owner may require Construction Manager to take other reasonable actions to document subcontract buy-outs.

§ 6.2.1.2 Subcontracts or other agreements shall conform to this Agreement. Other than Construction Manager Fee, Construction Manager must not markup any subcontracts. If a subcontract is awarded on the basis of cost plus a fee or is self-performed, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager. If a subcontract is awarded on a basis other than cost plus a fee it must be approved by the Owner and on conditions acceptable to Owner.

§ 6.2.2 If a labor burden is approved by and/or to be paid by Owner, to a subcontractor, it must be auditable, the subcontractor must explicitly disclose all costs and components of the labor burden in its bid for a subcontract, and the labor burden must not exceed thirty-five (35%) percent.

§ 6.2.3 Upon award of any Subcontract (General Condition and/or Cost of Work), Construction Manager must provide Owner and Architect with an updated list of all subcontractors, of any tier, along with their name, business address, phone number and email address. This list must remain updated thought final completion.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner, with Board of Trustees' approval, if appropriate, may, without invalidating the Contract or Guaranteed Maximum Price Amendment, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of A201–2017, as amended.

§ 6.3.2 Increases or decreases, if any, to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of A201–2017, as amended.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Section 7.3.3 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts. Adjustments for self- performed work must comply with § 3.3.2.1.2 of this Agreement.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of A201–2017, as amended shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 Intentionally Omitted.

§ 6.3.6 Other than Construction Manager Fee, Construction Manager must not mark up any subcontracts obtained for changes in the Cost of Work..

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term **Cost of the Work** shall mean the following direct, actual and verifiable costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work except those costs identified

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as General Conditions under Section 6.1.5 above, Construction Manager Fees, or Contingencies. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7 below. Cost of the Work in excess of the not to exceed Cost of Work portion of the Guaranteed Maximum Price Amendment shall be borne by the Construction Manager.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Guaranteed Maximum Price Amendment.

§ 7.1.3 Costs shall be at reasonable and verifiable rates not higher than the standard rates paid at the place of the Project, except with explicit prior written approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Actual wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, to the extent allowed by law.

§ 7.2.2 Labor rates should be based on regular rates of pay or over time, as required by law. Time and half, double time or other markup on labor rates is prohibited except as required by law or with explicit prior written approval of the Owner.

§ 7.2.2.1 Actual wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities with Owner's prior written approval, listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

« Intentionally Omitted. »

§ 7.2.3 Actual wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, to the extent not compensated under General Conditions and with Owner's prior written approval.

§ 7.2.4 Actual costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for employment related taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3, to the extent not compensated under general conditions.

§ 7.2.5 Intentionally Omitted

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. Construction Manager must not mark up subcontracts. Any Subcontract Work to be performed by the Construction Manager's own forces on the basis of a bid or proposal submitted by the Construction Manager per § 3.3.2.1 above, shall be treated as provided under § 3.3.2.1 above. The Construction Manager's compensation for such Subcontract Work performed shall be consistent with § 3.3.2.1.2 of this Agreement

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Actual costs, including transportation and Owner-approved storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Intentionally Omitted.

§ 7.5.2 Intentionally Omitted.

§ 7.5.3 Intentionally Omitted.

§ 7.5.4 Intentionally Omitted.

§ 7.5.5 Intentionally Omitted.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Intentionally Omitted..

§ 7.6.1.1 Intentionally Omitted..

§ 7.6.1.2 Intentionally Omitted.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, for materials that are related to the Work but not incorporated in the Work, and for which the Construction Manager is liable and Owner is not exempt.

§ 7.6.3 Intentionally Omitted

§ 7.6.4 Actual Fees of laboratories for tests required by the Contract Documents and paid by the Constriction Manager; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of A201–2017 or by other provisions of the Contract Documents.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents. If such royalties, fees and costs are excluded by provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.5.1 Intentionally Omitted..

§ 7.6.6 Intentionally Omitted.

§ 7.6.7 Intentionally Omitted.

§ 7.6.8 Deposits lost for causes directly resulting from the Owner's action or decisions.

§ 7.6.9 Intentionally Omitted.

§ 7.6.10 Intentionally Omitted.

§ 7.6.11 Intentionally Omitted.

§ 7.7 Other Costs and Emergencies
§ 7.7.1 Other costs incurred in the performance of the Work, if, and to the extent, explicitly approved in advance in writing by the Owner.

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

§ 7.7.3 Intentionally Omitted.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work unless such costs are excluded by the provisions of Section 7.9 or other provision of or amendments to this Agreement. However,

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notwithstanding anything in Article 6 to the contrary, no reimbursable cost or expense will be paid again if it is also included and paid in any General Conditions amount submitted by Construction Manager. Moreover, these costs and all costs shall not exceed the Guaranteed Maximum Price.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Section 3.3.2 et. seq., Administration, located herein. If the Owner fails or refuses to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party.

§ 7.9 Costs Not To Be Reimbursed

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

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2;
- **.2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments or nonmonetary incentives, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has explicitly provided prior approval in writing;
- **.3** Expenses of the Construction Manager's principal office and offices other than the onsite office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in change orders or Construction Change Directive approved in writing by the Owner, which would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs for preconstruction services or other items incurred during the Preconstruction Phase or prior to the issuance of a Notice to Proceed for Construction;
- **.10** Items that are Prohibited General Condition Costs;
- **.11** Storage costs, unless with prior written Owner approval;
- **.12** All costs intentionally deleted from Article 7 above, including all subsections;
- **.13** All fees, penalties or charges for late payments or defective work;
- **.14** All items included in either general conditions under Section 6.1.5 above, or the Construction Manager's Fee in Section 6.1.2 above; and
- **.15** Fees and assessments for the building permit and other fees for permits, licenses and inspections, which are paid directly to the governing authority.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials, equipment, bonds and insurance connected with the Work and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Intentionally Omitted.

§ 9.1.1 Intentionally Omitted.

§ 9.2 Intentionally Omitted.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work, this Project and this Agreement. The Construction Manager shall also exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon three (3) Work Days' notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, schedules, correspondence, instructions, drawings, receipts, subcontracts, subcontractor's proposals, subcontractor's invoices, purchase orders, vouchers, memoranda, and any other data relating to this Contract or the Project. The Owner and the Owner's auditors, and other representatives shall receive full and complete responses to questions or request for records or information within three (3) Work Days from Construction Manager. Owner may extend the Construction Manager's response time in writing. The Construction Manager shall preserve these records for a period of ten (10) years after the date of Final Completion, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

«Intentionally Omitted. »

§ 11.1.3 The Construction Manager must submit monthly Applications for Payment to both the Architect and Owner (or Owner's Program Manager, if applicable), on AIA Form G702 or other Owner approved form, for approval. Continuation sheets shall be submitted on AIA Form G703 or other Owner approved forms. The monthly Project Schedule shall be submitted on a form approved by Owner in hard copy and as a data file. If the Architect approves the application, then it shall submit a Certificate for Payment to the Owner. The Architect or Owner (or Owner's Program Manager, if applicable), may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect shall have at least seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts to the Construction Manager within forty-five (45) days, if Owner's Board of Trustees meets once a month, or thirty (30) days, if Owner's Board of Trustees meets twice a month, of receipt of the Certificate for Payment from the Architect. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 11.1.4 With each Application for Payment, the Construction Manager must submit an updated Project Schedule, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the general conditions and Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by

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the Owner and the amount of such payments to subcontractors and suppliers, and in the next payment cycle, proof of each payment to Construction Manager's subcontractors and suppliers after payment. In addition, the Construction Manager and Subcontractors shall pay all laborers, workmen, and mechanics employed in the construction thereof in accordance with the minimum wage rates prescribed in General Conditions of the Contract for Construction and the Davis Bacon Wage Rates, which is attached and incorporated herein. If the Davis Bacon Wage Rates are not attached, Construction Manager shall use the Davis Bacon Wage Rates applicable to the Contract by law. Construction Manager and all Contractors and Subcontractors are required to use Davis Bacon wage rates including weekly certified payrolls and to report this using the LCP Tracker Wage and Hour Compliance software or other software or forms (DOL WH-347) approved by Owner. Alamo Community Colleges District may provide access to this software to Construction Manager and Construction Manager's Contractors and Subcontractors.

§ 11.1.5 Each Application for Payment must include and be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions or classifications of the Work including Allowances, if any; (2) any unused contingency (Owner and Construction) for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; (3) the Construction Manager's Fee as a separate line item; (4) Insurance cost including SDI and CCIP, if any; and (5) self-performed work.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner (or Owner's Program Manager, if applicable), may require. The schedule of values, unless objected to by the Architect or Owner (or Owner's Program Manager, if applicable), shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 Unless approved in writing by Owner's Authorized Representative, no costs or expenses or any amount of the Contract Sum attributable to either the construction phase of the Work, General Conditions, Contingency or Cost of Work are reimbursable or payable by Owner which accrued prior to execution of Guaranteed Maximum Price Amendment and the issuance of the Notice to Proceed for Construction.

§ 11.1.5.3 When the Construction Manager, with the Owner's prior written approval, allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect or Owner (or Owner's Program Manager, if applicable) as they may require.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§ 11.1.7 In accordance with A201–2017, as amended, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- **.1** That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- **.2** That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- **.3** Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in AIA Document A201–2017, as amended; and
- **.4** The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- **.1** The aggregate of any amounts previously paid by the Owner;

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.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017 or elsewhere in the Contract Documents;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect or Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 or elsewhere in the Contract Documents;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Sections 11.1.3 or 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors or other representatives in such documentation;

.6 Retainage withheld pursuant to Section 11.1.8 or elsewhere in the Contract Documents;

.7 Liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, that Owner is entitled to deduct, withhold or asses to Construction Manager; and

.8 Such amounts as the Architect or Owner (or Owner's Program Manager, if applicable), shall determine as the cost for completing incomplete Work and/or the value of unsettled claims.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five (5) % retainage.

In addition, The Owner may not withhold retainage: (1) after final completion of the work required to be performed under the contract, including during the warranty period; or (2) for the purpose of requiring the Construction Manager or Contractor, after final completion of the work required to be performed under the contract, to perform work on manufactured goods or systems that were: (A) specified by the designer of record; and (B) properly installed.

However, Owner may withhold retainage: (i) if there is a bona fide dispute and the reason for the dispute is that labor, services, or materials provided failed to comply with the express terms of the contract; or (ii) if the surety on any outstanding surety bond executed for the contract does not agree to the release of retainage. Owner shall provide written notice of the basis on which the Owner is withholding retainage. If there is no bona fide dispute between the Owner and the Construction Manager or Contractor and neither party is in default under the contract, the Construction Manager or Contractor is entitled to: (1) cure any noncompliant labor, services, or materials; or (2) offer the Owner a reasonable amount of money as compensation for any noncompliant labor, services, or materials that cannot be promptly cured. However, the Owner is not required to accept the proposed compensation. Moreover, this paragraph shall not be construed to limit either parties right to pursue any remedy available under the express terms of the contract or other applicable law. »

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

«Not Applicable »

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

«pursuant to state law, Owner's discretion and written approval. »

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Final Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Final Completion shall not include retainage as follows:

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(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

«amounts requested to be withheld until completion of Owner's audit and reconciliation process. In addition, upon the written approval by Owner, Construction Manager may bill for partial retainage once Substantial Completion has been achieved; and Owner has the sole discretion to release portions of the retainage adequate to pay all or some of the subcontractors.»

§ 11.1.9 Intentionally Omitted

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

§ 11.1.11 The Owner may determine the procedure for review and approval of payments to Subcontractors. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

§ 11.1.12 In submitting the Construction Manager's Applications for Payment, the Construction Manager shall be responsible for all errors and omissions. Owner shall not be responsible for Construction Manager's errors or omissions.

§ 11.2 Final Payment

§ 11.2.1 Final payment, (for each Work, if multiple Projects), shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, including the Construction Manager's responsibility to correct Work and to satisfy other requirements, if any, except for the Construction Manager's responsibility, which Owner agrees in writing necessarily extends beyond final payment;

.2 the Construction Manager has submitted a final accounting for the general conditions and Cost of the Work and a final Application for Payment that are certified by Construction Manager and reviewed and approved by the Owner's auditors or other representative;

.3 a final Certificate for Payment has been issued by the Architect and approved by Owner (or Owner's Program Manager, if applicable);.

.4 Construction Manager has provided all documents required by Section 3.5.8, Section 9.8 and Section 9.10 of A201- 2017, as amended or elsewhere in the Contract Documents; and

.5 Owner-accepts the Work and approves Final Payment.

§ 11.2.1.1 The amount of final payment shall be calculated, in accordance with the Contract Documents and as follows:

.1 Begin with the actual Cost of the Work substantiated by the Construction Manager's final accounting, which includes deductions for all discounts and unused contingencies, and construction savings achieved in the Cost of the Work, if applicable.

.2 Add the actual expended general conditions substantiated by the Construction Manager's final accounting, which includes savings to the Owner for unused general conditions.

.3 Add the Construction Manager's Fee.

.4 Subtract amounts, if any, for which Architect or Owner disputes, refuses or withholds payment, if any.

.5 If Owner is entitled to deduct liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, then subtract all such liquidated damages, amounts and fees.

.6 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then subtract such amounts as the Architect or Owner shall determine as the cost for completing incomplete Work and the value of unsettled claims.

.7 Subtract all previous payments made by the Owner.

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.8 In no event shall the total of subsections .1, .2, and .3 above exceed the Guaranteed Maximum Price.

.9 If the aggregate of previous payments made by the Owner exceeds the amount due to the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

§ 11.2.2 In conjunction with the requirements in Section 9.10 of A201–2017, as amended, the Owner's auditors or other representatives will endeavor to review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work and general conditions costs as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 above and the Contract Documents have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors or other representatives, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5 of the A201–2017. The time periods stated in this Section supersede those stated in Section 9.4 of the A201–2017, as amended or elsewhere. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.1 Intentionally Omitted.

§ 11.2.2.2 Intentionally Omitted.

§ 11.2.2.3 If the Owner's auditors' or other representatives report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount. A request for mediation must be made by the Construction Manager within twenty (20) days after the Construction Manager's receipt of either a copy of the Architect's final Certificate for Payment or the Auditor's report, whichever occurs first. Failure to request mediation within the time period in this section, shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the undisputed amount.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than ten (10) Business Days after Owner's approval.

«Not Applicable »

§ 11.2.4 If, subsequent to final payment, and at the Owner's prior written request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

§ 11.3 Intentionally Omitted.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Intentionally Omitted.

§ 12.1.1 Any Claim by the Construction Manager regarding any matter between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 15 of A201–2017.

§ 12.1.2 Intentionally Omitted.

§ 12.2 Intentionally Omitted.

§ 12.3 Construction Liability Claims When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the

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Contractor's or Architect's opportunity to cure. Notwithstanding anything to the contrary in the Agreement, before the Owner brings an action (not mediation) against its Contractor or Design Professional asserting a claim to which Chapter 2272 of the Texas Government Code (Certain Construction Liability Claims) applies, the Owner must among other things provide each party with whom the Owner has a contract for the design or construction of an affected structure a written report by certified mail, return receipt requested, that clearly: (1) identifies the specific construction defect on which the claim is based; (2) describes the present physical condition of the affected structure; and (3) describes any modification, maintenance, or repairs to the affected structure made by the Owner or others since the affected structure was initially occupied or used. Notwithstanding anything to the contrary in the Agreement, the parties further agree: (1) they will comply with the provisions of Chapter 2272 of the Texas Government Code to the extent is applicable to the claim; and (2) Chapter 2272 of the Texas Government Code does not prohibit or limit the Owner from making emergency repairs as necessary to protect the health, safety, and welfare of the public or a building occupant.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than ten (10) days' written notice to the Owner, for the reasons set forth in Section 14.1.1, 14.1.2 or 14.1.4 of A201–2017, as amended.

§ 13.1.2 In the event of termination of this Agreement by the Owner, pursuant to Section 13.1.1 above, the Construction Manager may be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Intentionally Omitted.

§ 13.1.4 Intentionally Omitted.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.1 after the commencement of the Construction Phase, which must have been approved by Owner in writing, but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may pay to the Construction Manager an amount calculated as follows, which amount may be in addition to any compensation paid to the Construction Manager under Section 13.1.2:

- **.1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- **.2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- **.3** Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner may also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager must contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse the Construction Manager for all reasonable and verifiable costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the reasonable and verifiable costs necessarily incurred by the Construction Manager because of such termination.

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§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment
§ 13.2.1 Termination
Following execution of the Guaranteed Maximum Price Amendment, the Contract may be terminated or suspended by the Owner or the Construction Manager as provided in Article 14 of A201–2017, as amended.

§ 13.2.1.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Article 14 of A201–2017, as amended shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 13.1.2 and 13.1.5 of this Agreement.

§ 13.2.2 Termination by the Owner for Cause
§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under the Contract Documents.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall have no obligation to pay the Construction Manager a termination fee:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

«Intentionally omitted since no termination fee is authorized. »

§ 13.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of A201–2017, as amended; in such case, the Guaranteed Maximum Price, if established by Amendment and Contract Time may be increased as provided in Article 14 of A201–2017, as amended.

ARTICLE 14 MISCELLANEOUS PROVISIONS
§ 14.1 Intentionally Omitted.

§ 14.2 Successors and Assigns
§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.1.6.1 above and in the Contract Documents, Construction Manager shall not assign the Contract as a whole without written consent of the Owner. If the Construction Manager attempts to make an assignment without such consent, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract. This does not prevent Construction Manager from engaging subcontractors to perform various phases of the

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Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds For all phases of the Project, the Construction Manager shall purchase and maintain insurance as required by Article 11 of the A201-2017 as amended for this Project, to protect Construction Manager, third parties, and Owner against all claims, damages, lawsuits, indemnities, or other actions which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations are by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with Article 11 of the A201- 2017, as amended.

§ 14.3.1 Preconstruction Phase
The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner may reimburse the Construction Manager for any additional reasonable and verifiable cost, if disclosed and approved by Owner in writing with the execution of this Agreement.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than «two million » ($ «2,000,000 ») for each occurrence and « five million » ($ «5,000,000 ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than «one million » ($ «1,000,000 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than «one hundred thousand » ($ «100,000 ») each accident, « one hundred thousand » ($ «100,000 ») each employee, and « five hundred thousand » ($ «500,000 ») policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «two million » ($ «2,000,000 ») per claim and «five million » ($ «5,000,000 ») in the aggregate.

§ 14.3.1.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits

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§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance and policies to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase
After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a **Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, as amended (hereafter, "A133-2019 Exhibit B") and** elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in **AIA Document A133™–2019 Exhibit B**, **as amended** and elsewhere in the Contract Documents.

§ 14.4 Reserved.

§ 14.5 Other provisions:

«**§ 14.5.1** No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by the Construction Manager of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver of any breach by either of the parties of any covenant, condition or agreement shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 14.5.2 Construction Manager shall require all construction workers, whether Contractor's own forces, or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

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

§ 14.5.4 Construction Manager shall follow, and shall require all employees, agents or subcontractors to follow all applicable ordinances of the municipality or municipalities in which the Project is located, including the tree ordinance, if applicable. If not covered by the municipal tree ordinance, Construction Manager shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work.

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

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

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

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

§ 14.5.9 By executing this Agreement, Contractor verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract. Pursuant to Texas Government Code, Chapter 2271, as amended, if Contractor is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is $100,000 or more, the Contractor represents and warrants to the Owner that the Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.

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

§ 14.5.11 Prohibition on Contracts with Certain Companies. Construction Manager affirmatively warrants and represents that it is not (i) an organization designated as a foreign terrorist organization by the United States Secretary of State, as authorized by 8 U.S.C. Section 1189 (ii) a company that is identified on a list prepared and maintained by the Texas Comptroller under Tex. Gov't Code § 2252.153 (iii) a company that has contracts with or provides supplies or services to Iran, Sudan or a foreign terrorist organization (iv) prohibited from contracting with the Owner, as provided in Tex. Gov't Code §§ 2252.151 *et seq.* and (v) going to allow any iron or steel produced through a manufacturing process and used in the Project to be produced in any country other than the United States, to the extent required by law unless the Owner has determined otherwise.

§ 14.5.12 The Construction Manager verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers. The Construction Manager or Contractor verifies and affirms that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of the contract against a firearm entity or firearm trade association.

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

The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four calendar days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.a Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.b Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

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.c The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.d Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.e If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 Work Days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

§ 14.5.14 In addition to the Criminal History Checks required under Section 3.4.6 of A201-2017, as amended, for each employee prior to commencing any work, Construction Manager and Subcontractors shall certify to the Owner all the information stated in the Owner's Criminal Background Check Certification Form, which is attached hereto. Said form shall be used for certification purposes; however, if no form is attached, Construction Manager shall use the form approved and provided by Owner.
»

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended (A133-2009, as amended)

.2 Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds, as amended and if completed

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended (A201-2017, as amended)

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

«If not attached hereto, this from may be completed and executed by the Parties at a later date. »

.6 Other Exhibits:
(Check all boxes that apply.)

[« »] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« Not Applicable unless completed and executed by the Parties »

[« »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Not Applicable unless completed and executed by the Parties			

.7 Other documents, if any, listed below:

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.1 ATTACHMENT A TO EXHIBIT A – DAVIS BACON WAGE RATES IN EFFECT ON THE DATE OF THE GUARANTEED MAXIMUM PRICE AMENDMENT;

.2 ATTACHMENT B TO EXHIBIT A – ALAMO COLLEGE DESIGN AND CONSTRUCTION STANDARDS (Available Online)

.3 ATTACHMENT C TO EXHIBIT A – ALLOWABLE GENERAL CONDITIONS COST LINE ITEMS;

.4 ATTACHMENT D TO EXHIBIT A – GUARANTEED MAXIMUM PRICE PROPOSAL FORM INCLUDING:

ATTACHMENT 1 TO ATTACHMENT D – GUIDELINES FOR THE PREPARATION OF THE GMP; AND

ATTACHMENT 2 TO ATTACHMENT D - PAYMENT AND PERFORMANCE BONDS;

.5 ATTACHMENT E TO EXHIBIT A –CMR'S PERSONNEL AND MONTHLY SALARY RATES;

.6 ATTACHMENT F TO EXHIBIT A – CONSTRUCTABILITY IMPLEMENTATION PROGRAM;

.7 ATTACHMENT G TO EXHIBIT A – PROPOSAL FOR PRE-CONSTRUCTION SERVICES;

.8 ATTACHMENT H TO EXHIBIT A – GUIDELINES ON UTILIZATION OF SMALL BUSINESS ENTERPRISE; AND

.9 ATTACHMENT I TO EXHIBIT A – CRIMINAL BACKGROUND CHECK CERTIFICATION FORM;]

.10 ATTACHMENT J TO EXHIBIT A –INTERNSHIP PROGRAM PARAMETERS;

.11 ATTACHMENT K TO EXHIBIT A – PROJECT MANAGEMENT SOFTWARE.

If any of the aforementioned Attachments to Exhibit A or Exhibits in Section 15.2.7, which are all incorporated by reference to this Agreement, are not attached hereto, Construction Manager shall comply with the latest version of said Attachment or Exhibit in effect as of the date of this Agreement.

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

[Signature Page to Follow]

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

OWNER *(Signature)*

« »« »

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)

Approved as to form by District's Counsel

DRAFT

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EXHIBIT A - ATTACHMENT A

Davis Bacon Wage Rates (Building and Heavy Machinery)

Contractor is required to use the most current Davis Bacon Wage Rates including weekly-certified payrolls and to report this using the LCP Tracker Wage and Hour Compliance software.

This is for information only.

The most current applicable Davis Bacon Wage rates on the Date of the GMP Amendment shall apply.

EXHIBIT A - ATTACHMENT B

ALAMO COLLEGES DESIGN AND CONSTRUCTION STANDARDS

Access this information on-line at the following link:

https://www.alamo.edu/about-us/offices-departments/departments/facilities-and-construction-management//

EXHIBIT A ATTACHMENT C

GENERAL CONDITIONS COST LINE ITEMS

The list below is not meant to be a complete listing of items that are allowable General Condition Costs , but it is meant to provide examples of items that would be considered project related and reimbursable.

