

# ***McLean Independent School District***

REQUEST FOR PROPOSALS FOR  
CONSTRUCTION MANAGER-AT-RISK ("CMAR")

For

***2020 Roof Repair/Replacement Project***

RFP No.: **20-01**

*Response due – May 21, 2020  
3:00 pm*



McLean Independent School District  
Mailing Address: P.O. Box 90, McLean, Texas, 79057  
Physical Address: 600 Rowe Street, McLean, Texas 79057

# **MCLEAN INDEPENDENT SCHOOL DISTRICT**

## **CONSTRUCTION MANAGER AT RISK 2020 Roof Repair/