On-Site Project Management Staff

- Safety Coordinator/Assistant(s)
- Project Executive
- Superintendent(s)
- Office Engineer(s)
- Project Expeditor(s)
- CPM Scheduler
- Field Engineer (s)
- Assistant Superintendent(s)
- Project Manager(s)
- Project Support Staff

Bonds and Insurance

- Builder's Risk Insurance
- General Liability Insurance (unless OICP)
- Payment and Performance Bonds
- Other Project Insurance, including subcontractor insurance, CCIP, SDI, etc.

All Temporary Project Utilities

- Dumpsters
- Project Water
- Temporary Toilets/On-site Sanitary Facilities
- Monthly Internet Service
- Temporary Fire Protection
- Street Rental and Barricades
- Internet System Installation
- Fencing and Covered Walkways Temporary
- Water Distribution and Meters Temporary
- Electrical Distribution and Meters
- Site Erosion Control (BMP) and Project Entrance(s) Permit and Trade Fee(s) paid to governmental agencies

Field Offices & Office Supplies

- Job Photos/Videos
- Project or Other Specific Signage
- Postage/Special Shipping
- Project/As-Built Drawings
- Security System/Watchman
- Safety Material and Equipment Drinking Water and cups
- Office Clean-Up/Janitorial Services
- Mobilization and Demobilization
- On-site Technology requested by Owner
- Final Clean-Up
- Reproduction Services
- Monthly Office Supplies
- Remote Parking Expenses
- Project Reference Manuals
- Move-In/Out and Office Setup
- Employee Identification System
- Small Tools and Storage Trailers
- Monthly Office Trailer Rental Costs
- Office Equipment
- Equipment Fuel
- First Aid Supplies

EXHIBIT A - ATTACHMENT D

GUARANTEED MAXIMUM PRICE PROPOSAL
SEE ALSO ATTACHMENT E

The Construction Manager at Risk hereby submits to the Alamo Colleges District for its use and benefit pursuant to the provisions of the Contract Documents between the parties ("the Contract"), including, without limitation, the AIA A133 Agreement Between Owner and Construction Manager as Constructor ("AIA A133"), as amended, a Guaranteed Maximum Price for Alamo Colleges District – _____ College _____ Capital Improvement Project (Project) developed for the Project, as follows:

1. A not-to-exceed amount for the **Preconstruction Services**
   Pursuant to the Contract: $ _____
2. A not-to exceed amount for the **Construction Services**
   Pursuant to the Contract including: $ _____
   a. A not-to exceed amount for the Cost of Work pursuant to the Contract: $ _____
      i Allowances, if any: $_____
   b. A not-to exceed amount for the General Conditions Cost pursuant to the Contract: $ _____
      i. The not-to-exceed minor self-performed work included in the General Conditions Cost are $_____
   c. A not-to exceed amount for the Construction Phase Fee pursuant to the Contract: $ _____
   d. **Contingencies**: Any unused amounts will automatically accrue to the Owner:
      Construction Contingency $_____
      Owner Contingency $_____
3. **TOTAL OF GMP LINE ITEMS 2 (a - d)** : $ _____
   This amount shall be the Guaranteed Maximum Price (GMP), which we hereby guarantee to the Owner shall not be exceeded.
4. In accordance with the provisions of the Contract, the only costs that Owner shall reimburse or pay to the Contractor are the actual reasonable cost incurred in completing the Work plus the construction manager fees both of which are based on the not-to-exceed: (i) estimates, (ii) rates and (iii) other documents attached hereto, all of which are incorporated by reference. Notwithstanding anything to the contrary herein, any self-performed work included in the Cost of Work must be specifically approved in writing by the Owner's Authorized or Designated Representative.

GUARANTEED MAXIMUM PRICE PROPOSAL SIGNATURE PAGE

(Continuation of Attachment D)

5. The Project has a Substantial Completion Date of _____ and a Final Completion date of _____ , which shall be no more than 30 days after Substantial Completion.

6. By signing below, Owner, Contractor and Architect represents and acknowledges that they have reviewed this instrument and its supporting data.

7. This agreement is effective as of the ____ day of _____, 20___, which is the date the Alamo Colleges District signed this document.

ACCEPTED AND AGREED, as evidenced by the signature below, which hereby converts this Guaranteed Maximum Price Proposal into the Guaranteed Maximum Price Amendment:

Alamo Colleges District:

By:_____
Printed Name: Dr. Diane Snyder
Its: Vice Chancellor, Finance & Administration

Accepted and Agreed to by:

Contractor:

By: _____
Printed Name: _____
Its:_____

District's Counsel, as to form only:

By:_____
Printed Name:_____
Its: _____

Architect:

By:_____
Printed Name: _____
Its:_____

ATTACHMENT 1 TO ATTACHMENT D

GUIDELINES FOR THE PREPARATION OF THE GUARANTEED MAXIMUM PRICE PROPOSAL

1. CONTRACT REQUIREMENTS:

   The provisions of the GMP are defined in the Contract, including, without limitation in the AIA A133 and A201.

The GMP Proposal shall adopt and incorporate all of the terms and conditions of the Contract. Once this proposal and its attachments are approved by the original signature of the Authorized Representative of the Owner, the Guaranteed Maximum Price Proposal shall become the Guaranteed Maximum Price Amendment.

2. PRE SUBMITTAL REQUIREMENTS:

   A. Scope Definition: Prior to GMP submittal, the Contractor shall thoroughly review the GMP construction document package with the Owner and determine if the scope is sufficiently defined and identify those areas requiring additional scope definition. As a minimum the following should be defined: Program building size, site limits and access, utility systems (existing and new), complete building systems descriptions, materials outline by division, MEP systems descriptions including materials, MEP system options shall be defined and accepted.

   B. Schedule: The anticipated Notice to Proceed and Final Completion dates with respect to the Project or any Work Package shall be coordinated and approved by the Owner prior to its inclusion in the GMP Proposal.

   C. Value Engineering: Proposed value engineering items included in the GMP shall be updated from previously submitted value engineering and should reflect the "final acceptance" of VE items, which are part of the scope of work. The VE schedule shall identify current acceptance and the date of acceptance in an adjacent column. VE items must be resolved and accepted by the Owner prior to GMP submittal.

   D. Pre-submittal Conference: The Contractor shall schedule a conference with the Owner prior to submitting the initial draft of the GMP to the Owner. Issues regarding the required materials to be included in the GMP should be reviewed so that there is a clear understanding of the format and contents of each division of work to be submitted. Additionally, a review of acceptable "General Condition" items, as defined in the Contract, is required.

3. CONSOLIDATION OF REVIEW COMMENTS:
   Representatives of the Owner and the Owner's Project Architect shall provide review comments. The Contractor shall consolidate all responses to those groups into TAB 9 of the document. Each Owner comment shall have a corresponding answer directly below the original comment. A reply to each Owner comment is required even if only a clarification is required. Each reply shall state where in the GMP Proposal the corresponding information may be located.

4. GENERAL REQUIREMENTS;

   The GMP Proposal shall be submitted at the phase specified by the Owner. The GMP Proposal

shall be submitted in the format described below and as required in the Contract. Proposals substantially deviating from the organization's format will be returned to the Contractor for re-submittal. Proposals not in compliance with the format, which result in substantial delay, will be the responsibility of the Contractor and may not extend the construction duration or substantial or final completion date.

5. MULTIPLE GMP'S:

In order to expedite the Project Schedule, the Owner and Contractor may execute separate GMP Amendments to cover separate Work Package within the Project. The requirements for this method shall be identical to the requirements for the first GMP submittal/approval process.

6. GMP PROPOSAL PACKAGE

The GMP Proposal shall be bound in 3-ring notebook or spiral notebook (**8 1/2" x 11" paper only**) and entitled "Guaranteed Maximum Price Proposal". Below it the following items shall be shown:

- Submittal number (i.e., Submittal #1)
- Date of Submittal
- Project Name

Since several submittal revisions may be submitted, always state which submittal number is currently being submitted.

All pages within each tab shall be numbered.

The proposal shall be organized in the order described below: TABLE OF CONTENTS

- List all the following items. Provide a brief summary of the major components within each Tab.

TAB 1 – Guaranteed Maximum Price Proposal

- Refer to the GMP Amendment Proposal document attached to this Exhibit. Type in the cost amounts and sign, attest, date and seal the form.
- In addition to the bound notebooks, provide two (2) loose original executed copies. (Do not bind into spiral notebooks.)
- Do not alter any language from the original document without prior approval from the Program Manager.
- Do not electronically alter the document.
- Each line item cost must exactly match the corresponding cost summary shown on the TAB 6 GMP Proposal Cost Breakdown.
- Provide a Corporate Resolution or Articles of Organization, stating individual's authorization to execute contracts on behalf of the corporation, for any individual signing the GMP, who is not the President or CEO of the firm.

TAB 2 - Executive Project Summary

- State any amended services or scope changes included in the Proposal.
- Provide a brief project summary defining the scope of work associated with the construction

phase of work included in this GMP Proposal.

- Include the description of building type, size, character and general materials.
- Summarize any relationship with existing structures, unusual conditions, utility issues, or conditions effected by other governmental agencies (i.e. right-of-way issues)
- State the anticipated Notice to Proceed (NTP) date and Substantial and Final Completion dates, and provide the number of calendar days from NTP to Substantial Completion.

TAB 3 - Project Team

- List the various teams and the team members, in graphic and written form, for including names, titles, job responsibilities, and contact information.
- Identify all consultants.

TAB 4 - List of Documents

- Drawings Index – Drawings shall be organized by listing each sheet number, sheet title and current revision date.

- Specification Index:
  - Provide a detailed listing of each specification section required by the Owner as identified in the Contract (see the Exhibit for "Owner's Specifications")
  - Provide a detailed listing of all other spec sections describing the project (including any assumptions and clarifications provided).
  - Specifications shall be organized by CSI Division format listing each specification section number, title and current revision date.

- Tab 4 shall contain a list of all other construction documents provided for the Project at the time of the submittal of the GMP Proposal including geotechincal reports, site surveys, campus maps, hazardous material surveys, as builts and other reports, studies or documents provided by Owner or the Design Team.

TAB 5 - Qualifications and Value Engineering

- Qualifications – A summary of all qualifications and assumptions organized by drawing sheet number or by specification sections to match those in Tab 4.
- Exclusions – A summary of exclusions organized by drawing sheet number or by specification section.
- Substitutions – A summary of substitutions to materials or systems described by drawing sheet number or by the specifications listed in Tab 4. Organize by specification section.
- Value Engineering (VE) Recommendations - List all items proposed to date and for each item identify if the item is accepted by the Owner and included in the GMP. State the date of acceptance. In addition identify those VE items not currently accepted. State if the price is good for a limited time period and state they are not included in the GMP.

TAB 6 - GMP Proposal Cost Breakdown

- Provide the Construction Cost breakdown (including estimated labor, materials, equipment, overhead and profit) on the Standard Schedule of Values Format for Cost of the Work (AIA Form G-703) based on anticipated subcontracts and self-performed work (as a separate line item) organized by CSI Division format; General Conditions per exhibit; Construction Contingency; Owner's Contingency; and Construction Phase Fee.
- The Contractor shall provide a breakdown for all Allowable General Condition Line Items by unit cost and duration as an attachment to the GMP Amendment.
- The Contractor shall include a completed Attachment E, "CMR's Personnel and Monthly Salary Rates," and include the details of any labor burden.

TAB 7 - Master Project Schedule (Summary Level)

- The Summary Level schedule shall be submitted electronically and as a PDF with the GMP Proposal using the Critical Path Method and including: the Activity ID, Activity Description, Original Duration, Early Start, Early Finish, Total Float, Late Start and Late Finish column titles; and other items required by the Contract Documents.

- Schedule Requirements
  - The schedule shall comply with the requirements of Contract Documents.
  - The schedule shall be a computer generated CPM schedule developed in Primavera P6 Project Planner software and the underlying data in XER. files shall be submitted with the GMP and monthly thereafter.
  - The schedule shall be presented in "bar chart" form and contain detailed activities for all events and milestones included in Pre-Construction Phase Services.
  - The schedule shall include detailed activities for all Construction Service activities.
  - Any other items or data requested by the Owner

- Total Float
  - The total float indicated on the Master Project Schedule shall be no less than 10% of the total Construction Phase duration (NTP to Substantial Completion). Notwithstanding the float, these guidelines or anything to the contrary, Final Completion shall occur within 30 days of Substantial Completion.

TAB 8 - Bid/Proposal Package Strategy

- The Contractor shall provide a written Bid/Proposal Package Strategy for procuring subcontracts including self-performance work (other than minor work covered under General Conditions Cost, as described in the Contract.

TAB 9 - Responses to Review Comments

- For resubmitted GMP Proposals, include all review comments provided by the Owner regarding the GMP or GMP re-submittal.
- For each submittal, the Contractor shall provide a written response below each original comment stating the appropriate response to the issue, and shall include that

documentation in this section. **A re- submittal may not be forwarded to Owner without responses to the previous review comments being included under this tab.**

TAB 10.- Previously Approved Amendments

- **NO PROPOSED AMENDMENTS TO ANY OF THE CONTRACT DOCUMENTS OTHER THAN THOSE DESCRIBED BY THE CONTRACT DOCUMENTS AS BEING WITHIN THE SCOPE OF A GMP AMENDMENT MAY BE CONTAINED IN THE GMP PROPOSAL. ANY SUCH AMENDMENTS SHALL BE VOID WHEN APPEARING THEREIN AND, IN ORDER TO BE EFFECTIVE, THE AMENDMENTS MUST BE ACCOMPLISHED BY A SEPARATE FULLY EXECUTED AMENDMENT TO THE CONTRACT DOCUMENTS, WHICH MAY BE INSERTED AT TAB 10.**

ATTACHMENT 2 TO ATTACHMENT D

PAYMENT AND PERFORMANCE BONDS

EXHIBIT A - ATTACHMENT E
CMR's PERSONNEL AND MONTHLY SALARY RATES

Project No. & Name: _____ _____
[CM - Insert Project No.] [CM - Insert Project Name]

The following Monthly Salary Rates (MSR) shall identify the estimated billable rate to be confirmed during the Guaranteed Maximum Price Proposal phase for use throughout Construction Phase Services on the Standard Schedule of Values Format for all salaried General Conditions-type personnel pursuant to the Agreement. The MSR shall include the employee's estimated monthly direct salary expense (including possible future salary increases, subject to owner's approval), plus any employer payroll taxes and/or fringe benefit contributions as identified below. Any additional employer contributions not identified below for listed positions, and any employment costs for any unlisted General Conditions-type positions, shall not be General Conditions Costs, but rather shall be included in the Construction Phase Fee.

Employee		Estimated Employer's Monthly Contributions						Monthly Salary Rate
Name and Title	Estimated Monthly Direct Salary Expense	Federal & State Unemployment *(Less than 1%)*	Social Security & Medicare *(Less than 7.65%)*	Worker's Compensation *($0 for ROCIP)*	Health & Insurance		Vacation / Holiday	
1.	$	$	$	$	$		$	$
2.	$	$	$	$	$		$	$
3.	$	$	$	$	$		$	$
4.	$	$	$	$	$		$	$
5.	$	$	$	$	$		$	$
6.	$	$	$	$	$		$	$
7.	$	$	$	$	$		$	$
8.	$	$	$	$	$		$	$
9.	$	$	$	$	$		$	$
10.	$	$	$	$	$		$	$
11.	$	$	$	$	$		$	$
12.	$	$	$	$	$		$	$

Construction Manager at Risk shall certify, to the best of his knowledge that the above referenced salary information is accurate.

CM signature: _____ (same individual who signs agreement

EXHIBIT A - ATTACHMENT F

CONSTRUCTABILITY IMPLEMENTATION PROGRAM

Program Objectives:

- Implement a rigorous constructability program based on concepts identified by the Construction Industry Institute (CII) to identify and document project cost and schedule savings (targeted cost savings: 5% of projected construction costs)

Proposed Steps:

- **Constructability Implementation Meeting**

  - identification of all project team personnel and all project stakeholders
  - clarification of project goals, objectives, and progress to date
  - team briefing on objectives, methods, and concepts of constructability
  - familiarization with implementation program
  - preliminary identification of constructability priorities and special challenges or concerns

- **Constructability Review of Schematic Design (SD) Documents; Comments Submitted to CM Team**

  - establishment of project constructability procedures, including procedures for documenting savings

- **Meeting to Review Schematic Design Constructability Comments**

  - assessment of applicability of 17 CII constructability concepts
  - prioritization and time-phasing of constructability concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)

- **Design Development Constructability Review Comments to CM Team**

  - follow-up discussions on front-end, high-priority concepts
  - detailed discussions of front-end, high-priority concepts (identify concerns, identify information needs, start to brainstorm alternative approaches, conduct preliminary evaluation of approaches, identify needs for further analysis, chart path forward, documentation of savings)

- **Constructability Review Meeting**

  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings

- conduct Value Engineering investigations into selected high-cost design elements; consider life-cycle cost effects

- **30% CD Constructability Review Comments to CM Team**

  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
  - conduct Value Engineering investigations into selected high-cost design elements

- **50% CD Constructability Review Comments to CM Team**

  - review plans & specifications developed to date, identifying sub-optimal or potentially problematic design elements
  - recommend alternative design suggestions for consideration and document potential savings
  - conduct Value Engineering investigations into selected high-cost design elements

- **95% CD Constructability Review Comments to CM Team**

- **Constructability Discussions with CM Team**

- **Document On-site Constructability Lessons Learned**

- **Close-out Project Constructability Documentation**

EXHIBIT A - ATTACHMENT G
PROPOSAL FOR PRECONSTRUCTION SERVICES

Exhibit A - Attachment H

Guidelines on the Utilization of Small Business Enterprise (SBE)

ATTACHMENT H

GUIDELINES ON THE UTILIZATION OF SMALL BUSINESS ENTERPRISE (SBE)

Alamo Colleges District
Purchasing and Contract Administration Department
September 2025

Guidelines on Utilization of Small Business Enterprises (SBE)

ALAMO COLLEGES DISTRICT

Guidelines on Utilization of Small Business Enterprises (SBE)

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- **Alamo Colleges District Small Business Enterprise Clause** **page 4-5**
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- **Small Business Subcontracting Plan** **page 7- 9**
- **Small Business Subcontracting Plan Reporting** **page 10**
- **Small Business Resource Contacts** **page 11**

Alamo Colleges District Small Business Program

Mission Statement

It is the policy of Alamo Colleges District to encourage the use of small business/demographically certified vendors as herein below defined to assist the College and District departments in the implementation of this policy through race, ethnicity, and gender-neutral means. The purpose of this program is to ensure that certified firms are provided the maximum practicable opportunity to participate in all purchasing and contracting opportunities.

ALAMO COLLEGES DISTRICT SMALL BUSINESS ENTERPRISE CLAUSE

Alamo Colleges District, its contractors, their subcontractors and suppliers, as well as all suppliers of all goods and services, shall not discriminate on the basis of race, color, religion, national origin, disability, gender or sexual orientation in the award and/or performance of contracts. All individuals and entities doing business, or anticipating doing business, with Alamo Colleges District are encouraged to support and implement a program designed to achieve the goal of establishing equal opportunity for all. Small Business Enterprises (SBEs) are hereinafter defined

Alamo Colleges District Purchasing and Contract Administration Department maintains an active program for the identification and placement of SBE's on solicitation mailing lists, and to provide information and other assistance to facilitate the use of such firms as contractors to the maximum extent practical. SBEs seeking contracting opportunities or looking to do business with Alamo Colleges District should file a "Vendor Registration" with the Alamo Colleges District Purchasing and Contract Administration Department, 2222 N. Alamo, San Antonio, Texas 78215; telephone 210-485-0100 or at https://www.alamo.edu/purchasing

Firms seeking contracting opportunities will be encouraged to use their best efforts to fully carry out this practice through subcontracting of small and/or minority business enterprises consistent with efficient performance.

Projects with subcontracting opportunities will be tracked monthly through B2Gnow thru https://alamo.diversitycompliance.com, whether there is a targeted goal or not, to track Alamo Colleges' progress in working with SBE-certified firms.

DEFINITION

1 - TYPES OF CERTIFIED ENTERPRISES

A. Small Business Enterprise:

Means a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated, and which meets the United States Small Business Administration (SBA) size standard for a small business (13 CFR Part 121, including the 13 CFR 121.201 see http://sba.gov/size)

B. Disabled Business Enterprise:

Means a business structure that is at least 51 percent owned, operated and controlled by a person with one or more disabilities as defined by the Americans with Disabilities Act (ADA) and amendments thereto (for purposes of applicability under the certification statutes, ordinances, rules and regulations governing the State of Texas).

C. Disadvantaged Business Enterprise:

Means an SBE with no more than $23.98 million in annual gross receipts that is at least 51 percent owned and controlled by socially and economically disadvantaged citizens or lawfully admitted permanent residents of the United States whose aggregate personal net worth does not exceed $1.32 million.

D. Historically Underutilized Business:

Means the State of Texas HUB (Historically Underutilized Business) Program of the Texas Procurement and Support Services (TPASS) division of the Texas Comptroller of Public Accounts. TPASS certifies HUB-eligible applicant suppliers and maintains a list of HUB-certified suppliers for Texas state agencies and governmental entities. The owner must provide proof of 51 percent ownership and control of the day to day operation of the business. The owner must be an economically disadvantaged person that is either Asian Pacific American, Black American, Hispanic American, Native American, American woman, and/or Service-Disabled Veteran with a service-related disability of 20 percent or greater.

E. Minority Business Enterprise:

Means a business enterprise that is owned/controlled and operated by one or more minority person(s). Minority persons include Blacks, Mexican-Americans, and other persons of Hispanic origin, American Indians, Alaskan Natives, and Asians and Pacific Islanders.

F. Veteran Business Enterprise:

Means a business structure that is at least 51% owned, operated, and controlled by an individual who served in the United States Armed Forces, and who was discharged or released under conditions other than dishonorable. **NOTE: This certification type should not be confused with the Service Disabled Veteran designation available through the Small Business Administration**.

Women Owned Business Enterprise:

Means a sole proprietorship that is owned and controlled by a woman, a partnership at least 51.0% of whose assets or partnership interests are owned by one or more women, or a corporation, limited liability Company, or other form of entity, at least 51.0% of whose assets or ownership interests are owned by one or more women.

2. OWNERSHIP AND CONTROL

A. Owned:

1. For a sole proprietorship to be deemed a certified business enterprise, it must be owned by a certified person.

2. For an enterprise doing business as a partnership, it is necessary that at least 51.0% of its assets or interests in the partnership property be owned by one or more certified person(s).

3. For an enterprise doing business as a corporation, limited liability Company, or other form of entity, it is necessary that at least 51.0% of its assets or ownership interests be owned by one or more certified person(s).

B. Controlled/Operated:

That the primary power to manage a business enterprise shall rest with certified person(s).

C. Share in Payments:

Certified partners, proprietors, members, stockholders, or other owners of the enterprise, as the case may be, shall be entitled to receive 51.0% or more of the total profits, bonuses, dividends, interest payments, commissions, consulting fees, rents, procurement, and subcontractor payments, and any other monetary distribution paid by the business enterprise.

(RESPONDENT'S BUSINESS LETTERHEAD)

Date

Torence Henderson

Supplier Management Coordinator

Alamo Colleges District

2222 N. Alamo St

San Antonio, TX 78215

Re: Small Business (SBE) Subcontracting Plan for_____

Dear Mr. Henderson:

In accordance with the statement outlined, I have read and understand the Alamo Colleges District guidelines for the demographic/small business (SBE) certification of vendors.

This (SBE) subcontracting plan commitment goal will include subcontracting opportunities representing an estimated cumulative percentage of _____%.

I acknowledge that if I am selected as the construction Manager at Risk or Prime Contractor for a project, I will be required to provide the attached subcontracting plan, inclusive of all (SBE) subcontractors and their certification document by an approved certifying agency. By completion of Section 6" of the (SBE) subcontracting plan, I affirm my intent to utilize the subcontractors selected to perform the scope of work to be subcontracted.

Should we discover additional subcontractors claiming (SBE) status during the course of this contract, we will notify you of the same. In addition, if, for some reason, a (SBE) is unable to fulfill its contract with us, we will notify you immediately in order to take the appropriate steps to amend this contractual obligation.

Sincerely,

(Project Executive)

X_____

ALAMO COLLEGES DISTRICT

SMALL BUSINESS SUBCONTRACTING PLAN

- - Special Instructions/Additional Requirements - -

- **Respondents shall submit a completed Small Business (SBE) Subcontracting Plan Plan to be considered responsive (pages 8, 9 and 10). Failure to submit a completed Subcontracting Plan shall result in point(s) reduction in the evaluation process for the bid and/or proposal.**
- **NOTE: Respondents who intend to <u>SELF-PERFORM all of their work</u> shall submit a Subcontracting Plan for Self-Performance and complete only Section 7 and 8.**
- **Payments for the Construction Manager at Risk or Prime Contractor will be tracked along with their selected subcontractors (SBE and Non-SBE) monthly online thru B2GNow.**

SECTION 1 - RESPONDENT AND SOLICITATION INFORMATION

a. Respondent (Company) Name: _____

Point of Contact: _____ Phone #: _____

b. Is your company a certified SBE? ☐ - Yes ☐ - No

c. CSP #: _____

SECTION 2 - SUBCONTRACTING INTENTIONS

☐ - **Yes, I will be subcontracting portion(s) of the contract.**
(If yes, in the spaces provided below, <u>list the portions of work you will be subcontracting</u>, and go to page 9.)

☐ - **No, I will not be subcontracting any portion of the contract, and will be fulfilling the entire contract with my own resources.**

Line Item # - Subcontracting Opportunity Description	Line Item # - Subcontracting Opportunity Description
(#1) -	(#11) -
(#2) -	(#12) -
(#3) -	(#13) -
(#4) -	(#14) -
(#5) -	(#15) -
(#6) -	(#16) -
(#7) -	(#17) -
(#8) -	(#18) -
(#9) -	(#19) -
(#10) -	(#20) -

IMPORTANT: You must complete a copy of this page for each of the subcontracting opportunities you listed in SECTION 1. **You may photocopy this page.**

SECTION 3 - SUBCONTRACTING OPPORTUNITY

Enter the line item number and description of the subcontracting opportunity you listed in SECTION 2.

Line Item # _____ **Description:** _____

SECTION 4 - NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

Complying with a, b and c of this section constitutes Good Faith Effort towards the portion of work listed in SECTION 3. After performing the requirements of this section, complete SECTION 5, 6 and 8.

a. Provide written notification of the subcontracting opportunity listed in SECTION 3 to **three (3)** or more SBEs. You can use the State of Texas' Centralized Master Bidders List (CMBL), found at ***http://www.window.state.tx.us/procurement/cmbl/cmblhub.html,*** and it's HUB Directory, found at ***http://www.window.state.tx.us/procurement/cmbl/hubonly.html***. Also, the South Texas Regional Certification Agency's (STRCA) database at **http://sctrca.org/** to identify available SBEs. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

b. Provide written notification of the subcontracting opportunity listed in SECTION 3 to a minority or women trade organization or development center to assist in identifying potential SBEs by disseminating the subcontracting opportunity to their members/participants. A list of trade organizations and development centers are available on page **13**. **Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

c. Written notifications should include the scope of the work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. Unless the contracting agency has specified a different time period, you must allow the SBEs no less than five (5) working days from their receipt of notice to respond, **and** provide notice of your subcontracting opportunity to a minority or women trade organization or development center no less than five (5) working days prior to the submission of your response to the contracting agency.

SECTION 5 - SBE FIRMS CONTACTED FOR SUBCONTRACTING OPPORTUNITY

List **three (3)** certified SBEs you notified regarding the portion of work (subcontracting opportunity) listed in SECTION 3. Specify the vendor ID number, date you provided notice, and if you received a response. **Note: Attach supporting documentation (letters, phone logs, fax transmittals, electronic mail, etc.) demonstrating evidence of the good faith effort performed.**

Company Name	VID #	Notice Date (mm/dd/yyyy)	Was Response Received?
		/ /	☐ - Yes ☐ - No
		/ /	☐ - Yes ☐ - No
		/ /	Yes - No

SECTION 6 - SUBCONTRACTOR SELECTION

List all the subcontractor(s), both SBE and non-SBE, you selected to perform the portion of work (subcontracting opportunity) listed in SECTION 3. Also, specify the expected percentage of work to be subcontracted, the approximate dollar value of the work to be subcontracted, and indicate if the company is a SBE.

Company Name	VID #	Expected % of Contract	Approximate Dollar Amount	Certified SBE?
		%	$	☐ - Yes ☐ - No*
		%	$	☐ - Yes ☐ - No*
		%	$	☐ - Yes ☐ - No*
		%	$	☐ - Yes ☐ - No*
		%	$	☐ - Yes ☐ - No*
		%	$	- Yes - No*

***If the subcontractor(s) you selected is not a SBE, provide written justification of your selection process below:**

_____

_____

SECTION 7 - SELF PERFORMANCE JUSTIFICATION

(If you responded "No" to SECTION 2, you must complete SECTION 7 and 8.)

Does your response/proposal contain an explanation demonstrating how your company will fulfill the entire contract with its own resources?

☐ **- Yes** If Yes, in the space provided below, list the specific page/section of your proposal which identifies how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.

☐ **- No** If No, in the space provided below, explain how your company will perform the entire contract with its own equipment, supplies, materials, and/or employees.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

SECTION 8 - AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the SBE Subcontracting Plan are true and correct. Respondent understands and agrees that, if awarded any portion of the solicitation:

- The respondent must submit monthly compliance reports (Payment Request Forms) to Alamo Colleges District, verifying their compliance with the SBE Subcontracting Plan, including the use/expenditures they have made to subcontractors.
- The respondent must seek approval from Alamo Colleges District prior to making any modifications to their SBE Subcontracting Plan.
- The respondent must, upon request, allow Alamo Colleges District to perform on-site reviews of the company's headquarters and/or work-site where services are to be performed and must provide documents regarding staff and other resources.

Signature	Printed Name	Title	Date

SBE Subcontracting Plan Payment Request Form

This form must be completed and submitted with each payment request to document compliance with your Subcontracting Plan.

Contract/Requisition Number: _____ Date of Award: _____ Object Code:

(mm/dd/yyyy) (ACCD Use Only) _____

Contractor (Company) Name: _____

Point of Contact: _____ Phone #: _____

Reporting Period: ☐ - Jan. ☐ - Feb. ☐ - Mar. ☐ - Apr. ☐ - May ☐ - Jun. ☐ - Jul. ☐ - Aug. ☐ - Sept. ☐ - Oct. ☐ - Nov. ☐ - Dec.

(Check only one Month)

Total Contract Amount Paid this Reporting Period to Contractor: $ _____

Report SBE and Non-SBE subcontractor information

Subcontractor's Name	Subcontractor's VID or SBE Certificate Number	Total Contract $ Amount from Subcontracting plan with Subcontractor	Total $ Amount Paid This Period to Subcontractor	Total Contract $ Amount Paid to Date to Subcontractor	Object Code (agency use only)
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
		$	$	$	
TOTALS:	$	$	$	$	

_____ _____ _____ _____

Signature Printed Name Title Date

Small Business Subcontracting Plan Reporting

Small Business (SBE) Subcontracting Reporting: This contract is subject to contract compliance tracking, and the prime contractor and any subcontractors are required to provide any noted and/or requested contract compliance-related data. The Prime or Lead selected and all subcontractors are responsible for responding by any noted response date or due date to any instructions or request for information. The Prime/Lead is responsible for ensuring all subcontractors have completed all requested items and that their contact information is accurate and up to date. Alamo Colleges District may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.

Please provide a signature as your acknowledgement that Subcontracting Reporting will be required on this project.

X_____

Small Business Resource Contacts

Alamo Colleges District Purchasing and Contracting Department

Purchasing and Contracting Department 210/485-0100

Torence Henderson, Supplier Management Coordinator, twhite85@alamo.edu 210/485-0127

2222 N. Alamo St

San Antonio, TX 78215

Websites – the following websites will assist in the ability to search or identify certified firms:

The South Texas Regional Certification Agency:

http://sctrca.org/

Texas Procurement and Support Services Division

http://www.window.state.tx.us/procurement/cmbl/cmblhub.html

Compliance of the project:

https://alamo.diversitycompliance.com

EXHIBIT A - ATTACHMENT I

CRIMINAL BACKGROUND CHECK CERTIFICATION

The undersigned, on behalf of _____, hereby certified to Owner that for the employees listed below, (i) a background check, (ii) an OFAC (Office of Foreign Asset Control) List check, and (iii) a check to affirm that employees' name and social security number match has been completed in compliance with Section 23.19 of that certain Construction Contract dated _____ by and between Owner and Construction Manager at Risk has been completed in accordance with such Section.

For each name listed below, _____certified there are no felony convictions, OFAC List matches, OFAC sanction violations or unmatched Social Security numbers with names.

The undersigned further certifies that he/she is unaware of any denial of an application for a fidelity bond for such individuals.

EMPLOYEE NAME	LAST FOUR DIGITS OF SOCIAL SECURITY NO.	DATE OF BIRTH	ADDRESS (home and mailing if different)

Signature: _____

Printed Name: _____

Title: _____

EXHIBIT A - ATTACHMENT J
INTERNSHIP PROGRAM PARAMETERS

The general responsibility for the success of internship programs lies with the Alamo Colleges District, participating employers, and interns. The Alamo Colleges District are primarily responsible for administration and instructional components of the program. Participating employers are responsible for providing interns with a work environment that provides an opportunity to learn or apply occupational skills in a significant way. Specific responsibilities of the employer and Alamo Colleges District include the following:

A. **Role of the Employer**

1. To list internship opportunities and job descriptions with the Alamo Colleges District (Internship Clearinghouse).
2. To select internship students using their own interviewing and selection process. If an employer so desires, an Alamo College representative will advertise the position, collect student credentials, screen applicants, and arrange for interviews with the employer.
3. To compensate interns on a fair and consistent basis.
4. To identify and maintain for the student a schedule which meets the minimum hour requirements of the internship.
5. To enter into a Memorandum of Agreement with the Alamo Colleges District that includes internship: learning objectives, term, schedule, compensation, and course evaluation process, using approved Alamo Colleges District format/forms.
6. To assist interns to meet learning objectives during the internship period.

B. **Role of the Alamo Colleges District**

1. The Alamo Colleges District will provide the participating employers with the name of the student(s) eligible to participate in the internship program.
2. To work with students, advisors, and employers in developing internships.
3. To provide students with referrals to internship sites.
4. To formulate job-oriented and educational learning objectives.
5. To develop and approve Memorandum of Agreements between the student, employer, and Alamo Colleges District.
6. To monitor the student's progress towards attaining stated objectives. This may include visits to job site and with the student's immediate supervisor. At a minimum, the faculty or Alamo Colleges District representative should be in contact with the supervisor via written or telephone communications.
7. Evaluate student's performance including written materials. Awards credit if earned.

C. **Key Internship Features** - It is the goal of the Alamo Colleges District Internship program to provide students with opportunities to learn skills for their chosen career. The program is designed to meet the diverse needs of the student body in the Alamo Colleges District. Internships can be set up for the summer, spring, or fall semesters. Full and part-time programs are possible.

1. **Intern Duties/Responsibilities** – The employer and college representative determine duties and responsibilities. Work assignments will vary depending upon the level of experience, knowledge and sophistication of the intern.
2. **Compensation for Interns** – A normal salary that the company would pay to a beginning individual if they meet company requirements, but not less than a minimum wage.
3. **Memorandum of Agreement** – The agreement is between the employer, Alamo Colleges District, and the intern. All sign the document as an indication of commitment to making the internship a rewarding experience for all parties.

EXHIBIT A - ATTACHMENT K
PROJECT MANAGEMENT SOFTWARE

External User License Workflow

External users may gain access to the Alamo Colleges Projectmates site and begin accessing assigned projects through the following External User license workflow. External users may be provided the following information (copy and paste this information directly to your external users):

1. **Online Setup:** Your external companies can now complete and submit their information electronically via the following link: https://best-construction-software.projectmates.com/external-licensing
2. **Password for Access:** To access the webform, please provide the external companies with the following password:
    - **Password:** Projectmates2025!
3. **License Creation:** Once the licenses have been created, Projectmates Licensing will send you a confirmation email.

Important Information:

- The cost for each user license is $795 annually. There is a $100 setup cost per user for the first year.
    - *Pricing should be confirmed via Projectmates account support as of the date of publication of this document. Pricing quoted here published in 2025.*
- The user account(s) will be activated and invoice sent. Accounts will renew automatically each year. Let us know if you need to cancel the renewal invoice.
- **For TX, NJ, and WA companies:** Sales tax will be added to the invoice. To avoid sales tax, please provide your sales tax exemption form with the order.

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DRAFT

AIA® Document A133™ – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the «___» day of « » in the year «202 »
(In words, indicate day, month and year.)

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

« »
« »

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

« Alamo Community College District »
« 2222 N. Alamo Street»
« San Antonio, Texas 78215 »

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

« »
« »
« »

TABLE OF ARTICLES

B.1 GENERAL

B.2 OWNER'S INSURANCE

B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017 General Conditions of the Contract for Construction, as amended.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

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§ B.2.2 Liability Insurance
The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ B.2.3 Required Property Insurance
§ B.2.3.1 If Construction Manager fails to procure coverages pursuant to Section B.3.3.2.1 (Builder's Risk), the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and extended or replaced through the period for correction of the work , unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees, if any.

§ B.2.3.1.1 If Owner is required to procure Builder's Risk coverages because the Construction Manager fails to do so, Owner may withhold the cost of said coverages from the Construction Manager or Owner may charge the cost of said coverages to the Construction Manager, which must be reimbursed within 30 days of notice. This remedy is not exclusive.

§ B.2.3.1.2 Intentionally Omitted.

§ B.2.3.1.3 Intentionally Omitted.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. Intentionally Omitted.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the Builder's Risk insurance have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures
If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner may purchase and maintain, until the expiration of the period for correction of Work as set forth in the General Conditions, property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.3.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Intentionally Omitted.

§ B.2.5 Other Optional Insurance.
The Owner may purchase and maintain the insurance selected below.
(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

[« »] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

[« »] **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

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ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager must provide certificates of insurance, policies, or other documents acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) at least five (5) Work Days after execution of the Contract documents and prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate, policies, or other documents acceptable to the Owner evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on all of Contractor's insurance policies, except Contractor's workers compensation insurance. These certificates and the insurance policies required by this Article shall contain a provision that coverages afforded under the policies will not be canceled, reduced, or restricted for any reason, other than nonpayment of premium, until at least 30 days' prior written notice of such cancellation, reduction, or restriction has been given to the Owner and Construction Manager. An additional certificate, policy, and endorsement evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment, and thereafter upon renewal or replacement of such coverage. Information concerning reduction or restriction of coverage on account of revised limits or claims paid under the General Aggregate, or cancellation or expiration of the insurance, shall be furnished by written notice to the Owner from the Construction Manager within three (3) Work Days of the date Contractor knew or should have known of the cancellation, reduction, or restriction. At least 30 calendar days prior to the date of expiration of any required insurance policy, Construction Manager shall provide Owner written notice of the impending expiration. In addition, Construction Manager shall also provide copies of all policies, declarations, and endorsements for such insurance to Owner.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager. If the insurance required by this Section B.3.1 is subject to deductibles or self-insured retentions, the Construction Manager shall be responsible for all loss not covered because of such deductibles or retentions. For any claim made against the Contractor's policies of insurance, the deductible shall not exceed $10,000.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage and any other insurance required by the Agreement, with the exception of Workers' Compensation insurance, to be endorsed to include (1) the Owner, governing body, officials, employees, and agents as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. All of the additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04 or its equivalent.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager and its subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims which may arise out of, or result from, the Construction Manager's operations under the Contract whether such operations be by Construction Manager or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable in the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. (See also the additional insurance requirements included in Article 11 of the 2017 AIA A201 General Conditions, as amended for this Project). The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in the General Conditions. The insurance required by this Section shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Construction Manager's completed operations coverage, until the expiration of the period for correction of

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Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents plus an additional four (4) years. The limits of liability for such insurance shall be in at least the following amounts as specified below.

« »

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than «two million » ($ «2,000,000 ») each occurrence, «five million » ($ «5,000,000 ») general aggregate, and «ten million » ($ «10,000,000 ») aggregate for products-completed operations hazard, providing coverage for claims including

- **.1** damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person with a sublimit not less than $2,000,000 for medical expenses per person for bodily injury, included within the limits noted above with a limit not less than $2,000,000;
- **.2** personal injury and advertising injury;
- **.3** damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- **.4** bodily injury or property damage arising out of the Work and out of completed operations, said coverage to be maintained for four (4) years after Final Completion. Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during this period and Owner shall be named by endorsement as an Additional Insured for such coverage and must include Completed Operations coverage for Construction Manager, its Subcontractors, and Owner; and
- **.5** the Construction Manager's contractual liability, including but not limited to, indemnity obligations under Section 3.18 of the General Conditions or elsewhere in the Contract Documents; and
- **.6** General Aggregate per Project endorsement.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- **.1** Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- **.2** Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- **.3** Claims for bodily injury other than to employees of the insured.
- **.4** Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- **.5** Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- **.6** Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- **.7** Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- **.8** Claims related to roofing, if the Work involves roofing.
- **.9** Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- **.10** Claims related to earth subsidence or movement, where the Work involves such hazards.
- **.11** Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering hired, or any other vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than those stated below per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. (Note: Owner's minimum is $100,000 per person, $300,000 per occurrence, and $100,000 property damage.) Such minimum limits shall be stated as follows, or in a combined single limit policy in the amount of at least $ 1,000,000.

.1 Bodily Injury (per person) $1,000,000

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.2 Bodily Injury (per accident) $1,000,000

.3 Property Damage $1,000,000

§ B.3.2.4 The Construction Manager may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance. In no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.4.1 Umbrella Excess Liability coverages shall be in at least the following amounts:

.1 $5,000,000 each occurrence
.2 $15,000,000 aggregate
.3 Aggregate Per Project Endorsement

§ B.3.2.5 Workers' Compensation

1	State:	Statutory Benefits	
.2	Employer's Liability:	$1,000,000	per accident
		$1,000,000	disease, policy limit
		$1,000,000	disease, each employee

§ B.3.2.5.1 Texas Workers' Compensation Insurance.
A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the employees providing services on a Project is required for the duration of the Project.

§ B.3.2.5.1.1 Duration of the Project includes the time from the beginning of the Work on the Project until the Construction Manager's work on the Project has been completed and accepted by the Owner.

§ B.3.2.5.1.2 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the Construction Manager has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

§ B.3.2.5.1.3 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

§ B.3.2.5.1.4 The Construction Manager shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44), as amended for all employees of the Construction Manager providing services on the Project for the duration of the Project.

§ B.3.2.5.1.5 The Construction Manager must provide a certificate of coverage and policy to the Owner prior to being awarded the Contract or commencing the Work.

§ B.3.2.5.1.6 If the coverage period shown on the Construction Manager's current certificate of coverage ends during the duration of the Project, the Construction Manager must, prior to the end of the coverage period, file a new certificate of coverage and policy with the Owner showing that coverage has been extended.

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§ B.3.2.5.1.7 The Construction Manager shall obtain from each person providing services on the Project, and provide to the Owner:

.1 A certificate of coverage and policy, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.2 No later than seven days after receipt by the Construction Manager, a new certificate of coverage and policy showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

§ B.3.2.5.1.8 The Construction Manager shall retain all required certificates of coverage and policies for the duration of the Project and for one year thereafter.

§ B.3.2.5.1.9 The Construction Manager shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Construction Manager knows or should have known of any change that materially affects the provision of coverage of any person providing services on the Project.

§ B.3.2.5.1.10 The Construction Manager shall post on each Project site a notice, in the text, form, and manner prescribed by the TDI, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

§ B.3.2.5.1.11 The Construction Manager shall contractually require each person with whom it contracts to provide services on the Project to:

.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

.2 Provide to the Construction Manager, prior to that person beginning work on the Project, a certificate of coverage and policy showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;

.3 Provide the Construction Manager, prior to the end of the coverage period, with a new certificate of coverage and policy showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.4 Obtain from each other person with whom it contracts, and provide to the Construction Manager:

.1 A certificate of coverage and policy, prior to the other person beginning work on the Project; and

.2 A new certificate of coverage and policy 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 and policies on file for the duration of the Project and for one year thereafter;

.6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

.7 Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

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§ B.3.2.5.1.12 By signing this Contract or providing or causing to be provided a certificate of coverage and policy, the Construction Manager is representing to the Owner that all employees of the Construction Manager who will provide services on the Project will be covered by 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 TDI's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Construction Manager to administrative penalties, criminal penalties, civil penalties, or other civil actions.

§ B.3.2.5.1.13 The Construction Manager's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the Contract void if the Construction Manager does not remedy the breach within (10) ten days after receipt of notice of breach from the Owner.

§ B.3.2.5.1.14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.
See 28 TAC § 110.110

§ B.3.2.6 Employers' Liability with policy limits not less than «one million » ($ «1,000,000 ») each accident, «one million » ($ «1,000,000 ») each employee, and «two million » ($ «2,000,000 ») policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « two million » ($ «2,000,000 ») per claim and « four million » ($ «4,000,000 ») in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than « two million » ($ « two million ») per claim and «four million » ($ «4,000,000 ») in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « two million » ($ «2,000,000») per claim and « four million » ($ «4,000,000 ») in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « one million » ($ «1,000,000 ») per claim and « two million » ($ «2,000,000 ») in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « one million » ($ «1,000,000 ») per claim and « two million » ($ «2,000,000 ») in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage
§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in the General Conditions, unless a different duration is stated below:
(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

« »

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§ B.3.3.2 The Construction Manager must purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.
(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[« X»] **§ B.3.3.2.1 Builder's Risk Property Policy.** The Construction Manager must purchase a Builder's Risk Insurance Policy of not less than $_____, on a replacement cost basis. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Construction Manager shall be responsible for losses within the deductible. The Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

«.1 **Builder's Risk**. Construction Manager must purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the state of Texas, builder's risk "all-risks" completed value insurance or an equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis, including boiler and machinery insurance, Coverage, if not included in the base coverage, shall include coverage against the perils of fire, (with extended coverage) and physical loss or damage including, without limitation or duplication of coverage, lightning, collapse, earthquake, flood, wind storm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, theft, vandalism, malicious mischief, falsework, testing and start-up, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and all other perils, and shall include materials stored on-site, off-site and in transit. The Construction Manager's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Final Completion (after Substantial Completion by a "permission to occupy" endorsement); unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees or grantees as loss payees, as applicable.

.2 Intentionally Omitted.

.3 Intentionally Omitted.

.4 Intentionally Omitted.

.5 Intentionally Omitted.

.6 **Occupancy or Use Prior to Substantial Completion**. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.3.3.2.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

.7 **Insurance for Existing Structures**. If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Construction Manager shall purchase and maintain, until the expiration of the period for correction of Work as set forth in the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.3.3.2.1, notwithstanding the undertaking of the Work. The Construction Manager shall be responsible for all co-insurance penalties.

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.8 **Employee Theft or Dishonesty.** If this Builder's Risk policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Construction Manager shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner.

.9 **Cancellation**. The insurance policies required by this Section B.3.3.2.1 shall contain a provision that coverages afforded under the policies will not be canceled for any reason, other than nonpayment of premium, or reduced or restricted due to a material change in coverage until at least 30 days' prior written notice of such cancellation or material change has been given to the Owner. Construction Manager shall provide Owner 30 days prior written notice of the expiration of any policy required by the Contract Documents.

.10 **Construction Manager at Risk**. If Contractor is a Construction Manager at Risk, then, the coverage shall be in a total amount equal to the Guaranteed Maximum Price Amendment(s) plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis.

.11 **Deductibles**. For any claim made against the builder's risk insurance, the deductible shall not exceed $25,000, unless approved by Owner in writing. »

[« »] **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than « one million » ($ « 1,000,000 ») per claim and « two million » ($ «2,000,000 ») in the aggregate, for Work within fifty (50) feet of railroad property.

[« »] **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than « one million » ($ «1,000,000 ») per claim and « two million » ($ « 2,000,000 ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials. **This coverage is required, even if the box is not checked, if the Contract Documents or Construction Documents contain any requirement of asbestos abatement**.

[« »] **§ B.3.3.2.4** Intentionally Omitted.

[« »] **§ B.3.3.2.5** Intentionally Omitted.

[« »] **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
See A133 and A201, as amended and other Contract Documents for other coverages and limits	

§ B.3.4 Performance Bond and Payment Bond
At least, prior to the performance of any Work, the Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, subject to the requirements of the Agreement, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum ($0.00)
Payment Bond	**Total of all GMP Amendments or Contract Sum, whichever is higher;**
Performance Bond	**Total of all GMP Amendments or Contract Sum, whichever is higher**

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The form of the Payment and Performance Bonds shall be subject to the requirements of Texas law current as of the date of this Agreement and in a form acceptable to Owner.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« See Contract Documents for additional insurance and bond requirements, including Maintenance Bond requirements.

Owner Controlled Insurance Program (OCIP). Owner reserves the right, in its sole discretion, to establish and implement an OCIP for all or part of the Work and Project. If the Owner implements an OCIP, the Construction Manager and all subcontractors of any tier must (i) comply with all the terms and conditions of the OCIP, at no additional cost to the Owner; (ii) exclude from the Contract Sum and/or GMP Amendment/Proposal, as applicable, any costs, premiums, allowances or other charges for insurance that will be provided under the OCIP and provide supporting documentation as required by the Owner; (iii) enroll in the OCIP prior to beginning any Work; and (iv) remain responsible for their respective deductibles. Failure to comply with this provision or the OCIP constitutes a material breach of the Contract.

In addition, the Owner reserves the right to review the insurance requirements for this Project and to adjust the lines of insurance coverage and their limits when considered necessary and prudent by the Owner. These adjustments may include but are not limited to requesting the modifications of coverages required by the Contractor in order to utilize an Owner Controlled Insurance Program. Contractor agrees to make any reasonable request to the insurance provider for additions, deletions, revisions, or modifications of insurance policy limits, coverages, terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation(s) binding upon either party to this Agreement or changes to policy provision are not reasonably available). Upon written request by the Owner, Contractor shall exercise reasonable efforts to accomplish such changes requested by Owner. Owner and Contactor shall adjust the Contract Sum to reflect the actual and verifiable changes in the costs of insurance due to the Owner's requested changes to the insurance requirements. »

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

OWNER: **Alamo Community Colleges District** _____ **By:** _____ **Title:** _____	**CONTRACTOR:** _____ **By:** _____ **Title:** _____

District's Counsel, as to form only:

By:_____

DRAFT

DRAFT

AIA® Document A201® – 2017

General Conditions of the Contract for Construction under the A101 and A133, as amended

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

« »
« »
« »

THE OWNER:
(Name, legal status and address)

«Alamo Community College District (sometimes Alamo Colleges, Alamo Colleges District, ACCD, or District »« »
«2222 N. Alamo Street, San Antonio, Texas 78215 »

THE ARCHITECT:
(Name, legal status and address)

« »
« »
« »
« »
« Email: »
« Telephone: »

THE CONTRACTOR OR CONSTRUCTION MANAGER, AS APPLICABLE:
(Name, legal status and address)

« »
« »
« »
« »
« Email: »
« Phone: »

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ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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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 A101 or A133 as amended and applicable for the Project. Any reference to Contract Documents herein shall include the Construction Documents, and any other documents included in the Contract Documents, as amended and/or supplemented for this Project.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

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

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations including the transportation of materials and supplies to or from the site, competent supervision of the Work and the provision of insurance and payment and performance bonds in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, competent supervision, insurance, bonds, transportation services, storage requirements, and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and the Construction Documents and all other items of cost or value needed to produce, construct and fully complete the public Work identified by the Contract Documents and the Construction Documents.

§ 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 Construction Documents

"**Construction Documents**" means: all Drawings, Specifications, Addenda, approved submittals, transmittals, deliverables, instructions to Contractors, the Project Manual and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants and which set forth in detail the additional requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards, as applicable, and the standards set forth in the Architect's contract with the Owner. Construction Documents include 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. Construction Documents

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may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The **Project Manual** is a volume assembled for the Work which includes but is not limited to the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.7.1 The Owner may furnish information, surveys, reports, or services. All documents provided by Owner shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Contractor may use the information at its own risk and shall use customary precautions relating to the performance of the Work.

§ 1.1.8 Intentionally Omitted.

§ 1.1.9 Addenda Addenda are written or graphic instruments issued prior to the execution of the Contract or Guaranteed Maximum Price Amendment, if applicable, which modify or interpret the bidding or proposal documents, including Drawings and Specifications, by additions, deletions, clarifications, or corrections. Addenda will become part of the Contract Documents and Construction Documents when the Agreement or Guaranteed Maximum Price Amendment, if applicable, is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

§ 1.1.10 All references to "**Construction Manager**" or "**Construction Manager at Risk**" shall mean and include "**Contractor**" as appropriate; and all references to "**Contractor**" shall mean "**Construction Manager**" or "**Construction Manager at Risk**" as appropriate.

§ 1.1.11 The Owner may retain Program Manager(s) to carry out some of the functions of the administration of the Owner's construction program. The Contractor, Architect, and Program Manager (when applicable) shall cooperate with each other in the performance of their respective functions. The management and reporting systems used by the Owner and/or Program Manager, including the assignment of the Program Manager, may be changed by Owner during the Project.

§ 1.1.12 Approved, Approved Equal, Approved Equivalents, or Equal The terms "Approved" and "Approved Equal" relate to the substitution of materials, equipment, or procedure in writing by the Architect prior to receipt of bids.

§ 1.1.13 Abbreviations

AIA:	American Institute of Architects. (All references to AIA documents refer to AIA's trademarked documents. Each reference to a specific document shall refer to the document as amended for this Project.)
AIEE:	American Institute of Electrical Engineers
ACI:	American Concrete Institute
AHERA:	Asbestos Hazardous Emergency Response Act
AISI:	American Iron and Steel Institute
AISC:	American Institute of Steel Construction
ANSI:	American National Standards Institute
ASA:	American Standards Association
ASTM:	American Society of Testing Materials
AWSC:	American Welding Society Code
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act
EPA:	Environmental Protection Agency
FS:	Federal Specification
NEC:	National Electrical Code
OSHA:	Occupational Safety and Health Administration
SPR:	Simplified Practice Recommendation
TAS:	Texas Accessibility Standards
UL:	Underwriters Laboratories, Inc.

§ 1.1.14 Bids or Bidding The terms "Bids" or "Bidding" shall include any kind of competitive purchasing under Texas state law.

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§ 1.1.15 Miscellaneous Other Words

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

As applied to everyone other than the Owner, "business day" is Monday through Friday, except for Holidays.

§ 1.1.15.2 Calendar Day
A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days. **All schedules must be in calendar days.**

§ 1.1.15.3 Holidays
Owner-approved holidays for Contractor's Work are limited to New Year's Day, Martin Luther King Day; Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving Day, and Christmas Day.

§ 1.1.15.4 Workday
Workdays are all calendar days except Holidays.

§ 1.1.15.5 Anticipated Weather Days
An allowance of regular Workdays, established as anticipated Workdays lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. Section 15.1.6.3 of this A201-2017, as amended, lists the required Anticipated Weather Days.

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

§ 1.1.16 Contract Sum
"Contract Sum" shall have the same meaning as in Article 4 of the A101 or Article 6 of the A133, as amended and applicable for the Project.

§ 1.1.17 Monthly Reports and Daily Logs
Contractor must record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. Additionally, the Contractor shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, Work accomplished, trades on site, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The Daily Logs must be completed using Owner's Project Management software, or absent software, other Owner approved form or medium. The Daily Logs and Monthly Reports shall be available to the Owner and Architect at any time during work hours, and shall be presented and discussed at regular progress meetings.

§ 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.

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

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless it shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of the Contractor's Proposal or Guaranteed Maximum Price Proposal, as applicable for the Project. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents. Additionally, Contractor must inform the Architect and the Owner, in writing, as soon as possible but in no event, no more than three (3) calendar days after Contractor first learns of a conflict.

§ 1.2.1.3 In the event of conflict, terms and conditions contained in the A101 or A133, as amended and applicable, shall take precedence over terms and conditions contained in the A201-2017 General Conditions, as amended, and the terms and conditions in the A201-2017 General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents except that subsequent documents modifying the Contract Documents such as Amendments, Modifications, Change Orders and Change Directives shall take priority over any conflicting provisions of prior Contract Documents once they are executed.

§ 1.2.1.3.1 The Construction Documents, including but not limited to the Project Manual, Drawings, Specifications, Plans and Addenda, must be construed as imposing requirements upon the Contractor that are in addition to the requirements set forth in AIA Contract Document Set (A101, A133, A201, Exhibits. A and B and any other AIA agreements signed by the parties). The Contractor must seek written clarification from both the Owner and Architect prior to taking any action or incurring any costs or performing any work when any requirement or provision of the Construction Documents (i) conflicts with any other requirement or provision; (ii) conflicts with any other requirement or provision of the AIA Contract Document Set; (iii) is ambiguous or confusing; or (iv) is unnecessarily duplicative. Additionally, Contractor must inform the Architect and the Owner, in writing, as soon as possible but in no event, no more than three (3) calendar days after Contractor first learns of a requirement or provision of the Construction Documents that (i) conflicts with any other requirement or provision; (ii) conflicts with any other requirement or provision of the Contract Documents; (iii) is ambiguous or confusing; or (iv) is unnecessarily duplicative.

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

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

§ 1.2.4 Relation of Specifications and Drawings
General Requirements in the Specifications govern the execution of all Specifications. Summary paragraphs present a brief indication of the Work, but do not limit the Work as later detailed. The Drawings and Specifications are correlative and have equal authority and priority. Should the Drawings and Specifications have internal inconsistencies, then the Contractor shall base the bids and construction on the more expensive combination of quality and quantity of work indicated. For purposes of construction, the Architect shall determine the appropriate Work, after the Contractor brings the inconsistency to the Architect's attention. Failure to report an inconsistency shall be evidence that Contractor has elected to proceed in the more expensive manner.

§ 1.2.5 Materials, Equipment and Processes
Exact location and arrangement of the various pieces of equipment specified shall be determined with the approval of the Architect after equipment has been selected and/or as the Work progresses. All equipment shall, insofar as possible, be installed in such a manner as it will not interfere with architectural or structural portions of the building.

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Should changes become necessary because of a failure of the Contractor to comply with the Contract Documents which results in equipment requiring more area then shown on the Contract Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and is not intended for the purpose of limiting competition; nonetheless, Owner's written approval, which shall not unreasonably be withheld, will be required for any deviations. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project. When more than one material, process, or brand is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made by the Owner from the range available within the option selected by the Contractor, unless the item is specified to match a specific color or sample furnished. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Contract Documents. The Architect shall review and respond to proposed substitutions within fifteen (15) days of receipt. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Contract Documents, equally compatible with the existing installations and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved by the Architect and Owner, however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

§ 1.2.6 Standards and Requirements

When the Contract Documents refer to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, then the current edition as of the effective date of the Agreement shall apply. It shall be the responsibility of the Architect to address revisions or amendments to applicable codes or standards which arise after the effective date of the Agreement and until Final Completion, pursuant to the terms of the Agreement between Owner and Architect. Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 1.3 Capitalization

Terms capitalized in these Contract Documents 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 Construction Documents

§ 1.5.1 All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Construction Documents. 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 any reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are granted a limited license to use and reproduce the Construction Documents provided to them, subject to any protocols established by the parties, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Construction Documents 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. All copies of the

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Construction Documents, except the Contractor's copy of the record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.

§ 1.5.3 All of Contractor's documentation and correspondence to Owner under the Agreement shall be the property of Owner, without restriction on its future use by Owner related to the Work associated with the Project.

§ 1.6 Notice

§ 1.6.1 Written notice shall be deemed to have been duly served if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the required individuals set forth in the next sentence, to the last business address known to the party giving notice. Notice's must be served on the (i) Owner's Designated Representative, with a copy to the Owner's Authorized Representative; (ii) Contractor's representative or person who signed any portion of the Contract Documents; and (iv) when applicable, Architect's Designated Representative.

§ 1.6.2 Intentionally Omitted**.**

§ 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 may 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 shall be done pursuant to an agreement as to protocols governing the use of, and reliance on, the information contained in the model, which may be done using those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, as amended, the AIA Document G202™–2013, Project Building Information Modeling Protocol Form, as amended and/or other Owner approved forms.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is a junior college district identified in the Contract Documents. Neither Architect nor Contractor may rely upon the direction of any employee, contractor, representative or agent of Owner who has not been designated in writing by the Board of Trustees or in the Contract Documents as the Designated Representative or the Authorized Representative; moreover, Owner must not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

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

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

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

§ 2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of

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same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents.

§ 2.2 Owner's Financial Arrangements

§ 2.2.1 The Owner, being a public body under the laws of the State of Texas, must have adequate funds and/or financing as provided by law prior to award and execution of the Contract Documents.

§ 2.2.2 Intentionally Omitted.

§ **2.2.3** Intentionally Omitted.

§ **2.2.4** Intentionally Omitted.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Permits and fees required for the Project and/or the completion of the Work are the responsibility of the Contractor. Owner will cooperate with Contractor to obtain the issuance of the necessary permits and approvals, required for the Project and/or the completion of the Work .

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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a successor architect has been employed by Owner.

§ 2.3.4 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Other than the metes and bounds noted in the legal description of the site, the Contractor shall not 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 after receiving the Contractor's written request for such information or services. Absent such timely notification and reasonable opportunity to cure, any Claim based upon lack of such information or services shall be waived.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor at least one copy of the Construction Documents, as provided for in the Project Manual, for purposes of making reproductions.

§ 2.3.7 Owner's personnel may, but are not required to, be present at the construction site during progress of the Work, to observe, to assist the Architect in the performance of their duties, and/or to verify Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and/or the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment. Notwithstanding anything to the contrary, and except as otherwise permitted under this Agreement, Owner's personnel may not unreasonably hinder the progress of the Work. The Owner's Authorized or Designated Representative(s) have the legal right to stop the Work.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to commence work, correct defective Work, fails to correct Work that is not in accordance with the requirements of the Contract Documents or Construction Documents, 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. Owner may also stop work (temporarily or permanently) for its convenience.

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§ 2.5 Owner's Right to Carry Out the Work
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect shall withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and other consultants additional services, if any, made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, then the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR
§ 3.1 General
§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The 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 and includes the "Construction Manager" or the "Construction Manager at Risk", if applicable.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and approved submittals.

§ 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, activities of the Owner (or Owner's Program Manager, if applicable), or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 Quality Control Program. Contractor must develop, submit, and implement a comprehensive Quality Control Plan ("QCP") covering all services performed during the Preconstruction Phase and Construction Phase, as the case may be. The QCP shall ensure that all work complies with the Contract Documents (including Construction Documents), applicable codes, industry standards, and the requirements of the Architect and Owner. Failure to implement or maintain the QCP constitutes a material breach.

§ 3.1.4.1 No later than ten (10) days following execution of this Agreement and prior to the issuance of the Notice to Proceed for Preconstruction and/or Construction Services, if not already provided, Contractor must submit a QCP for Owner's review, comment, and approval. The QCP must be in effect prior to the commencement of Work and shall remain in effect until Final Completion.. The QCP shall be updated throughout the Project. The QCP shall: (1) contain a chart showing the chain of command for quality, including the relationship between the Quality Manager, Project Manager, Superintendent, and subcontractors; (2) define who is responsible for inspecting, testing, approving, and documenting each phase of work; and (3) provide for procedures for auditing and ensuring subcontractors and suppliers follow the QCP.

§ 3.1.4.2 Prior to Construction, the Contractor shall implement a QCP, which at a minimum is designed to perform continuous constructability reviews of the design at each design milestone to:(i) assess design completeness and clarity; (ii) identify inconsistencies, conflicts, and coordination issues; (iii) recommend improving durability, quality, and performance; (iv) review material selections and installation methods; and (v) verify compliance with Construction Documents. Contractor shall provide a monthly written report to show completion of each review and to track the resolution of all comments in a log on ProjectMates.

§ 3.1.4.2 During Construction, the QCP must, at a minimum, implement a systematic inspection and testing program that provides for (1) the review of contract and code requirements, submittals, and site conditions before a new component of Work begins; (2) the inspection of the first representative portion of a new work task or component of Work to establish acceptable standards; (3) daily, ongoing checks to ensure continued compliance with the established standards, and applicable code and contract requirements; (4) a comprehensive matrix identifying all required inspections, tests, responsible parties, and acceptance criteria; (5) a breakdown of the Project into specific, manageable, and inspectable components; and (6) the coordination with Owner and Architect for their inspections, commissioning, or Work, as the case may be. The QCP must provide for documentation and reporting, to include at a minimum: (1) daily logs documenting inspections, tests, deficiencies found, and corrective actions taken entered

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into a Quality Control Log on ProjectMates, which is produced monthly with Pay Applications; (2) procedures for tracking, reviewing, and approving shop drawings and material certifications to ensure compliance before procurement; (3) a formal process for identifying, documenting, and tracking the correction of faulty work (the Non-conforming Work Log) on ProjectMates, which is produced monthly with Pay Applications; and (4) procedures for inspecting materials upon delivery to ensure they match approved submittals.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor represents and warrants by submission of Contractor's Proposal or Guaranteed Maximum Price Proposal that it has carefully examined the Contract Documents, including: the soil test reports, drainage studies, geotechnical or other reports provided by the Owner or Architect; and the site of the Work. Based on Contractors own examination and investigations, it has satisfied himself as to the nature and location of the Work, the site of the Work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, generally prevailing climatic conditions, anticipated labor supply and costs, and all other materials which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once (no more than three (3) calendar days), notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner's Scope of the Work. The Contractor shall not be entitled to any additional time or compensation for Contractor's failure to visit the site, or for any additional Work caused by the Contractor's fault, by improper construction, or by Contractor's failure to examine the site of the Work or to carefully study and compare the Contract Documents prior to execution of the Work. The Owner assumes no responsibility for providing a safe place for the performance of the Work or for the reports provided herein for the site or Project.

§ 3.2.1.1 Contractor must also carefully study and compare Contract Documents with existing conditions at Project site and shall at once (no more than three (3) calendar days) report in writing to Owner any error, inconsistency or omission it may discover or any materials, systems, procedures, or methods of construction, either shown on Contract Drawings or specified, which it feels are incorrect, inadequate, obsolete, or unsuitable for purpose intended, or which it would not be satisfied to warranty as specified. Contractor shall not proceed with any work in such areas until written instructions are received from Owner or Architect.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor must, 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, shall take field measurements of any existing conditions related to that portion of the Work, and must observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; the Contractor shall promptly (no more than three (3) calendar days) report to the Architect and Owner any errors, inconsistencies or omissions or any variance from applicable laws, statutes, ordinances, building laws, rules, regulations or any lawful orders of any governmental body, or public or quasi-public authority discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner 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. Contractor shall not perform any Work involving an error, inconsistency, variance, or omission without further instructions to Contractor or revised Construction Documents from the Architect.

§ 3.2.3 Neither the Owner nor the Contractor is 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 (no more than three (3) calendar days) to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a written request for information in such form as the Architect or Owner may require.

§ 3.2.3.1 The Construction Manager or Contractor is not responsible for the consequences of design defects in and does not warranty the adequacy, sufficiency, or suitability of plans, specifications, or other design documents provided to the Construction Manager or Contractor by a person other than the Construction Manager's or Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier. However, the Construction

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Manager or Contractor must, within a reasonable time (no more than three (3) calendar days) of learning of a defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications, or other design documents, disclose in writing to the Owner and Architect the existence of any known defect in the plans, specifications, or other design documents that is discovered by the Construction Manager or Contractor. The Construction Manager or Contractor shall use ordinary diligence in reviewing the Contract Documents, including the Construction Documents before commencing construction. Ordinary diligence means the observations of the plans, specifications, or other design documents or the improvement to real property that a Construction Manager or Contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work in this Agreement and under normal circumstances. Ordinary diligence does not require that the Construction Manager or Contractor engage a person licensed or registered under Title 6, Occupations Code, or any other person with specialized skills. A disclosure under this subsection is made in the Construction Manager's or Contractor's capacity as a Construction Manager or Contractor and not as a licensed professional under Title 6, Occupations Code. A Construction Manager or Contractor who fails to timely disclose a defect as required shall be liable for the consequences of defects that result from the failure to disclose. Except as provided by Section 59.052, of the Texas Business and Commerce Code, the preceding portion of this paragraph does not apply to the portion of a contract, if any, between an Owner and a Construction Manager or Contractor under which the a Construction Manager or Contractor agrees to provide input and guidance on plans, specifications, or other design documents to the extent that: (1) the a Construction Managers' or Contractor's input and guidance are provided as the signed and sealed work product of a person licensed or registered under Title 6, Occupations Code; and (2) the work product is incorporated into the plans, specifications, or other design documents used in construction of this project.

§ 3.2.4 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 its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly (no more than three (3) calendar days) notify the Architect and Owner in writing, providing substantiation for its position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. 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, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1 through 3.2.4 of the A201, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. Contractor must take field measurements, verify field conditions, and must carefully compare them to the Construction Documents. Contractor shall not be entitled to additional time or compensation for additional Work caused by Contractor's failure to carefully study and compare the Construction Documents, take field measurements, or verify field conditions prior to the execution of the Work.

§ 3.2.5 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage which should have been discovered by (i) calling 811 or (ii) reviewing the construction documents or other documents provided by owner or architect; (iii) or the exercise of reasonable diligence. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and before performing any portion of the Work, Contractor shall review the appropriate AHERA and hazardous materials surveys for the particular property involved in the Project and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor must perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor must fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing, or painting work in buildings built prior to 1978 involving lead-based paint.

§ 3.2.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided

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information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the Architect or its Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure.

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

.1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;

.2 Generally prevailing climatic conditions;

.3 Anticipated labor supply and costs;

.4 Availability and cost of materials, tools and equipment; and

.5 Other similar issues.

§ 3.2.8 Contractor shall be deemed to have satisfied itself as to the design contained in and reflected by the Contract and Construction Documents. In particular, but without prejudice to the generality of the foregoing, Contractor will review the Contract and Construction Documents to establish that to its knowledge:

§ 3.2.8.1 There are no obvious or patent ambiguities, inaccuracies or inconsistencies within or between the documents forming the Agreement that Contractor has failed to recognize and report in writing to the Owner; and

§ 3.2.8.2 Contractor can work with the aforementioned design so as to complete the Work and of each and every part thereof such that the Work and each and every part thereof will jointly and severally be in all respects in accordance with the express requirements of the Contract Documents, including any performance specifications expressly stated therein.

§ 3.2.9 Structural and Environmental Tests, Surveys and Reports.
The Owner may furnish information, surveys, tests, inspections, reports or services. Unless provided by the Architect by agreement with the Owner, the Owner, when such services are reasonably required by the scope of the Work and are requested by the Architect or Contractor and approved in writing by the Owner, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner may also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. All documents provided under this section or elsewhere in the Contract Documents by Owner shall be provided for information only and are not warranted or represented to show the conditions at the Project site accurately. Contractor may use the information at its own risk and shall use customary precautions relating to the performance of the Work.

§ 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.

§ 3.3.2 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using

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tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and employees. All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. The Contractor shall further ensure that no on-site fraternization shall occur between personnel under the Contractor's and Subcontractor's direct or indirect supervision and Owner's students or employees and the general public. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal of the offending employee from all construction on any of Owner's property. Repeated removal of Contractor's or Contractor's subcontractor's forces, or one serious infraction, shall constitute a substantial breach of the Agreement justifying the immediate termination by Owner.

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

§ 3.3.5 Intentionally Omitted.

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

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

§ 3.3.8 Pursuant to Texas Labor Code Sec. 214.008, the Contractor and any subcontractor on the Project shall properly classify, as an employee or an independent contractor, in accordance with Texas Labor Code Chapter 201,

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any individual the Contractor or subcontractor directly retains and compensates for services performed in connection with this Agreement. Any Contractor or subcontractor who fails to properly classify such an individual may be subject to the penalties of Texas Labor Code Sec. 214.008(c).

§ 3.4 Labor and Materials

§ 3.4.1 These Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code § 2269.054. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient works and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract documents, the Contractor shall provide and pay for 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. Before ordering any material or doing any Work, Contractor must verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any inconsistency shall be brought to the attention of the Architect and Owner. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor.

§ 3.4.2 Substitutions. Except in the case of minor changes in the Work approved by the Architect in accordance with the Contract Documents, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. All materials and equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and new. If required by the Architect or Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment.

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

§ 3.4.2.2 The Contractor must submit to the Architect and Owner: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in writing to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

§ 3.4.2.3 Whether or not the Architect accepts any proposed substitution, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitution that is not presented as required by the Contract Documents.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. **THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR**

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CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance."

§ 3.4.4. Including, but not limited to, the specific requirements of Article 10, Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct its work so as to protect the Contractor from the consequences of its own conduct.

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

§ 3.4.6 All materials shall be shipped, stored, and handled in a manner that will protect and ensure their condition at the time of incorporation in the Work. After installation, they shall be properly protected against damage to ensure their being in the condition as required by the Contract Documents when the Work is completed and accepted by the Owner.

§ 3.4.7 Contractor shall procure and furnish to the Owner all guarantees, warranties, spare parts, and maintenance manuals that are called for by the specifications or that are normally provided by a manufacturer. As part of any commissioning process of the equipment called to be furnished by the Contract Documents, the Contractor shall arrange to have adequate training of the Owner's personnel in the operation and maintenance of the equipment. The maintenance manual shall include a catalog and price list for any equipment, materials, supplies, or parts used in the inspection, calibration, maintenance, or repair of the equipment. Items in the catalog shall be readily available for purchase.

§ 3.4.6 CRIMINAL HISTORY CHECKS

§ 3.4.6.1 Contractor shall obtain all criminal history information required by Texas Education Code Chapter 22 regarding its "covered employees", as defined below. If Contractor is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Contractor will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Contractor will provide written certification to the District that Contractor has complied with the statutory requirements as of that date. Upon request by Owner, Contractor will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history record information on the covered employees. Contractor shall assume all expenses associated with obtaining criminal history record information.

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

§ 3.4.6.3 For the purposes of this Section, "covered employees" means employees, agents or applicants of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator

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certification under Texas Education Code Section 21.060 and 19 Texas Administrative Code § 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5 Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure chapter 62; or an equivalent offense under federal law or the laws of another state.

§ 3.4.6.4 Subcontractors or any subcontractor entity, as defined by Texas Education Code § 22.08341(a)(3), shall be required by the terms of their contract with Contractor or any other contracting entity (as defined in Texas Education Code §22.08341(a)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certifications to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

§ 3.4.6.5 On request of Owner, Contractor shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Contractor and all subcontractors. Contractor shall update this list on Owner's request.

§ 3.4.7 In addition, Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or applicant of the Contractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at another location where students are likely to be present. Contractor shall assume all expenses associated with the background checks and shall immediately remove any employee, agent or subcontractor who was convicted of a felony or a misdemeanor involving moral turpitude from Owner's property, or other location where students are likely to be present. Owner shall determine what constitutes "moral turpitude" or a "location where students are likely to be present.

§ 3.4.8 PREVAILING WAGE RATES

§ 3.4.8.1 The Contractor and Contractor's Subcontractors shall cause all persons performing work on the Project to be properly classified by reference to, and be paid fully in compliance with, Chapter 2258 of the Texas Government Code, as that Chapter may be amended or recodified from time to time, and the wage and hour payment and payroll reporting requirements of the federal Davis Bacon and Related Acts, as those Acts may be amended or recodified from time to time (DBRA), adopted by Alamo Colleges to comply with Chapter 2258 according to the Davis-Bacon Wage Rate Determinations published at the website of the federal Department of Labor applicable to this Agreement ("Applicable State Requirements"). Any agreement involving any use of federal funds within the meaning of DBRA would require the Contractor and Contractor's Subcontractors to fully comply with (i) all DBRA requirements, which exceed those required by Alamo Colleges' DBRA requirements adopted for compliance with Chapter 2258 by, without limitation, requiring the posting of federally required notices at the jobsite ("Notice Requirements"), and (ii) the Copeland "Anti-Kickback" Act (collectively, "Applicable Federal Requirements"). Contractor and Contractor's Subcontractors shall apply BOTH the Applicable Federal Requirements and the Applicable State Requirements in the performance of this Agreement, without regard for whether or not the Applicable Federal Requirements would otherwise apply to the Work. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Texas Government Code Section 2258.001 *et seq*.

§ 3.4.8.1.1 The wage rates listed in **Attachment A to Exhibit A** attached hereto or contained in the Contract Documents have been ascertained and determined by the Owner as the Davis-Bacon Wage Rate Determinations published at the website of the federal Department of Labor applicable to this Agreement for the classifications listed. The value of prevailing fringe benefits must be included in the total compensation wage rate. The Contractor and each subcontractor shall compensate all laborers, workmen and mechanics employed by them in the execution of this contract not less than such rates for each craft or type or workman or mechanic needed to execute the contract. In the event the prescribed wages are not in compliance with BOTH the Applicable Federal Requirements and the Applicable State Requirements, then both such requirements shall prevail. In the event a conflict exists for the same classification between two different wage determinations, the Contractor and each subcontractor must pay compensation at the higher rate. This determination of prevailing wages shall not be construed to prohibit the payment of more than the rates listed. Nothing contained in this paragraph shall create any claim or cause of actions by such laborer, workman or mechanic against the District for wages payable by the Contractor or any subcontractor.

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§ 3.4.8.1.2 Without limitation, Contractor shall at least weekly send a reliable representative to the Project job site to digitally photograph with imprinted date and time notation, and promptly send a duplicate thereof to the Owner's Authorized Representative or their designee, the required notice statement set forth in **Exhibit 1.1**, which shall be in the substantial same form as provided below, as evidence of compliance, by posting, with the Notice Requirements.

EXHIBIT 1.1
ACCD WAGE RATE DETERMINATION AND NOTICE

In its resolution of December 17, 2013, the Board of Trustees of the Alamo Community College District (ACCD) adopted the following prevailing Davis Bacon Wage Rates which shall become part of this contract and full compliance with such shall be required.

The Alamo Community College District (or "Owner") is the contracting agency for this construction project. The following statute requires the contracting agency to specify the generally prevailing rates of wages in contracts that are proposal:

Texas Government Code 2258.021 et seq. "Duty of Governmental Entity to Pay Prevailing Wage Rates"

Pursuant to the requirements of this statute, it has been determined that the following rates of wages are paid to various classifications of workers in the locality of this project.

Accordingly, the prevailing wage determination for Building Construction Trades shall be paid to all workers for work located INSIDE a boundary line placed five feet beyond the drip line of building structures, and the prevailing wage determination for Heavy Highway Trades shall be paid to all workers for work located OUTSIDE a boundary line placed five feet beyond the drip line of building structures. In the event a conflict exists for the same classification between two different wage determinations, the Contractor and each subcontractor must pay compensation at the higher rate. A copy of the applicable wage rate schedule for this project (one or both) is attached to this Exhibit.

Wage rates are the minimum total hourly compensation that must be paid by the Contractor and Subcontractor(s). The value of prevailing fringe benefits must be included in the total compensation wage rate. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "Laborer". All hours of work over 40 hours per week are overtime and will be compensated at the rate of 1 and 1/2 times the regular wage.

Apprentices/trainees/helpers, where not otherwise specified, may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but a rate neither less than 60% of the journeyman's wage nor less than the "Laborer" rate. At no time shall a journeyman supervise more than two of apprentices, trainees or helpers. All apprentices/trainees/helpers shall be under the direct supervision of a journeyman. The terms journeyman and apprentice apply to both union and independent workers, and are not intended to imply that these positions are union workers only.

The Contractor is required to post copies of this wage rate schedule in a prominent, easily accessible place at the work site. If a worker determines that wages paid are not in compliance with wage rates required for the appropriate classification, he or she should report the discrepancy to the Ethics Hotline, phone 1-866-294-3696, http://www.ethicspoint.com.

Additionally, the following statement shall be posted beside the wage determination schedule in English and Spanish:

"All complaints of violations by your employer in not paying the posted wage rates for the type of work you do should be reported to the Ethics Hotline, phone 1-866-294-3696, http://www.ethicspoint.com. No employee who files a complaint concerning underpayment of wages shall be discharged or in other manner be discriminated against by the Contractor for filing a complaint."

ANNUNCIO PARA EMPLEADOS DE CONTRATISTAS

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"Toda queja de injusticias cometidas por el contratista por no pagar el sueldo establecido sugun el tipo de trabajo que Ud. haga, se debe reportar a Ethics Hotline, phone 1-866-294-3696, http://www.ethicspoint.com.

Ningun empleado que registre quejas referentes a irregularidades en su sueldo sera discriminado o despedido por el contratista/jefe por registrar la queja."

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

§ 3.4.8.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors. The Contractor shall keep or cause to be kept, and shall cause each of its Subcontractors to keep or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed in connection with the Project, and showing also the actual per diem wages paid to each of such workers, which records shall be open at all reasonable hours to the inspection of the Owner, its officers or agents. The Contractor and Contractor's Subcontractors shall each be provided access to Alamo Colleges' LCP Tracker Wage and Hour Compliance Software for submission of the reports. A representative of the Contractor and each of the Contractor's Subcontractors shall be trained in use of the LCP Tracker Software and submission of the reports.

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

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

§ 3.4.8.6 ANTI-KICKBACK PROVISIONS. No person employed in the construction, renovation or repair of any Owner project shall be induced, by any means, to give up to any Contractor, subcontractor, public official, or any other employee of the Owner part of the compensation to which it is otherwise entitled. No employee of the Owner, or the Architect/Engineer who is authorized on behalf of the Owner to negotiate, make, accept, or approve or participate in negotiating any architectural, engineering, insurance, inspection, contract, subcontract, change order, or material supply, purchase order/subcontract shall have any interest whatsoever or receive any compensation in connection with the aforementioned duties.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear and normal usage but such exclusions shall only apply after Owner has taken occupancy of the damaged or defective portion of the Project. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work within the Project, and each such individual warranty shall run from the Work's Substantial Completion date (unless otherwise expressly provided in the applicable Contract Documents for that particular

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Work). Contractor's express warranty is in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner. This warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if a latent defect, within one (1) year after discovery thereof by Owner, except when a longer warranty time is specifically called by in the Contract Documents or provided by law. The warranties set out in this Subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner.

§ 3.5.2 Contractor shall certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents. Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code Section 61.1036.

§ 3.5.3 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to Final or Substantial Completion, as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor must promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice by beginning corrective work and continuing through completion within seven (7) days of Contractor's receipt of the written notice, then the Owner may take measures to correct the Work and Contractor will be obligated to reimburse Owner's costs. Immediately upon completion of corrective work of a warranty item, the Contractor will be required to secure Owner's acceptance in writing. Failure to get Owner's acceptance will jeopardize acknowledgement of repair work performed by the Contractor or its subcontractor(s). The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of:

.1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or

.2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or

.3 such further reasonable proof as is required by the Architect and Owner.

§ 3.5.5 The Contractor agrees to issue in the name of the owner or assign to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion for any and all material, equipment, fixtures and furniture (if supplied or installed by Contractor or its subcontractors), other special warranties, and manufacturers' warranties relating to materials and labor used in the Work. Contractor further agrees to perform the Work in such manner so as to preserve any and all manufacturers' warranties. All forms will be required to be submitted prior to Final Completion and Final Payment.

§ 3.5.6 The warranties of Contractor shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work and all such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

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§ 3.5.7 Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect, prior to Final Completion and Final Payment. At least one hundred and eighty (180) days and thirty (30) days prior to termination of the warranty period, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any warranty items which are observed or reported during the warranty period. Contractor shall prosecute such warranty work within seven (7) calendar days of Contractor's receipt of the written notice and continue without interruption until accepted by Owner and Architect, even though such work should extend beyond the warranty. If Contractor fails to provide the schedules to Owner and Architect or timely conduct the reinspection, Contractor's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.

§ 3.5.8 Prior to receipt of Final Payment, Contractor shall:

.1 Obtain duplicate original warranties, executed by all subcontractors, making the dates of beginning of the warranties the Date of Substantial Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties the Date of Substantial Completion;

.2 Verify that the documents are in proper form and contain full information;

.3 Co-sign warranties when required;

.4 Bind all warranties in commercial quality 8½ by 11 inch three-ring binder, with hardback, cleanable, plastic covers;

.5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;

.6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;

.7 Separate each warranty with index tab sheets keyed to the Table of Contents listing;

.8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner; and

.9 issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of Section 3.5 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

§ 3.5.9 Contractor agrees to provide notice of the warranty expiration date to Owner and Architect at least one month prior to the expiration of the warranty. Owner will notify Contractor of deficiencies and Contractor shall commence and continue through completion to remedy these defects within seven (7) days of initial notification from Owner. Contractor shall prosecute the work without interruption until such defect is corrected to Owner's reasonable satisfaction, even though such prosecution should extend beyond the limit of the warranty period.

§ 3.5.10 Warranties shall become effective on a date established by the Owner and Architect in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work unless otherwise agreed or installed thereafter. All warranties shall include labor and materials and shall be signed by the Manufacturer or Subcontractor as case may be and countersigned by the Contractor.

§ 3.5.11 Neither the final payment nor any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents nor relieve Contractor or its sureties of liability with

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respect to any warranties or responsibility for faulty materials and workmanship. Contractor guarantees that the Work will conform to the Contract Documents.

§ 3.5.12 In addition, the Contractor warrants to the Owner for a period of twelve (12) months after the Date of Final Completion that the Project shall at every point and in every area be constructed as expressly shown in the Contract Documents to be necessary to achieve a watertight and leak proof condition. Contractor, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and do any work necessary to make the Project watertight. Contractor also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration and return the Project to original condition. The costs of such determination and repair shall be borne by Contractor only to the extent that the leak(s) are attributable to faulty workmanship or unauthorized or defective materials.

§ 3.5.13 The provisions of Section 3.5 in its entirety shall survive the completion, termination or expiration of this Contract.

§ 3.5.14 Extension of Warranty. If the Contractor does not reach final completion within 30 days of Substantial Completion, the warranties provided in Section 3.5 of the A201, as amended are automatically extended by a day for each day the Contractor fails to reach Final Completion within 30 days of Substantial Completion.

§ 3.6 Taxes

Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. **CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.**

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 After Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation and other governmental entities with jurisdiction over the Project, Architect and Contractor shall coordinate to make and submit the applications for the building permit. The Contractor must pay the body with jurisdiction over the Project directly for the building permit, trade permits, and all other development "impact" fees, if any, required for the Project and/or the completion of the Work. The Contractor shall continue to be responsible for payment of other permits, governmental fees, licenses, and inspections necessary for proper execution of the Contract and which are legally required. Such fees and expenses shall only be reimbursable or paid to the Contractor without markup.

§ 3.7.1.1 The Contractor shall pay directly to the governing authority the cost of all permanent property utility assessments and similar connection charges. Such assessments and similar connection charges shall only be reimbursable or paid to the Contractor without markup.

§ 3.7.1.2 The Contractor shall directly pay all temporary utility charges, tap charges, and water meter charges. Such temporary utility charges, tap charges, and water meter charges shall only be reimbursed or paid without markup. After consultation with the Owner, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Also, after consultation with the Owner, the Contractor shall obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor's

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obligations under this Section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable items shall not include any fines or penalties assessed against the Contractor, Contractor's subcontractors, the Project, or the Owner.

§ 3.7.1.3 Notwithstanding anything to the contrary in other paragraphs of the Contract Documents Owner will not reimburse or pay the Contractor with any markup (fee, overhead, or profit), for the payment of governmental fees, building or trade permits and inspection fees, impact fees, utility fees and charges, as well as other reasonable and necessary fees and charges assessed by governmental entities for customary construction and related activities. And in no event, will the Owner pay for: the fees related to Contractor's failure to comply with the Contract Documents, federal law, state law, local law or manufacturer's instructions; re-inspection fees and charges for failed or missed inspections; fines, assessments, penalties or charges related to some form of violation; correction of Contractor's work; or damage caused by Contractor to utilities or other property owned or controlled by a governmental entity. In the event other governmental fees are incurred or proposed by Contractor, which are not covered in this paragraph, Owner may reimburse or pay Contractor without any markup, if approved in writing in the sole discretion of the Owner's Authorized or Designated Representative; otherwise, Contractor shall bear the 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. In addition, Contractor shall authorize posting of any notices required of Owner pursuant to Texas Business and Commerce Code, Section 16.0001, or concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work and/or completion of the Project.

§ 3.7.3 If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents 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 (collectively, "Extraordinary Conditions"), the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than two (2) work days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. Contractor's claims under this Section 3.7.4 are limited to Claims for Additional Time and/or increases to the Contract Sum, provided they are made in compliance with this Section and Article 15 of these General Conditions. As part of such claim, the Architect will promptly investigate such Extraordinary Conditions and report findings and a recommended resolution in writing to Owner and Contractor, which is limited to an extension of the Contract Time and/or increases to the Contract Sum.

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

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reports are furnished or made available by Owner to Contractor are for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all work associated with or attributable to Subsurface Conditions, and Contractor shall be limited to submit a claim for an extension of the Contract Time due to the existence of Subsurface Conditions provided they are made in compliance with this Section and Article 15 of these General Conditions.

§ 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 in writing. 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. Contractor's claims under this Section 3.7.5 are limited to Claims for Additional Time, provided they are made in compliance with this Section and Article 15 of these General Conditions. As part of such claim, the Architect will promptly investigate such conditions and report findings and a recommended resolution in writing to Owner and Contractor, which is limited to an extension of the Contract Time.

§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of services to the Project. The Contractor shall inform the Architect and Owner at once when the Owner's participation is required. Connections for temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion. Any reimbursement for such costs shall be without markup.

§ 3.7.7 Notice to Deenergize. If the Contractor anticipates the need to deenergize a building or portion thereof and Owner agrees to deenergize, at a transformer or building level only, the Contractor must identify the date and time of deenergizing in the Project Schedule issued with the Guaranteed Maximum Price Amendment and coordinate the date to deenergize with Owner at least ten (10) Business Days prior to the date requested. Contractor must make their request in advance using Owner's Form.

§ 3.8 Allowances, if Applicable.

§ 3.8.1 The Contractor may include in the Contract Sum all allowances stated in the Construction Documents and as provided by the Architect. Allowances shall be included in the Contract Sum and as a separate line item under each of the applicable CSI 50 division of construction information.

§ 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, 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, (i) any savings shall accrue to Owner's Contingency; and (ii) any shortfall must be funded by Contractor.

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

§ 3.8.4 Prior to beginning and incurring any Allowance cost, Owner must approve use of Allowance in writing. Additionally, upon the written request of the Owner's Authorized or Designated Representative, the Contractor must provide Owner with the information it requests in order to evaluate the potential use of an allowance. Failure to provide the information requested by the Owner may result in a reallocation or termination of an Allowance. All unused Allowances shall accrue to the Owner.

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§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. In addition, the Contractor may employ a project manager and necessary assistants who may supervise several Project sites. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be similarly confirmed in writing. Other communications shall be similarly confirmed on written request in each case. Questions about plan interpretation or directions shall be submitted to the Architect in the form of a written request for information and the Architect shall respond to such request for information in a reasonable and timely fashion. Contractor's selection of project manager or superintendent(s) shall be approved by Owner, and Contractor shall not replace the project manager or superintendent(s) without Owner's consent or until a replacement project manager or superintendent(s) has been selected in accordance with this Section. The Owner may reject or require removal of any job superintendent, project manager or employee of the Contractor, Subcontractor or Sub-Subcontractor involved in the Project. Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-Subcontractors and their employees.

§ 3.9.2 Intentionally Omitted.

§ 3.9.3 Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site during performance of the Work, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion. Contractor shall provide adequate supervision at the job site at all times and the Architect or Owner may but shall not be obligated to determine adequacy of supervision.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal (i) to the superintendent's daily rate shall be deducted from the amount owed to the Contractor or (ii) $500.00, if there are no superintendent costs included in the Contract Documents. The Owner reserves the right to utilize one or more of its experienced employees to function in the capacity of Owner's inspector, whose primary function may include daily inspections, observations, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, if not previously provided, no later than ten (10) days after the issuance of each Notice to Proceed (preconstruction or construction), shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, in compliance with this Section 3.10 and the other Contract Documents. Unless otherwise indicated in the Contract Documents, the Work Project Schedule shall be prepared by Contractor in-house, using a critical path schedule, as approved by Owner. At a minimum, this schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, commissioning, inspections, substantial completion, final completion, coordination of Owner and its Separate Contractors / Contractor / other third party activities required for substantial completion (i.e., testing and balancing, commissioning, and other specialties applicable for the Project), and acceptance of all the Work ("Milestone Dates") and shall include a schedule of values (the "Schedule of Values") allocating the entire Contract Sum to the various portions of the Work using the Construction Specifications Institute 50 Division Master-Format for each portion of the Work and prepared in such form and supported by such data to substantiate its accuracy, as the Owner may require. Owner may request the inclusion of other Milestone Dates required for substantial or final completion. Once the Milestone Dates and Schedule of Values are approved, they may not be amended or modified without Owner's prior written consent. The schedule shall not exceed the time limits set forth in the Contract Documents, as amended. Contractor shall organize the Work Project Schedule and provide adequate detail, so the schedule is capable of: (i) measuring and forecasting the effect of delaying events on completed and uncompleted activities; and (ii) showing the relationship between each

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task. The Contractor must include Owner's Float (measured from the date of the Notice to Proceed for Construction to Substantial Completion), show the Milestone Dates and show the relationships between tasks. The total Owner Float indicated on the Master Project Schedule shall be no less than 10% of the total Construction Phase duration (NTP to Substantial Completion and shown in calendar days).When acceptable to the Owner, the accepted Work Project Schedule and Schedule of Values shall be the baseline schedule for comparison to actual conditions throughout the duration of the Agreement. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project with the Owner's prior written consent. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval. **The schedule must be updated at least monthly beginning at the time of Contract execution and continuing through final payment and completion.**

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall prepare and submit a submittal schedule for the Architect's written approval, which must be promptly provided to the Owner. 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 an Architect approved submittal schedule, or fails to provide submittals in accordance with the Architect 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 For any contract in excess of $1,500,000, the Contractor must maintain a cost loaded schedule from NTP throughout the duration of the Project, which shall be included in the Contract Sum. If a cost loaded schedule is required, it must show earned value; forecast for cost outlay, forecast of cash flow income from Owner; and other information requested by Owner.

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's Project Schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the Project Schedule showing all progress, modifications required and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date.

§ 3.10.5 The Project Schedule is for Contractor's use in managing the Work and submittal of the Project Schedule, and successive updates or revisions, is for the information of the Owner and to demonstrate that Contractor has complied with requirements for planning the Work. The Owner's written acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule. Moreover:

.1 Acceptance of the Project Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.

.2 Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute the Owner's consent, alter the terms of the Agreement, or waive either Contractor's responsibility for timely completion or the Owner's right to damages for Contractor's failure to do so.

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.3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Agreement. Change Orders are the only method of modifying the final or substantial completion date(s) and Contract Time.

§ 3.10.6 Submittal of a Project Schedule, schedule revision or schedule update constitutes Contractor's representation to the Owner of the accurate depiction of all progress to date and that Contractor will follow the schedule as submitted in performing the Work. Moreover, submission of any schedule under this Agreement constitutes a representation by Contractor that it is Contractor's good faith belief that: (1) the schedule represents the sequence in which Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and duration used to prosecute the completed Work during the period for which the updated schedule is submitted; (3) that to the best of its knowledge and belief Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that Contractor intends to complete the remaining work in the sequence and time indicated.

§ 3.10.7 Contractor is accountable for completing the Work in the time stated in the Agreement, or as otherwise amended.

.1 If, in the judgment of the Owner, the Work is behind schedule and the rate of placement of Work is inadequate to regain scheduled progress to ensure timely completion of the entire Work or a separable portion thereof, Contractor, when so informed by the Owner, shall immediately take action to increase the rate of Work placement by: increasing working forces; increasing equipment or tools; increasing hours of work or number of shifts; expediting delivery of materials; or taking other action proposed if acceptable to Owner.

.2 Within ten (10) calendar days after such notice from the Owner, Contractor shall notify the Owner in writing of the specific measures taken and/or planned to increase the rate of progress and include an estimate as to the date of scheduled progress recovery and an updated Project Schedule illustrating Contractor's plan for achieving timely completion of the Project.

.3 Should the Owner provide Contractor written notice with particularity the reasons why Owner considers the plan of action inadequate and providing with such notice copies of any relevant documents that support the Owner's determination, the Owner shall have the right, to be exercised in good faith, to order Contractor to take feasible corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and shall be performed at Contractor's sole cost.

.4 The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring Contractor's compliance with the construction schedule and/or Contract Time. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner.

.5 The Owner may exercise the rights furnished the Owner under or pursuant to this Section as frequently as the Owner deems necessary to ensure that Contractor's performance of the Work will comply with any Milestone Date or completion date(s) set forth in the Contract Documents.

§ 3.10.8 If reasonably required by Owner, Contractor shall also prepare and furnish project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof. Contractor shall recommend to the Owner and to the Architect/Engineer a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the completion date(s).

§ 3.10.9 Unless waived in writing by the Owner, Contractor must submit its monthly Project Schedule in an electronic format and paper format using the Primavera P6 Project Planning software. The Owner has no duty to make progress payments unless the Contractor submits the monthly updated Project Schedule in both an electronic format (XER) and paper format.

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§ 3.11 Documents and Samples at the Site
The Contractor shall maintain and make available at all times, at the Project site, the Construction Documents, including Change Orders, Construction Change Directives, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner at all times, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 In addition to any other requirement in the Contract Documents and prior to installation, Contractor shall furnish or cause a subcontractor to furnish, for the Owner's and Architect's written approval, a physical sample of each specified item, product, fixture, or device which is visible by the general public and/or attached to an architecturally-finished surface. Samples shall be suitably labeled, adequately protected, and properly stored at the site. Samples which are approved and undamaged will be considered to be suitable for incorporation into the Work.

§ 3.11.3 The Contractor shall maintain at the site for the Owner and Architect:

.1 Record Documents and Samples in the Field Office apart from documents used for construction and provide files, racks and secure storage for Record Documents and Samples.
.2 Label and file Record Documents and Samples in accordance with the section number listings in the Table of Contents of the Project Manual.
.3 Maintain Record Documents and Samples in a clean, dry and legible condition and not use Record Documents for construction purposes.
.4 Keep Record Documents and Samples available for inspection by Architect/Engineer and Owner.
.5 Record information on a set of blue line opaque drawings and in a copy of a Project Manual.
.6 Provide felt tip marking pens, maintaining separate colors for each major system, for recording information.
.7 Record information concurrently with construction progress. Do not conceal any work until required information is recorded.
.8 Legibly mark Contract Drawings and Shop Drawings to record actual construction, including:
- Measured depths of elements of foundation in relation to finish first floor datum.
- Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
- Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of construction.

.9 Field changes of dimension and detail.
.10 Changes made by Modifications.
.11 Details not on original Contract Drawings.
.12 References to related Shop Drawings and Modifications.
.13 Mark HVAC unit Serial Number and Rooms that unit serves on reproducible mechanical plans for the entire project.

§ 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. Each Shop Drawing must show the project name and number and identify each element of drawings by reference to sheet number and detail, schedule, or room number in Contract Documents. In addition, each Shop Drawing shall identify field dimensions and show its relationship to adjacent or critical features of work or products.

§ 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. In connection with Product Data, Contractor shall: (a) mark each copy of standard printed data to identify the pertinent products, referenced to Specification Section and Article number and show reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions, and required clearances; and (b) modify manufacturers' standard schematic drawings and diagrams to

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supplement standard information and to provide information specifically applicable to the work and delete information not applicable.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged. In connection with Samples as per the Contract Documents, Contractor shall: (a) submit a full range of manufacturers' standard finishes except when more restrictive requirements are specified, indicating colors, textures, and patterns, for Architect's selection; (b) submit Samples to illustrate functional characteristics of products, including parts and attachments; (c) indicate approved Samples which may be used in the work are indicated in the specification section; (d) label each Sample with the identification used in transmittal letters; (d) provide field Samples of finishes at project, at location acceptable to Architect.

§ 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 Contract Documents for those portions of the Work for which the Contract Documents require submittals. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

§ 3.12.5.1 In connection with Contractor reviews, Contractor shall:

.1 Determine and verify field measurements, field construction criteria, manufacturer's catalog numbers and conformance of submittal with requirements of Contract Documents.
.2 Coordinate submittals with requirements of work and of Contract Documents.
.3 Sign or initial each sheet of Shop Drawings and Product Data and each sample label to certify compliance with the requirements of Contract Documents.
.4 Notify Architect in writing at time of submittal of any deviations from requirements of Contract Documents.

§ 3.12.5.2 In connection with Submittals, Contractor shall:

.1 Transmit Submittals in accordance with approved Progress Schedule and in such sequence as to avoid delay in the Work, allowing time for checking, correcting, resubmitting and rechecking.
.2 Apply Contractor's stamp, sign or initial, each page of each Submittal, to review, verification of products, field dimensions and
.3 Coordinate each Submittal with the requirement of work and Contract Documents.
.4 Coordinate Submittals into logical groupings to facilitate interrelation of the several items, such as:
  .1 Finishes which involve Architect's selection of colors, textures, or patterns.
  .2 Associated items which require correlation for efficient function or for installation.
  .3 No colors shall be selected for the project until all Shop Drawings and Submittal data pertaining to colors have been submitted in order to properly coordinate all colors.
.5 Submit the number of opaque reproductions of Shop Drawings required by Contractor plus two copies to be retained by Architect.
.6 Submit number of copies of Product Data and manufacturers' instructions required by Contractor, plus two copies to be retained by Architect
.7 Submit number of Samples specified in individual specifications sections.
.8 Submit transmittal letters which identify the project by title and number and identify the work and product by specification section and article.
.9 Number Submittals consecutively.

§ 3.12.5.3 In connection with resubmittals, Contractor shall

.1 Make resubmittals under procedures specified for initial submittals and identify changes made since previous Submittal. Resubmittals shall have same number as original, plus a letter.

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.2 Distribute reproductions of Shop Drawings, copies of Product Data, and Samples, which bear the Architect's stamp of approval to job site files, Record Documents files, subcontractors, suppliers, and others who may require such information.

.3 Forward an information copy of each transmittal letter simultaneously with submission to the Architect, but shall not submit Shop Drawings, etc., to Owner.

§ 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, verified and coordinated the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services 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 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 completeness and accuracy of the services, certifications, and approvals performed or provided by such design professionals. 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. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

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§ 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 drawings, data and samples to the Architect at least fifteen (15) days prior to the date the Contractor needs the reviewed submittals and samples returned. The Contractor shall be prepared to submit color samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) days of the award of Subcontract(s). All color samples required for the Work shall be received within sixty (60) days of the date of the approval of the Contract Sum if the Project is an A101 project, or Guaranteed Maximum Price if the Project is an A133 project. Once samples of all key items are received, the Architect will finalize color selections. The timelines in this Section 3.12.11 may be modified by written agreement with the Architect.

§ 3.12.12 The Contractor shall submit the number of copies of product data and samples which the Contractor and subcontractors need for their use, plus two additional sets for the Architect, one additional set for the Owner and one additional set for each of the Architect's consultants involved with the particular section of Work. Where shop drawings are involved, the Contractor shall submit one high quality reproducible transparency and one opaque print of the shop drawing for the Architect, plus one additional opaque print for each of the Architect's consultants involved with the particular section of Work. The reproducible transparency will be marked by the Architect and/or its consultants. After final review and correction of the submittal, the Contractor shall send one corrected set to the Architect and each of the Architect's consultants involved with the particular section of Work. The process and required drawings may be modified by agreement with the Architect.

§ 3.12.13 The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

§ 3.12.14 The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by applicable law, an architect or an engineer.

§ 3.13 Use of Site

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

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor.

§ 3.13.3 The Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Construction Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy.

§ 3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than

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those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly, provided, however, that any such cutting, fitting or patching can only be performed if the cutting, fitting or patching results in Work that is in accordance with the Construction Documents and Contract Documents. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in performing the original Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. 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. Care shall be taken by all workers not to mark, soil, or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor or any of its Subcontractors shall clean and restore such surfaces to their original condition.

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

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 3.15.4 After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

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§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect and their designated representatives with access to the Work in preparation and progress wherever located. The presence of the Owner, Architect or their representatives does not constitute acceptance or approval of the Work.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. **THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, SHALL WAIVE AND RELEASE CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ARCHITECT FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR SHALL NOT BE RESPONSIBLE TO ARCHITECT FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS OR OTHER DOCUMENTS PREPARED BY THE ARCHITECT, AND SHALL NOT BE RESPONSIBLE TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION.** However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect in writing.

§ 3.17.2 If such infringement claim or action has occurred or, in Contractor's judgment is likely to occur, Owner may allow the Contractor, upon Owner's written consent and at Contractor's expense (unless such infringement results directly from Contractor's compliance with Owner's written standards or specifications or by reason of Owner's or Architect's design of articles or their use in combination with other materials or in the operation of any process for which Owner shall be liable) to: (a) procure for Owner the right to continue using said deliverable and/or materials; (b) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect Owner's intended use of the deliverable and/or materials as contemplated hereunder); (c) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to Owner; or (d) if none of the foregoing alternatives is reasonably available to Contractor, upon written request, Owner shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by Owner with respect to such deliverable and/or materials and accept return of same. If any such cure provided for in this Paragraph shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this Article.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S TRUSTEES, , OWNER'S CONSULTANTS AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, COURT COSTS, EXPERT WITNESS FESS AND COSTS ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK OR NONPERFORMANCE OF THE WORK, ACTIVITIES, SERVICES, OR THE SUBJECT MATTER OF THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING LOSS OF USE RESULTING THEREFROM, OR CLAIMS BROUGHT BY CONTRACTORS, CONTRACTOR'S SUBCONTRACTORS OF ANY TIER, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH 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. ALL COSTS AND EXPENSES SO INCURRED BY ANY

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OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS.

§ 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 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3 THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM : (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 *ET SEQ*.

§ 3.18.4 THE OWNER MAY CAUSE ANY OTHER CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S OTHER CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

§ 3.18.5 Other Provisions Regarding Indemnity.

.1 THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

.2 THE INDEMNITIES CONTAINED HEREIN SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER.

.3 CONTRACTOR SHALL PROMPTLY ADVISE OWNER IN WRITING OF ANY CLAIM OR DEMAND AGAINST OWNER OR CONTRACTOR, AS THE CASE MAY BE, KNOWN TO CONTRACTOR, RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THE AGREEMENT, AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONTRACTOR'S COST. OWNER SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS ARTICLE.

.4 OWNER SHALL HAVE THE RIGHT TO APPROVE DEFENSE COUNSEL, OF WHICH APPROVAL WILL NOT BE UNREASONABLY WITHHELD, TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND

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INDEMNIFY OWNER, ITS EMPLOYEES, OFFICERS, TRUSTEES, AGENTS, SUCCESSORS, ASSIGNS AND REPRESENTATIVES UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY OWNER IN WRITING. CONTRACTOR SHALL RETAIN AN OWNER APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) WORK DAYS OF OWNER'S WRITTEN NOTICE THAT OWNER IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, OWNER SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY OWNER. OWNER SHALL ALSO HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE, WITHOUT WAIVING THE FOREGOING.

.5 THE INDEMNIFICATION OBLIGATIONS UNDER THIS ARTICLE 3.18 SHALL NOT BE LIMITED IN ANY WAY BY THE LIMITS OF ANY INSURANCE COVERAGE OR ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY, FOR, OR TO CONTRACTOR OR ANY SUBCONTRACTOR, SUPPLIER, OR ANY OTHER INDIVIDUAL OR ENTITY UNDER ANY INSURANCE POLICY, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

.6 INDEMNIFIABLE CLAIMS OF CONTRACTOR PURSUANT TO THIS SECTION 3.18 INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS FOR NON-PAYMENT OF MECHANICS' LIENS BY SUBCONTRACTORS, LABORERS, VENDORS AND MATERIAL PROVIDERS OF ANY TIER (SO LONG AS OWNER HAS MADE ALL UNDISPUTED PAYMENTS REQUIRED UNDER THIS AGREEMENT) AS WELL AS THE FAILURE OF ANY SUBCONTRACTOR OR SUPPLIER TO PERFORM ITS OBLIGATIONS HEREUNDER, INCREASED COSTS OF PERFORMANCE, COSTS OF CORRECTIVE OR WARRANTY WORK, LIABILITY TO THIRD PARTIES, PROCUREMENT COSTS, AND STORAGE AND RENTAL FEES FOR OFFICE AND WAREHOUSE SPACE.

§ 3.18.6 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18 of the A201, 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 obligations shall continue in full force and effect.

§ 3.18.7 It is understood and agreed that Section 3.18 is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 3.19 ADDITIONAL REPRESENTATIONS AND WARRANTIES; COVENANTS. Contractor represents and warrants (and covenants and agrees, as applicable, to) the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, all of which shall survive the execution and delivery of the Contract Documents and the Final Completion of the Work:

§ 3.19.1 That it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents.

§ 3.19.2 That it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

§ 3.19.3 That it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

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§ 3.19.4 That the execution of the Agreement and its performance thereof is within its duly authorized powers;

§ 3.19.5 Prior to commencement of the Work, Contractor visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents;

§ 3.19.6 All sums advanced or paid to Contractor pursuant to the Contract Documents shall be used solely for the purpose of the performance of the Work and the construction, furnishing and equipping of the improvements in accordance with the Contract Documents. All sums paid to Contractor pursuant to the Contract Documents shall constitute a trust fund for the purpose of performance of the Work and the construction, furnishing and equipping of the Project in accordance with the Contract Documents, including the subcontracts, purchase order and other lower tier agreements between Contractor and other parties; and

§ 3.19.7 Contractor shall maintain complete and accurate records of the receipt and application of all funds paid to it.

§ 3.19.8 That Contractor agrees to notify Owner promptly (no more than three (3) calendar days) upon discovery of any instance where the Contractor fails to comply with the Contract Documents, or where Contractor has reason to believe that a previous representation regarding the Contract is no longer accurate and complete.

§ 3.19.9 The Contractor shall: establish and maintain benchmarks, and all other grade, lines, and levels necessary for the Work; confirm the placement of the building on the Site to the Architect after all lines are staked out; and be responsible for the accuracy of the layout and shall make all corrections necessary to achieve an accurate layout of all Work.

§ 3.19.10 Upon request by the Owner or Architect, the Contractor shall prepare quotations for proposed changes in the Work, in a form approved by Owner or Architect. The Quotations shall generally be in a "break-down" form giving the number of units, unit cost of materials, hours of labor, hourly cost of labor, tool costs, overhead and profit; may be based on the approved Schedule of Values or unit costs; and shall reflect credits as well as extras.

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

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

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner and identified as such in the Agreement. If the employment of the Architect is terminated, the Owner may employ a new architect whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if Owner has employed a new Architect.

§ 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.

§ 4.1.3 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and the Contract Documents by the duties, responsibilities, or activities of the Architect.

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§ 4.1.4 Owner reserves the right to appoint a representative empowered to act for Owner during construction and to supersede the Architect's Construction phase responsibility. Similarly, from time to time, Owner may expand or reduce Owner's delegation of powers to the Architect, with Owner so notifying Contractor in writing of the any such changes. The Architects shall not be construed as a third-party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth herein. In no event, however, shall Owner have control over or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for the acts or omissions of Contractor's Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

§ 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 final payment is due, and, with the Owner's concurrence, from time to time during the period for correction of Work. The Architect will have authority to act on behalf of the Owner only to the extent specifically provided in the Contract Documents, or as they may be amended in the future.

§ 4.2.2 Architect may visit the site to inspect the progress, quantity and quality of the work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Construction Documents and the Contract Documents and on time. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion may be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall at all times have access to the Work. Architect or its structural consultant may provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or its structural consultant may provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor will advise Owner of the need for any third-party laboratory or testing services to assist the Architect or Owner. Architect or Owner shall promptly notify Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits or inspections made necessary by the fault, neglect, delay, or request of the Contractor.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. However, Owner reserves the right to communicate directly with the Contractor and Subcontractors. 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.

§ 4.2.5 As further provided in the Contract Documents, 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 Owner or Architect shall reject Work that does not conform to the Construction Documents and the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend to

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Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or nonconformance with Construction Documents or the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect. Testing or inspections required by this subparagraph shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code.

§ 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 Construction Documents and the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or Separate Contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems, remain the responsibility of the Contractor as required by the Construction Documents and 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 of the A201, as amended and elsewhere in the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Construction Documents or the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.

§ 4.2.8 The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Construction Documents and the Contract Documents, accompanied by all supporting documentation requested by the Architect or Owner. Upon Owner approval, the Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work by the Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

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

§ 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 make recommendations 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 or recommendations 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 recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor.

§ 4.2.13 The Owner's decisions on matters relating to aesthetic effect shall be final.

§ 4.2.14 The Architect will review and respond to requests for information about the Construction Documents and the Contract Documents. The Architect's response to such requests will be made in writing with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information, at no additional cost to the Owner.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing 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 shall notify in writing 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. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

§ 5.2.2 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. When the parties agree on a proposed substitute Subcontractor then, the Contract Sum and Contract Time may 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 responsibly in submitting names as required.

§ 5.2.4 The Contractor shall notify the Owner prior to changing any subcontractor, person, or entity previously selected to perform Work on the Project or to supply materials to the Project, and the provisions of Subparagraph 5.2.1 shall apply to the proposed replacement. 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.

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§ 5.2.5 Contractor shall be fully responsible to Owner for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal and/or prior to commencement of any Work. No increases in Contract Sums shall be allowed for failure to so inspect or investigate.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The Owner shall be a third-party beneficiary to the each such subcontract. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. 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. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to ensure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

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

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for any unperformed 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 or convenience pursuant to Article 14 or abandonment of the Project by the Contractor; and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- **.2** assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and
- **.3** The Subcontractor provides bonds and insurance as required by law or prime contractors or by Owner.

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

§ 5.4.2 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4 of the A201, the Owner may further assign the subcontract to a successor contractor or other entity. Owner shall only be responsible for compensating

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subcontractors for Work performed or materials furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

§ 5.5 NOTICE OF SUBCONTRACTOR DEFAULT

Contractor shall promptly (no more than three (3) calendar days) notify Owner and Architect in writing of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

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 or with Separate Contractors. The Owner reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.

§ 6.1.2 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 Contractor shall coordinate the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, to ensure that the Work remains on schedule. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement between the Owner and Contractor. 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 Any Separate Contractors may be requested to execute Contractor's Site Access Agreement.

§ 6.2 Contractor's Responsibility

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access and introduction and storage or staging 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. Contractor shall be responsible for coordination between Contractor's subcontractors and Owner's Separate Contractors. Contractor shall review Owner's contract with Owner's Separate Contractors and become familiar with the requirements and scope of services contained therein.

§ 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 (no more than three (3) calendar days) notify in writing the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work, and shall promptly report in writing to the Architect and Owner if Owner's Separate Contractors fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to notify in writing the Architect and Owner 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, and is performed in a timely manner to receive the Contractor's Work. The Contractor shall not be responsible for latent discrepancies or defects in the construction or operations by the Owner or Separate Contractor.

§ 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. Contractor

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shall be entitled to recover additional contract time as a result of delays, improperly timed activities or defective construction by Owner in the self-performance of work or caused by Owner's separate contractors.

§ 6.2.3.1 If the Architect is required to provide additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the additional services result from negligence of or an act or omission by the Architect.

§ 6.2.3.2 If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

§ 6.2.3.3 All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate, or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor.

§ 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.

§ 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 this A201, as amended.

§ 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 Owner 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. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents or Construction 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. Contractor shall not make any claim for an adjustment to time or Contract Sum due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a change in the Work. No claim for an adjustment to Contract time or Contract Sum shall be valid unless so ordered or directed and approved in writing by the Owner's Authorized or Designated Representative, as applicable.

§ 7.1.4 Contractor, subcontractor or sub-subcontractor markup is not a recoverable element of direct damages under the Contract or for Changes in the Contract Sum; however, Owner or its Authorized or Designated Representative(s) may, in their sole discretion, permit a maximum mark-up of 10% for overhead, and profit for a contractor and subcontractor of all tiers. **For A133 Only -** The total Contractor mark-up for overhead, profit, or fee for work performed by the Contractor's own forces shall not exceed 7.5% of the change in the Cost of Work. The total

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Contractor mark-up for overhead and profit for supervision of work performed by subcontractors' forces shall not exceed 2.5% of the change in the Cost of Work. The total subcontractor mark-up for overhead and profit for work performed by the subcontractor's forces shall not exceed 7.5% of the change in the Cost of Work. In no event shall total mark-up for overhead and profit in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 10 % of the total change in the Cost of Work. In cases of multiple tiers of subcontractors, Owner, in its sole discretion, may permit slight deviations on the allocation of allowable percentage of overhead and profit for work performed and/or for supervision permitted in Section 7.1.4. But the total overhead, profit or fee for work performed and supervision in cases of multiple tiers of subcontractors must not exceed 15% of the total change in the Cost of Work.

§ 7.1.4.1 When a change order results in a reduction in the Contract Sum, the applicable overhead, profit and fee for supervision and/or work performed assessed by Contractor and all affected Subcontractors shall be included in the reduction balance on the change order form.

§ 7.1.5 Intentionally Omitted.

§ 7.1.6 If the Contract Sum is $1,000,000.00 or more, or if the Contract Sum is less than $1,000,000.00, and any Change Order, Construction Change Directives, or other changes in the Work would increase the Contract Sum to $1,000,000.00 or more, the total of all Change Orders, Construction Change Directives, or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect.

§ 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 or Guaranteed Maximum Price; and
- **.3** The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

§ 7.2.4 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum, unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

§ 7.2.5 Work requiring approved Change Order must not commence until the Contractor has received written authorization to proceed from Owner. Work completed without such authorization may not be recognized or paid for by Owner and Work completed in emergencies may (at Owner's option) not be recognized or paid for by Owner.

§ 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 an 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;

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.2 Unit prices stated in the Contract Documents or subsequently agreed upon (additional mark-ups for overhead, profit, and fees may be allowed);

.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, subject to the limitations of subparagraph 7.1.4 above; or

.4 As provided in Section 7.3.4 below, subject to the limitations of subparagraph 7.1.4 above.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, then Architect shall determine the adjustment on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct costs of performing the Work without the change in the Work. Direct costs shall be limited to the following:

.1 Actual costs of labor, including applicable payroll taxes, before workers' compensation, and workers' compensation insurance;

.2 Actual costs of materials, supplies, and equipment, including cost of transportation, used in performing the Change in the Work;

.3 Actual rental costs of machinery and equipment rented from third parties, exclusive of hand tools; and

.4 Actual costs of premiums for all bonds and insurance, and permit fees, directly related to the change.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with the applicable provisions of Article 15 of this A201, as amended.

§ 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 and Owner 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, provided that, pursuant to Texas Government Code Section 2251.0521, Contractor shall not be required to proceed with additional work nor be responsible for any damages resulting from not proceeding with such work absent a fully-executed Change Order when such Construction Change Directive, either individually or collectively with other Construction Change Directives for which no Change Order has been fully executed, exceeds ten percent (10%) of the Guaranteed Maximum Price or the Contract Sum. No subcontractor shall be required to proceed with additional work nor be responsible for any damages resulting from not proceeding with such work absent a fully executed Change Order when such Construction Change Directive, either individually or collectively with other Construction Change Directives for which no Change Order has been fully executed, exceeds ten percent (10%) of the subcontractor's contract amount.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum or 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 Intentionally Omitted.

§ 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 in writing 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 reduced to writing and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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§ 7.4 Minor Changes in the Work
With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the Contract Documents or Construction 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 Owner 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. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

§ **7.5** Intentionally Omitted.

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 Final Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the first Work Day after Contractor's receipt of the written Notice to Proceed for Preconstruction Services or Construction Services, as applicable. The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor, signed by the Owner's Authorized Representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance. Issuance of the Notice to Proceed shall not relieve the Contractor of its responsibility to comply with the bond and insurance requirements.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in conjunction with the Owner in accordance with Section 9.8 of the A201, as amended. The date of Final Completion is the date certified by the Architect in conjunction with the Owner in accordance with Section 9.10 of the A201, as amended. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion.

§ 8.2 Progress and Completion
§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract with respect to the Project Schedule and achievement of the Substantial and Final Completion of the Work pursuant to the terms of the Contract Documents. By executing this Agreement, the Contractor stipulates that the Contract Time is a reasonable period for performing the Work, as set forth in the Contract Documents upon which the Agreement is based.

§ 8.2.2 The Contractor must not commence the Work prior to the effective date of insurance and bonds required to be furnished by the Contractor under the Contract Documents.

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

§ 8.2.4 The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the date of Final Completion. **Time is of the essence**.

§ 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 (1) an act or neglect of the Owner or of a Separate Contractor of the Owner; (2) by changes ordered in the Work, which are not attributable to the Contractor; (3) by fire, governmental actions, or adverse weather conditions documented in accordance with Section 15.1.6.2 of this A201, as amended; (4) by delay authorized in writing by the Owner; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, may justify delay, then the Contract Time may be extended for such reasonable time as the Architect and Owner may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 of this A201, as amended.

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§ 8.3.3 This Agreement does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions, or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather or acts of God or for acceleration. Contractor agrees that the only possible compensation for any delay is an extension of time.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the A101 or A133, as amended and applicable, including authorized adjustments, is the not to exceed total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 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 may be equitably adjusted by written agreement.

§ 9.2 Schedule of Values

§9.2.1 The Contractor, if not previously provided, no later than ten (10) days after the issuance of each Notice to Proceed (preconstruction or construction), shall prepare and submit a schedule of values, subject to Owner's review and approval. And the Schedule of Values must be established and in place before the submittal of 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 or Owner. This initial schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and Owner, (and titled as "Amended Schedule of Values") with changes explicitly identified and supported by such data to substantiate its accuracy as the Architect or Owner may require; and if approved in writing by the Owner, the Amended Schedule of Values shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item using the Construction Specifications Institute 50 Division Master-Format for each portion of the Work and on AIA Documents G702 and G703, Application and Certificate for Payment and Continuation Sheet or other Owner approved forms.

§ 9.2.2 Additional Schedule of Value Requirements. **For A133 Only** - If the project is a Construction Manager at Risk project, in order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703 or other Owner approved form, and must include the following attachments:

.1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, or general conditions, which shall be listed as individual line items.

.2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, or paving, etc.

.3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, or start-up, etc.).

.4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit, or supervision. For self-performed work see A133 at § 3.3.2.1.2 Fees on Self-Performed Work.

.5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.

.6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

.7 Other items as may be required by Owner..

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§ 9.3 Applications for Payment

§ 9.3.1 The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the approved schedule of values 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.

§ 9.3.1.1 Reserved.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor or supplier unless Contractor has self-performed the Work.

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in the Contract Documents.

§ 9.3.2 Payments will be made on the basis of invoices for specific materials or equipment incorporated in the Work and specific materials or equipment (1) suitably stored at the site or (2) 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 warehouse where the materials and equipment may be insured and/or bonded as required by the Owner.

.3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.

.4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time may be an Additional Service and shall compensate Architect directly for same upon request.

.5 Payment shall not include any charges for overhead or profit on stored materials, costs of insurance, storage and transportation to the site of all materials and equipment stored offsite.

.6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other documentation 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 naming the specific materials or equipment stored and their location) and proof of delivery 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 until the materials or equipment are delivered to Owner's site or the agreed-upon off-site storage. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 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. Neither Contractor nor any of its materialmen, laborers or Subcontractors shall have any lien rights against the Owner's lands, building funds, materials or other property. No materialmen, laborers or Subcontractors of the Contractor shall have any enforceable rights against the Owner on this Contract. Materialmen, laborers and Subcontractors of the Contractor may have rights under any

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Payment Bond provided by the Contractor, but cannot look to the Owner for any help in enforcement of those rights. **CONTRACTOR SHALL WAIVE, RELEASE, INDEMNIFY, AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH, OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR**.

§ 9.3.3.1 CONTRACTOR COVENANTS AND AGREES TO HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND OWNER, AND ITS TRUSTEES, EMPLOYEES, OFFICERS, AGENTS, SUCCESSORS, AFFILIATES, ASSIGNS AND REPRESENTATIVES, INDIVIDUALLY OR COLLECTIVELY, AND OWNER'S REAL PROPERTY FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DEMANDS, ACTIONS, LAWSUITS, PROCEEDINGS, LIABILITIES, LIENS, LOSSES, DAMAGES, COSTS, AND EXPENSES, OF EVERY KIND AND CHARACTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE AMOUNT OF ANY JUDGMENT, PENALTY, INTEREST, COURT COSTS AND REASONABLE LEGAL FEES INCURRED IN CONNECTION WITH THE SAME, OR THE DEFENSE THEREOF, FOR OR IN CONNECTION WITH, OR RESULTING FROM, THE PROJECT AND THE WORK TO BE PERFORMED, SERVICES TO BE RENDERED, OR MATERIALS TO BE FURNISHED BY CONTRACTOR OR ANY CONTRACTOR'S SUBCONTRACTORS OF ANY TIER UNDER THIS AGREEMENT; PROVIDED THAT OWNER HAS MADE ALL UNDISPUTED PAYMENTS REQUIRED UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL APPLY ONLY TO THE EXTENT THE MATTER OR MATTERS TO BE INDEMNIFIED OR DEFENDED AGAINST ARE CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS SUBCONTRACTORS OF ANY TIER OR OTHERS WITHIN CONTRACTOR'S CONTROL.

§ 9.3.4 Contractor shall submit Applications for Payment electronically or, if requested by owner, in writing and in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment and Continuation Sheet or any other form requested by the Owner. All blanks in the form must be completed and signatures of Contactor and Notary Public must be original on each form. Incomplete or inaccurate Applications for Payment shall be returned to the Contractor by the Architect for completion and/or correction. Owner shall have no responsibility for payment of same if the Application for Payment is incomplete or inaccurate.

§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits, and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for, and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that Contractor has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of the Application for Payment; that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Payment Application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including, but not limited to, Texas Penal Code Sections 32.46, 37.09, and 37.10, and may justify termination of Contractor's Contract with Owner. Contractor further understands and agrees that falsification of documents may entitle Owner to restitution as permitted by Texas law and these Contract Documents.

§ 9.3.6 In addition, each Application for Payment must be accompanied by an updated Project Schedule (and Schedule of Values) containing any and all events and/or occurrences (regardless of fault) of delay or other hindrance to the critical path of the Project and must also contain an analysis of the impact of any such event or

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occurrence on the completion date for the Project. Failure to submit an updated Project Schedule with Contractor's Application for Payment may result in a justified denial of the Application for Payment by the Owner and Contractor shall be required to resubmit the Application for Payment with an updated schedule.

§ 9.3.7 Prior to approval of the Application for Payment, the Architect or Owner shall be provided an opportunity to review the on-site record construction drawings for completeness.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will promptly and carefully evaluate and review the Application for Payment and, when appropriate, return the Application for Payment to the Contractor. If the Application for Payment is complete, then the Architect shall sign and either (1) certify and 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) certify and issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner with a detailed statement in writing of the Architect's reasons for withholding certification in part as provided in Section 9.5.1 below; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner with a detailed statement in writing of the Architect's reason for withholding certification in whole in accordance with Texas Government Code Section 2251.042(a) and Architect's written reasons for withholding certification shall be submitted in accordance with and construed as the notice required by Texas Government Code Section 2251.042 *et seq.* Owner may not withhold from payments more than 110% of the disputed amount. Owner shall provide certifications of payment for any of the Owner's separate consultants or contractors on Architect's prior written request.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion, and the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents. Further, the issuance of the Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has carefully evaluated and certified that the amounts required in the Application for Payment are valid and correct. 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 in writing to the Owner. 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 unless 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. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents or otherwise, why payment should be withheld. If the Owner elects to withhold payment, it may do so in accordance with state law.

§ 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 above and elsewhere 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. 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:

- **.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;

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.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
.7 repeated failure to carry out the Work in accordance with the Contract Documents; or
.8 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract time.

§ 9.5.2 When the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15. Owner shall not be deemed to be in default by reason of withholding payment as provided in the Contract Documents.

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

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under the Contract Documents, then Architect or Owner may withhold any further Certificate for Payment from Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or the Contract Documents.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within 21 days if Owner disputes the Application for Payment, listing the specific reasons for nonpayment and amount in dispute. The Owner may withhold from payments required no more than 110 percent of the disputed amount. Payments to the Contractor shall not be construed as releasing the Contractor or its Surety from any obligations under the Contract Documents. Notwithstanding the foregoing, in no event shall Owner be required to make payment for items of cost disallowed by the Owner, Owner's franchisor or Owner's lender's inspecting architect because of nonconforming or defective work or discrepancy in percentage of completed based upon the Contract Documents or, if Owner, in its reasonable, good faith judgment, determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due Contractor unless and until Contractor, at no cost to Owner, performs a sufficient portion of the Work so that the portion of the Contract Sum then remaining unpaid (as reasonably determined by Owner) is sufficient to complete the Work. Furthermore, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contractor Documents and Owner shall not be deemed to be in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ten (10) 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. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide to the Owner copies of such Subcontractor payments. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner. This Section is subject to the provisions of Texas Business and Commerce Code Chapter 56.

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§ 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 three (3) 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. Any action taken by the Owner to require the Contractor to pay a Subcontractor shall not impose any liability on Owner to the Subcontractor or supplier.

§ 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 of this A201, as amended.

§ 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 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. Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor. Texas Property Code § 162.001.

§ 9.6.8 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.

§ 9.6.9 Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor.

§ 9.7 Failure of Payment

§ 9.7.1 Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due, and owing, after the date the payment is due under the Contract Documents then the Contractor, upon ten (10) additional days' written notice to the Owner and Architect that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided with a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

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§ 9.7.2 The Owner shall pay the undisputed amounts to the Contractor within forty-five (45) days of receipt of the Applications for Payment unless otherwise provided in the Contract Documents or state law.

§ 9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

.1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or

.2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 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; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all items on any commission reports have been satisfied; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor must certify that all remaining Work (i.e., punch list) shall be completed within 30 days. Contractor shall prepare Owner's Substantial Completion Certificate for review and approval by Architect and Owner, and it must include the date of Substantial Completion, the punch list with estimated costs provided by the Contractor to address all remaining areas of the Project, and all known Owner-accepted non-conforming work. Notwithstanding the foregoing, the Owner may refuse to make payment of any Certificate of Substantial Completion or any Certificate of Payment (including, without limitation, the final Certificate of Payment) for any default of the Contractor. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.8.1.1 As an additional condition of Substantial Completion, Contractor must provide an itemized asset list on an Excel spreadsheet ("**Substantial Completion Asset List**") and as defined in this section. The Substantial Completion Asset List must contain an itemized list of all materials, equipment and assets incorporated in the Project; and for each item on the list of materials, equipment and /or assets Contractor must provide the following information:

a. College/Site;
b. Project or Building Name
c. Physical Location
d. Symbol / Asset Type
e. Service / Manufacturer
f. Description
g. Manufacturer Part / Model Number
h. Manufacturer Serial Number"
i. Install Date
j. Warranty Expire Date
k. Attribute / Filter 1 / Voltage
l. Attribute / Filter 2 / Wattage
m. Attribute / Filter 3
n. Attribute 4 and
o. Reference to Sec. 3.5.8 Warranty Binder or Sec. 9.10.4 Manuals Binder

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The Substantial Completion Asset List must be complete, accurate and in a substantially similar Excel Spreadsheet form as shown below (an example may also be provided upon Contractor's request to the Owner's representative):

Location College/Site	Project or Building Name	Physical Location	Symbol / Asset Type	Service	Manufacturer	Description	Manufacturer Part / Model Number	Manufacturer Serial Number	Install Date	Warranty Expire Date	Attribute / Filter 1 / Voltage	Attribute / Filter 2 / Wattage	Attribute / Filter 3	Attribute 4
SAC	STEM Building	Roof	RTU-1	Science Lab Wing	Trane	20 ton RTU	BR549-10012345	JE237G90	01/01/10	01/01/15	MERV 13 - 20x20	MERV 13 - 12x15		
SAC	STEM Building	Class Room 200	HC-1	SAV-100	Brasch	Electric Heat Coil	EBSF2	6544458	01/01/10	02/01/20				
SAC	STEM Building	Lab 121	100	Chemistry Research Lab 121	Phoenix Controls	Fume Hood Exhaust	10345678g-2255	HFGG455	04/01/10	04/01/11	ACCELL II			
SAC	STEM Building	Lab 121	L-1	Recessed	Forum Lighting	LED 3300 Lumens	SRT-4JFEC-X9HGSN47684678-SAT-4-UNV-WHD10V	LL3-16	01/01/10	01/01/25	120-277V	38 W		
SAC	STEM Building	MR 25	WH-1	Restrooms 1 and 2	AO Smith	Water Heater	JJJH88776	584125854	01/01/10	01/01/20	480 V		120 gallon	

The Substantial Completion Asset List must be updated as a condition precedent to Final Completion and Payment.

§ 9.8.1.2 As an additional condition of Substantial Completion and if applicable to the Project, the following "**District Substantial Completion Inspection List"** must be, inspected, reviewed and approved by Owner's Authorized or Designated Representative:

1. **Above Ceiling Inspection** (inspection conducted, deficiencies cleared, completed)
2. **Building Number Assigned by A/E** (Do not use an old building number, must generate a new number)
3. **Operations & Maintenance (O&M) Manuals** (as specified for electric, mechanical, controls, fire detection, sprinkler system, doors, etc., must be submitted, approved, turned-over to College Superintendent and DSO Facilities in the form of two (2) Hard Copies and one (1) Electronic copy on a USB thumb Drive in .pdf format)
4. **O&M Training** (must be scheduled with specific dates/times/location and coordinated with applicable College. Contractor must identify durations of specialized training, identify participants and the time of start, finish, breaks, lunch and times of training. Contractor shall provide copies of manuals, if any, required; sign-in sheets of training; videotaped training and special tools, if any)
5. **Preliminary Operational and Functional Testing of Systems must occur and pass** (College Superintendent and Maintenance invited prior to training for familiarization with systems)
6. **Fire Alarm, Detection System, Sprinkler System** (must be tested, accepted, and coordinated with Fire Department (AHJ) and shall include Safety Inspection, fire extinguishers inspection as specified with Contract)
7. **CQC/QA Mechanical & Electrical Systems Testing** (conducted, verified) (Additional Mechanical-verification that all systems have been cleaned, flushed, and pacified, if applicable. New Addition Chemicals have been added to the primary loops, as required, and coordination with Owner is required before adding any chemicals.)
8. **Commissioning** (Preliminary, functional & final testing of systems completed, pre-commissioning plan submitted, approved, team identified, coordinated with commission representatives, test records, reports submitted and approved by Owner's Authorized or Designated Representative.)
9. **Valve Tags, Charts, Diagrams** (approved tags, posted properly)
10. **Communications** (installation and successful operation of phone, cable, fiber optics including testing and coordinate punch-out with DSO IT & Facilities or other contractor/vendors)
11. **Excess Materials/Attic Stock** (if any such material, Contactor shall provide an inventory of spare parts, tools, with quantities as specified on an itemized list showing where such materials are located/stored with copy provided and accepted by Owner's Authorized or Designated Representative)
12. **Landscaping/Turfing** (coordinate with Superintendents reference items for landscaper, utilities, irrigation system and provide written maintenance requirements for same)
13. **Exterior** (All of the following items must be complete - parking lots, pavement, striping, handicap signs, wheel stops, light standards, vehicle plug-in, sidewalks, fencing, bollards-safety markings, dumpster enclosures, transformer enclosure, locks, as applicable.)
14. **Signage** (All of the following items must be complete - interior, exterior, directory, facility name and number, billboard, Fire Evacuation, as applicable.)
15. **"Keys/Tags/Box/Construction Cores** (All of the following items must be complete - numbers required as specified, POC for turnover, key control, location, construction cores, documented coordination with College/District locksmith, Superintendent, sign shops)
16. **Substantial Completion Cleaning** (All of the following items must be complete - waxing of floors, operational access control, and ability to secure building.)
17. "**Installed Property Equipment List** (See Section 9.8.1.1 above – generally need mechanical and electrical, Asset/Equipment list provided by Contractor and submitted in MS Excel Format Only to Owner showing actual equipment installed, which shall match the approved equipment schedules)

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18. "**Submittals/RFIs Closeout** (All of the following items must be complete - outstanding, delinquent, transfer to PM/DSO Facilities)"
19. **Warranty Conference** (Meeting must be scheduled with contractor for additional input, but Contractor shall provide at substantial completion booklets with all inclusive warranties, procedures, response order of priority, meeting minutes with POCs phone #s, attendees to include building manager, service desk, reserved room large enough for attendees)
20. "**Warranty follow-up Inspections** (Schedule 4 month, 9 month and 1-year inspections, set up warranty call log/procedures, contractor response times, etc.)"
21. "**Equipment Warranty Tags** (Confirm Tags are typed, submitted & approved with correct warranty tags dated and posted on appropriate equipment or materials)"
22. **CQC completion inspection and Punch List** (submitted w/ scheduled dates for completion of item, coordinate w/ QAR. No pre-final inspection scheduled w/o this.)
23. **Initial Certificate of Occupancy** must be Issued and posted.
24. "**Master Issue and Deficiency Log** (This item must be cleared or with correction suspense dates of the Contractor)"
25. **Pre-final Inspection** (All of the following items must be complete – a quality control punch list received, phased by facilities, floors, mechanical rooms, etc., and scheduled for inspection at any time other than on early Mondays or late Fridays)
26. **Receipt of General Contractor Affidavit** release of claims, and release and waivers of liens or claims from Subcontractors as part of payment application.
27. **All applicable certifications** required have been issued and validated (for example Elevator Certification)
28. **As-builts** (All of the following items must be complete and in Owner's possession - red line preliminary, final, CADD files submitted, approved with required number of copies and in the format as specified including a CDs, etc.)
29. **Final Inspection** (Substantial Completion Memo prepared for signature after inspection completed)
30. **Substantially Complete** - Construction Complete Sign Substantial Complete Memorandum (As-Builts Required, Punch List items must not impact the function of the facility)
31. **Final Certificate of Occupancy** must be issued for Substantial Completion
32. **Ribbon Cutting** coordination with Owner to establish tentative or actual date (if applicable)
33. **Final Completion** must occur within 30 days of substantially completion (All of the following items must be complete - Record Drawings - 1 Hard Copy, 2 USB PDF format, and 1 USB in CAD format).

§ 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, using the Owner's Project Management Software or other approved forms or software, prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The punch list shall contain an area or room description, and a written description and photograph of each deficiency listed in the punch list, an estimated cost to cure each deficiency, and a space for contractor and architect to individually indicate the date of the correction and observation of the correction, respectively. 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. The Architect and/or Owner shall have the right to add additional items to be completed or corrected to the comprehensive list submitted by the Contractor.

§ 9.8.2.1 The Contractor's Project Manager or superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and Owner for supplementation. Upon receipt, the Architect shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. Should the Architect or Owner determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done within 30 days of Substantial Completion.

§ 9.8.2.2 Upon receipt of an acceptable Contractor's punch list, the Contractor's Superintendent or Project Manager shall accompany the Architect, its Consultants and the Owner (at its discretion) during their inspections and the preparation of verbal or written additions to the Contractor's punch list. The Contractor's Project Manager or Superintendent shall record or otherwise take notes of all supplementary items and incorporate them into the Final Punch List. A typed addition to the supplements to the punch list will be made by the Contractor. This procedure will produce a Final Punch List that has the Contractor's, Architect's, Consultant's and Owner's comments incorporated in only one list using the Owner's Project Management Software or other approved form or

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software. Delay in the preparation of the Final Punch List shall not be cause for a claim for additional cost or extension of time as the Contractor's superintendent shall have been in attendance during the inspections of the Architect and its consultants and will have been expected to have taken appropriate own notes.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and Owner'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, then the Architect or Owner shall so notify the Contractor in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than three (3) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect in consultation with the Owner will prepare, sign and issue Owner's 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 estimated cost and time (which must not be more than 30 days after Substantial Completion) within which the Contractor shall finish all items on the Final Punch List accompanying the Certificate.

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

§ 9.9 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 agreed to by the Owner and the Contractor in writing, provided such occupancy or use is consented to by the insurers (contractor's builder risk and owner's liability among others) and authorized by public authorities having jurisdiction over the Project. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided that 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 resulting from such occupancy, use or installation, and property and liability insurance. 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 recommendation of the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

§ 9.9.2 Immediately prior to such partial occupancy, use, or installation, 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 in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect in consultation with the Owner, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly prepare, sign, and issue Owner's Certificate of Final Completion and a

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final Certificate for Payment certifying to the Owner that, 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, including all retainages 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 below as precedent to the Contractor's being entitled to final payment have been fulfilled. Final payments shall be made by the Owner in accordance with Owner's regular schedule for payments. Except as provided in any warranty or maintenance stipulations, bond, or by law, the Project will have reached "Final Completion" when all the Work has been finally completed, the final inspection is made by the Architect and final acceptance by the Owner is issued in writing.

§ 9.10.1 As an additional condition of Final Completion and Final Payment, Contractor must completely and accurately update the previously provided itemized Substantial Completion Asset List on an Excel spreadsheet to create the "**Final Completion Asset List**". The Final Completion Asset List must contain any new or omitted materials, equipment or assets incorporated in the Project along with the previously provided items on the Substantial Completion Asset List. The Final Completion Asset List must (i) comply with the requirements in Section 9.8 above (ii) be accurate and in a substantially similar Excel Spreadsheet form as shown in Section 9.8 above and (iii) be provided to Owner in a digital (excel) and paper format. Likewise, as an additional condition of Final Completion and Final Payment all incomplete items, if any, on the **District Substantial Completion Inspection List** must be completed to the satisfaction of Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) using AIA Document G706 or other Owner approved form, 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) evidence satisfactory to Owner 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) using AIA Document G707 or other Owner approved form, consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A or other Owner approved form, notarized subcontractor's lien releases, 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. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

.1 Written certifications required by Sections 10.5, 10.6, and 10.7 of this A201, as amended;

.2 Final list of subcontractors (AIA Document G705);

.3 Contractor's certification in Texas Education Agency's Certification of Project Compliance;

.4 Contractor's warranties, organized as required elsewhere in the Contract Documents;

.5 Maintenance and Instruction Manuals;

.6 Owner's Final Completion Certificate; and

.7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any

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reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor promptly after acceptance of the Work and approval of the Final Payment.

§ 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 which is not attributable to the Contractor, and the Architect so confirms, the Owner may, 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, and it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner. As a condition to Owner's obligation to make final payment, Contractor shall have satisfied the following: (1) all conditions in all Contract Documents have been fulfilled by Contractor; (2) Contractor has delivered to Owner all warranties and guaranties which are applicable to any part of the Work; (3) Contractor has furnished Owner with two sets of as-built drawings showing the actual location of all improvements constructed; (4) Contractor has delivered to Owner lien releases as required by the Contract Documents in the form prescribed by applicable law, and no lien claims have been filed and remain against the Project for labor performed or material installed in the Project by or on behalf of Contractor; (5) Contractor has delivered to the Owner an indexed binder containing complete installation, operation and maintenance manuals, including all manufacturer's literature, of equipment and materials used in the Work; (6) Contractor has delivered to the Owner an indexed binder containing all inspection reports, permits, and final certificates of occupancy and licenses necessary for Owner's occupancy of the Project; (7) Contractor has delivered to Owner a permanent Certificate of Occupancy issued by the applicable governmental authority; (8) The consent of surety to final payment; and (9) Contractor has delivered to Owner and Owner's lender, if applicable all such other documents as Owner and/or Owner's lender may require.

§ 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 for those claims previously asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.11 In addition to any damages payable to the Owner by Contractor, if: (1) the Architect are required to make more than three (3) inspection for Substantial Completion as a result of Contractor's or any subcontractor's actions; (2) the Architect are required to make more than one (1) inspection for Final Completion as a result of Contractor's or any subcontractor's actions; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents, then the Owner shall be entitled to deduct from the Contract Sum (including from the final payment) amounts paid to the Architect for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 *et seq.*, and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and

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provide approved fall protection safety equipment for use by all exposed Contractor employees. Contractor further agrees to comply with all applicable OSHA and CDC guidelines.

§ 10.1.2 Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any legal or illegal controlled substance; or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall: use, possess, distribute, or sell illegal or nonprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription or over-the-counter drugs; or act in contravention of warnings on medications while performing the Work or while on Owner's premises. Contractor's employees, agents, Subcontractors, or anyone directly or indirectly employed by any of them, shall not distribute or sell alcohol or drugs of any kind to Owner's students or staff, regardless of the location of the distribution or sale.

§ 10.1.3 Contractor will comply with all applicable federal, state, and local drug and alcohol-related laws and regulations (e.g., Department of Transportation regulations, Drug-Free Workplace Act). Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies, as a result of a for-cause test, conducted immediately following removal, that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

§ 10.1.4 Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a weapon, and Contractor agrees that Contractor's representatives, employees, agents, and subcontractors will abide by same. Weapons may only be permitted in Owner's parking lots if weapons are locked in personal vehicles in Owner's parking lot.

§ 10.1.5 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to Contractor's insurers or the State of Texas in connection with such injuries or fatalities.

§ 10.1.6 Both Owner and Contractor agree these safety and health terms to be of the highest importance, and a breach or violation of any of the terms of this Section or other safety provisions of this Agreement by Contractor will be considered to be material and substantial breach of this Agreement. In the event that Owner shall determine that Contractor has breached or violated such safety provisions, then Work shall terminate immediately upon written notice to Contractor. Work shall not recommence until Owner shall be satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner shall terminate the Agreement, the Owner and Contractor shall complete their obligations hereunder to one another in accordance with Section 14.

§ 10.1.7 Nothing contained in this Section shall be interpreted as creating or altering the legal duty of Owner to Contractor or to Contractor's agents, employees, contractors, subcontractors, or third parties, or altering the status of Contractor as an independent contractor.

§ 10.1.8 Notwithstanding either of the above provisions or whether Owner exercises its rights set forth herein, Owner does not warrant nor represent to Contractor, Contractor's employees, contractors or subcontractors or agents, any subcontractors, or any other third party that Contractor's policy meets the requirements of any applicable law, code, rule, or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy will insure that no accidents or injuries will occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the Contract Documents.

§ 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

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.1 employees on the Work, school personnel, students, and other persons on Owner's premises including the installation of fencing between the Work site and any connecting or adjacent property of Owner, when required by Texas Education Code Section 22.08341 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 other buildings, and other contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities, tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

§ 10.2.5 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 above 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 above. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18 above and elsewhere in the Contract Documents.

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

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

§ 10.2.8 The Contractor shall do all things reasonably necessary to protect the Owner's premises and all persons from damage and injury when all or a portion of the Work is suspended for any reason.

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's Authorized or Designate Representative and the Architect.

§ 10.2.10 Contractor's obligations under this Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project, if any, pursuant to a Substantial Completion Certificate.

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§ 10.2.11 Injury or Damage to Person or Property
If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of 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 written notice shall provide sufficient detail to enable the other party to investigate the matter. Contractor understands and acknowledges that, under Texas law, Owner has sovereign and/or governmental immunity as to all torts except as to the Owner's permitted use or operation of Owner's motor vehicles, subject to any defenses under law.

§ 10.3 Hazardous Materials and Substances
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify in writing the Owner and Architect of the condition. In the event the Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner may 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, may cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion.

§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.

§ 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.

§10.4 Emergencies
§ 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss and promptly inform Owner and Architect.

§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

§ 10.5.1 Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor."

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§ 10.5.2 Final Payment shall not be made until this written certification has been received.

§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM
§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.7 HAZARDOUS MATERIALS CERTIFICATION
The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals related to Contract Closeout.

§ 10.8 PUBLIC CONVENIENCE AND SAFETY.
§ 10.8.1 Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner and entity having jurisdiction over the streets and sidewalks. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

§ 10.8.2 In case of an emergency, the Owner reserves the right to remedy any neglect on the part of Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours' notice in writing to Contractor and Contractor's failure to cure such item within said twenty-four hour period unless Contractor has initiated the remedy and diligently pursues the remedy to completion which shall be complete within five (5) days of Owner's notice to Contractor. In case of an emergency, the Owner shall also have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy Contractor's neglect may be deducted from the Contract Sum.

§ 10.9 BARRICADES, LIGHTS AND WATCHMEN. If the Work is carried on or adjacent to any street, alley or public place, Contractor shall, at Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this section, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect may order the damaged portion immediately removed and replaced by Contractor at Contractor's cost and expense; provided, however, the Architect shall not take any action that would preclude a Builders Risk insurance claim for such damage. Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

§ 10.9 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED. In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work.

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§ 10.11 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS. When existing storm sewers or drains have to be blocked, taken up or removed, Contractor shall, at its own expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers.

§ 10.12 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT.
§ 10.12.1 When Contractor desires to use water in connection with the Work, Contractor shall make complete and satisfactory arrangements with any water providers in consultation with the Owner.

§ 10.12.2 Contractor, in consultation with the Owner, shall make complete and satisfactory arrangements for electricity and metered electrical connections with any retail electric provider in the event that separately metered electrical connections are required for the Project.

ARTICLE 11 INSURANCE AND BONDS

§ 11.0.1 No Work will be commenced, and no equipment or materials can be shipped, until all the insurance and bond requirements in the Contract Documents have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner, in its sole discretion. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated in the Contract Documents because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner. Said lack of insurance may then be grounds for termination or modification of this Agreement. All insurance required under the Contract Documents must be in a form satisfactory to the Owner. Insurance documents required by this Agreement shall be delivered to the address of the Owner, Architect, Project or other location designated by the Owner.

§ 11.0.2 Satisfactory evidence of insurance required by the Contract Documents must be provided to Owner and Architect not later than five (5) calendar days after execution of the Contract by Owner and prior to commencement of the Work. Satisfactory evidence shall include copies of all required insurance policies, declarations, endorsements themselves and any other insurance related documents requested by Owner. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and additional insured (except as noted below) and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations, and additional endorsements, as they are provided to Contractor.

§ 11.0.3 All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than "A - X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation.

§ 11.0.4 All insurance required herein shall name the Owner, its officers, trustees, employees, representatives, or agents, as an additional insured, except Contractor's Worker's Compensation insurance. Subcontractors shall include the Contractor on all liability insurance policies to the same extent as the Owners are required to be named as an Additional Insured.

§ 11.0.5 All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, trustees, employees, representatives, or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner as provided for in Section 11.3 below.

§ 11.0.6 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, trustees, employees, representatives, or agents.

§ 11.0.7 All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

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§ 11.0.8 Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.9 Each insurance policy to be furnished by Contractor shall include the following required provisions within the certificate of insurance, and within the body of the insurance contract or by endorsement to the policy:

.1 Each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to Owner by certified mail. The Contractor shall also notify the Owner in writing by certified mail or personal delivery, within three (3) Work Days after the Contractor knew or should have known of any change that materially affects the provision of coverage.

.2 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an Additional Insured on the policy. The insurance coverage furnished by Contractor as required is considered to be primary insurance and non-contributions for purposes of the Project and the Additional Insureds named in the required policies.

.3 All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

.4 None of the liability policies shall contain a provision excluding coverage for claim(s) brought by one insured against another insured.

.5 Without limiting, in any way, the indemnity obligations set forth in the Contract Documents, all insurance shall also provide coverage for indemnity obligations.

§ 11.0.10 Contractor agrees to the following special provisions:

.1 Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner. It being the intention that the insurance policies shall protect all parties to the Agreement and be primary coverage for all losses covered by the policies. This Waiver of Subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under the Contract Documents.

.2 Insurance companies issuing the insurance policies and Contractor shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Contractor.

.3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by Contractor (or any Subcontractors) shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.

.4 The Owner reserves the right to review the insurance requirements in the Contract Documents during the effective period of this Agreement and to adjust the lines of insurance coverage and their limits when deemed necessary and prudent by the Owner, based upon changes in statutory law, court decisions, the claims history, or Owner's discretion. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Agreement or upon the underwriter of any such policy provisions). Upon written request by the Owner, Contractor shall exercise reasonable efforts to accomplish such changes in policy lines of coverage; and Owner shall pay Contractor for all extra costs incurred in effecting the changes to the policies.

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.5 No special payments shall be made for any insurance policies that Contractor and Subcontractors are required to carry because all are included in the Contract Sum.

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims that may arise out of, or result from, the Contractor's operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, at a minimum, of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section **11.1** in the Agreement, or elsewhere in the Contract Documents. Such insurance shall include the following:

.1 Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project **(See Exhibit A);**

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations;

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18 of this A201; and

.9 Claims for damages to the Work itself, through builder's risk insurance.

§ 11.1.2 Intentionally deleted.

§ 11.1.2.1 Performance Bond and Payment Bond. The Contractor shall furnish separate payment and performance bonds covering faithful performance of the Contract and payment of obligations arising thereunder, each bond to be in a total amount equal to 100% of the Contract Sum. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. The Performance Bond shall also provide for the repair of all defects due to faulty materials and workmanship that appear within a period of one (1) year from Final Completion. Except as provided below, such bond shall be furnished to Owner before any work begins. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 *et seq*. and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-" X according to the latest posted ratings on the A.M. Best website, www.ambest.com. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of

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the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

§ 11.1.2.2 The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five (5) calendar days after execution of the Contract by Owner and prior to the commencement of the Work. All bonds will be reviewed for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.

§ 11.1.2.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 11.1.2.4 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

§ 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) Work Days of the date the Contractor knows or should know of an impending or actual cancellation of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation. Upon receipt of written 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 written notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. At least 30 calendar days prior to the date of expiration of any policy required by the Contract Documents, Contractor shall provide Owner written notice of the impending expiration.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date of Substantial Completion. If Owner occupies or uses any completed or partially-completed portion of the Work at any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, if any, Contactor's builder's risk shall be primary and non-contributory.

§ 11.2.2 Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

§ 11.2.3 Intentionally Omitted.

§ 11.3 Waivers of Subrogation

§ 11.3.1 All insurance required under the Contract Documents shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. The Contractor shall require similar written waivers in favor of the Owner, from the

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subcontractors and sub-subcontractors. The policies of insurance purchased and maintained by Contractor shall not prohibit this waiver of subrogation.

§ 11.3.2 The Owner, as fiduciary, shall have power to adjust and settle any loss arising out of the Work with insurers, regardless of the purchaser of the insurance policy.

§ 11.4 Loss of Use and Business Interruption

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.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Contract Documents 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 Section 11.5.2 below.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify any other insureds of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds.

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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner'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 or Owner 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 may 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 and the Contract Time will not be extended.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or Work 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. And the Contract Time will not be extended for the correction.

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand. Notwithstanding the foregoing or any provision of the Agreement to the contrary, Owner shall have no obligation to notify Contractor of any defect creating an emergency that is presently damaging, or imminently threatening damage to, persons or property and in such event, Owner may make any repairs it deems necessary or appropriate to repair such matters and may recover such costs of repair from Contractor.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 of this A201, as amended, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such written notice promptly after discovery of the condition. If the Contractor fails

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to commence to continue through completion the correct nonconforming Work within seven (7) days after receipt of written notice from the Owner or Architect, the Owner may correct the Work as provided in 12.2.2.1.1 below. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within seven (7) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

§ 12.2.2.2 To the extent any warranty begins herein at Substantial Completion, 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 To the extent any warranty begins herein at Substantial Completion, the one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to the corrected Work. The Owner shall give notice to Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in Subparagraphs 12.2.2.1 and 12.2.2.2 above does not limit the ability of the Owner to require Contractor to correct latent defects or nonconformities in the Work discovered after said one (1) year period, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion.

§ 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 by 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 of the A201, as amended, shall be construed to establish a period of limitation(s) with respect to 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 of this A201, as amended, 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. Moreover, the corrective remedies set forth in this Article 12 are not exclusive and shall not deprive the Owner of any action, right, or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

§ 12.2.6 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are destroyed or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or by defects in the Work.

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

§ 12.2.8 If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, then an equitable deduction from the Contract Sum shall be made by written agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as

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Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner. If final payment has been made, then Contractor shall pay Owner upon demand.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Bexar County, Texas.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part 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 invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contact Documents.

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such 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 which shall be included in the Contract Sum. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing and inspection services, and the verification testing services necessary for acceptance of the facility by the Owner. The Contractor shall give the Architect and Owner timely written notice of when and where tests and inspections are to be made so that the Architect or Owner may be present for such procedures. The Owner may 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 above, the Owner may provide or contract for such additional testing, inspection, or approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 above reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary

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by such failure, including, but not limited to, 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, with a copy to the Owner.

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

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

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is overdue at the rate as provided by Texas Government Code Sections 2251.0025 and .0027. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's Application for Payment. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law."

§ 13.7 RECORDS

§ 13.7.1 Contractor shall maintain Job Records, including, but not limited to, insurance records, scheduling records, accounting records, written policies and procedures, invoices, receipts, all records related to the Contract Documents and Construction Documents, tax records, communications (texts, email, etc.), invoices, Construction Documents, scheduling documents and data, insurance records, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, insurance records, correspondence, change order files (including documentation covering negotiated settlements) other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor and subcontractor for at least ten (10) years after the date of Final Completion of the Project. Within three (3) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

§ 13.7.2 For A133 Only - If Contractor is a Construction Manager at Risk, then Contractor shall also maintain subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; communications (email, etc.); and any other supporting evidence that may substantiate charges related to the Contract and/or Project.

§ 13.7.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1 above.

§ 13.7.4 Contractor shall keep all Contract Documents related to the Project, subject to the provisions of Section 13.7 above, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

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§ 13.7.5 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor. In addition, if an audit inspection or examination discloses overpayments (of any nature) by the Owner to the Contractor in excess of one percent (1%) of the Contract Sum, the actual cost of the Owner's audit shall be paid by the Contractor.

§ 13.7.6 Contractor shall require all subcontractors, sub-subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section 13.7 by insertion of the requirements hereof in a written contract agreement between the Contractor and payee. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payees' costs from amounts payable to the Contractor pursuant to this contract.

§ 13.8 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION

§ 13.8.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.8.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.8.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq*., and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq*. See also, Section 8.7.22 of the A101-2017, as amended.

§ 13.9 TIME LIMITS ON LITIGATION

The Owner and Contractor shall commence all litigation, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the dispute resolution method selected in the Agreement and within the time period specified by applicable law.

§ 13.10 ADDITIONAL DOCUMENTS AND FURTHER ASSURANCES. Contractor acknowledges that Owner may require from time-to-time certain statements, certificates and documents from Contractor. Contractor agrees to furnish such statements, certificates and documents as the Owner may reasonably require, which may include, without limitation, names of subcontractors and suppliers and their respective addresses; amounts due or to become due or previously paid to such Subcontractors and suppliers; information concerning any mechanic's lien claims; mechanic's lien releases and lien waivers; receipted bills evidencing payment, estimates of the cost of the Work performed by Contractor and any subcontractor or supplier and estimates of the cost of completing the Work. Contractor further agrees to cooperate with and assist Owner in complying with all of the requirements of the bonds or notes used to finance the Project, in part or in whole, if any, which relate to the performance of the Work. Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

§ 13.11 SUBCONTRACTOR OBLIGATIONS. **Other than the Subcontractor insurance obligations set forth in Article A.4 Special Terms and Conditions of the AIA Document A101-207 Exhibit A, as amended,** any specific requirement in the Contract Documents that imposes responsibilities or obligations on the Contractor shall also apply to a Subcontractor and a subcontractor of any tier. The omission of a reference to a subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a subcontractor of any tier under the Contract Documents or the applicable subcontract.

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§ 13.1 IMPACTS CAUSED BY GOVERNMENTAL ACTIONS. Subject to prior written approval from the Owner as described in this paragraph, the actual amount of cost increases, which are charged to and paid by the [Construction Manager / Contractor] or any of their subcontractors (of any tier) as a result of supply chain disruptions in the marketplace, price escalations in the marketplace or price increases due to labor or materials shortages, legislative, judicial, or administrative action, and/or any added or increased tariff, duty, or tax imposed by governmental authorities, shall be paid by Owner, without any markup (and without any additional Construction Manager Fee, if applicable), provided that such costs are (i) specified on a separate line item to the District on a revised Schedule of Values and (ii) are supported by documentation reasonably satisfactory to Owner that shows the increased costs and/or dollar amount paid. Notwithstanding anything to the contrary, [Construction Manager / Contractor] or any of its subcontractors (of any tier) must obtain Owner's prior written approval, which approval shall not be unreasonably withheld, before incurring any of the aforementioned cost increases (to enable, without limitation, consideration of alternates) as a condition precedent to seeking and obtaining a cost increase.

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 ninety (90) 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; or
- **.2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

§ 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 below, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, then after applicable time period the Contractor may, upon ten (10) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, and other actual and verifiable damages permitted under the law that were incurred to the date of termination.

§ 14.1.4 If the Work is stopped for a period of one hundred and twenty (120) 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 twenty (20) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding any term of the Agreement to the contrary, Contractor may not terminate the Agreement solely as a result of Owner initiating litigation against the Contractor prior to completion of the Work.

§ 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, equipment 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;
- **.4** otherwise is guilty of substantial or material breach of a provision of the Contract Documents;
- **.5** fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- **.6** engages in serious or repeated worker misconduct in violation of the Contract Documents;;

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.7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or

.8 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents;

.9 Contractor fails or refuses start the Work within seven (7) days after the date of written notice by the Owner to commence the Work;

.10 Owner has a reasonable belief that Contractor has abandoned the Work;

.11 Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work;

.12 Progress of the Work being made by Contractor is insufficient to complete the Work within the Contract Time or in accordance with the most recent approved Project Schedule;

.13 Contractor repeatedly fails or refuses to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect or the Owner as permitted in the Contract Documents;

.14 Contractor repeatedly fails or refuses to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect or Owner; and

.15 Collusion exists or has occurred for the purpose of illegally procuring the Work or a Subcontractor, or a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 above exist, subject to any prior rights of the surety, 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 (7) 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 of this A201, as amended; 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 above, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts earned to the date of termination.

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6 in this A201, as amended. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the

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Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 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. During the period of suspension, Contractor shall protect and care for the Work.

§ 14.3.2 The Contract Sum and Contract Time may be adjusted, by mutual written agreement, for adjustments in the cost and time caused by suspension, delay, or interruption under Section 14.3.1 above. 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.

If there is no mutual agreement, the Contract Sum and Contract Time shall be adjusted based on the reasonable and verifiable change in the cost and time caused by such suspension, delay, or interruption of the Work, as permitted by the law.

§ 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. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and other actual and verifiable damages permitted under the law that were incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit or fee for Work not executed or preformed.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in this Section 14.4.

ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of additional compensation under the Contract Documents, interpretation of the Contract Document terms, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Intentionally Omitted.

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§ 15.1.3 Notice of Claims
Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to Final Payment, shall be initiated by written notice to the Owner and to the Architect. Claims by Contractor under this Section 15.1.3 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first knew or should have known the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representatives. The Notice shall clearly set out the specific matter of complaint, and the impact which may occur or have occurred as a result thereof, to the extent that the impact can be assessed at the time of the Notice. If the impact cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement. Claims by Contractor not filed as required by this Section shall be waived.

§ 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 above, and Article 14 above, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 Litigation is not a basis for Contractor to terminate this contract or suspend the Work.

§ 15.1.5 Claims for Additional Cost or An Increase in the Contract Sum or Guaranteed Maximum Price
IF THE CONTRACTOR WISHES TO MAKE A CLAIM FOR ADDITIONAL COST OR AN INCREASE IN THE CONTRACT SUM, WRITTEN NOTICE AS PROVIDED IN SECTION 15.1.3 MUST BE GIVEN TO OWNER AND ARCHITECT. PRIOR NOTICE IS NOT REQUIRED FOR CLAIMS RELATING TO AN EMERGENCY ENDANGERING LIFE OR PROPERTY ARISING UNDER SECTION 10.4 ABOVE. THE ARCHITECT WILL PROMPTLY INVESTIGATE SUCH CLAIM AND REPORT FINDINGS AND A RECOMMENDED RESOLUTION IN WRITING TO THE OWNER AND CONTRACTOR. IF THE CLAIM IS APPROVED BY OWNER'S BOARD OF TRUSTEES, OR OWNER'S REPRESENTATIVE, IF PROVIDED FOR HEREIN, THEN CONTRACTOR SHALL PROCEED WITH THE EXECUTION OF THE WORK THAT IS THE SUBJECT MATTER OF THE CLAIM. IF THE CLAIM IS REJECTED BY THE OWNER, THEN CONTRACTOR MAY PURSUE ALTERNATIVE DISPUTE RESOLUTION AS PROVIDED FOR IN THE CONTRACT DOCUMENTS. TO THE FULLEST EXTENT PERMITTED BY THE LAW AND NOTWITHSTANDING ANY OTHER PROVISION, THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE OWNER, FOR ANY CLAIMS FOR DAMAGES, ADDITIONAL COST, OR INCREASE IN THE CONTRACT SUM, SHALL NOT EXCEED TWENTY FIVE PERCENT OF THE CONTRACT SUM PROVIDED FOR IN THE CONTRACT DOCUMENTS.

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

§ 15.1.6.2 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 prevented the execution of major items of work on normal working days. "Adverse weather conditions" means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year.

§ 15.1.6.3 The Contractor shall anticipate and include in the construction schedule nineteen (19) rain days due to adverse weather conditions in accordance with the rainfall table below. A rain day is defined as a day when rainfall exceeds one-half (.5) inch during a 24-hour period. The number of rain days expected for each month is as follows:

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January	[_1_] calendar days	July	[_1_] calendar days
February	[_1_] calendar days	August	[_1_] calendar days
March	[_1_] calendar days	September	[_3_] calendar days
April	[_2_] calendar days	October	[_2_] calendar days
May	[_3_] calendar days	November	[_1_] calendar days
June	[_2_] calendar days	December	[_1_] calendar days

§ 15.1.6.4 Time extensions may be granted for rain days in any month when the cumulative number of rain days during that month exceeds the number scheduled, provided that the rainfall prevented the execution of major items of work on normal working days. No day will be counted as a rain day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The number of rain days shown in the above schedule for the first and last months of the Contract will be prorated in determining the total number of rain days expected during the period of the Contract. No delays or extensions shall be granted for mud conditions.

§ 15.1.6.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or persons or entities under Contractor's control. Claims for extension of time may only be considered because of rain delays, or because of hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. **No damages shall be paid for delays**. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.6.6 Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether Contractor, Owner, rain day, or other. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section shall be waived.

§ 15.1.7 Intentionally Omitted.

§ 15.1.8 PASS THROUGH CLAIMS: In the event that any Subcontractor of Contractor asserts a claim to Contractor and that Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to:

.1 the requirements of Section 15.1.3 of this agreement; and

.2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such claim against the Owner:

(i) Contractor shall either:

(A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting; or

(B) Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement Contractor has agreed to be legally responsible to the Subcontractor for the assertion of such claim against the Owner under the Contract Documents and for paying to the Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by Contractor in the claim submittal materials.

(ii) Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the

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extent to which the claim is believed in good faith to be valid. Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid or Contractor will notify Owner if Contractor is not willing to recommend the claim for approval and certify the claim.

(iii) The Subcontractor making the claim to Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Contractor in the claim submittal materials.

.3 Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

.4 Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or law.

§ 15.2 Initial Recommendation

§ 15.2.1 Timely claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect shall review Contractor's Claims and within ten (10) days of the receipt of the Claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

§ 15.2.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in making a written recommendation.

§ 15.2.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished, or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

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

§ 15.2.6 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.6.1 Intentionally Omitted.

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§ 15.2.7 Intentionally Omitted.

§ 15.2.8 Intentionally Omitted.

§ 15.3 Alternative Dispute Resolution

§ 15.3.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, shall, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall be a condition precedent to the initiation of any litigation arising out of such Claims. Claims for injunctive relief shall not be subject to mediation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. Requests for mediation shall be filed in writing with the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then one of the parties may request the appointment of a neutral mediator by a Bexar County District Court Judge.

§ 15.3.3 The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held in Bexar County, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, signed by the Contractor, considered for approval by the Owner, if required, and signed by the Owner's Designated Representative, and, if fully executed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1. **HOWEVER, BOTH PARTIES EXPRESSLY WAIVE THEIR RIGHTS TO DEMAND A TRIAL BY JURY.**

§ 15.4 No Arbitration

§ 15.4.1 Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 15.4.1.1 Intentionally Omitted.

§ 15.4.2 Intentionally Omitted.

§ 15.4.3 Intentionally Omitted.

§ 15.4.4 Intentionally Omitted**.**

§ 15.4.4.1 Intentionally Omitted.

§ 15.4.4.2 Intentionally Omitted.

§ 15.4.4.3 Intentionally Omitted.

§ 15.5 5 Contractor stipulates that: (a) Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas; and (b) Owner's act regarding the Project and this Agreement are taken in its capacity as a governmental function. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided by state law.

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

[Signature Page to Follow]

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User Notes: (1229677171)

EXECUTED this _____ day of _____, _____.

OWNER: **Alamo Community Colleges District** _____ **By:** _____ **Title:** _____	**CONTRACTOR:** _____ **By:** _____ **Title:** _____

District's Counsel, as to form only:

By:_____

DRAFT

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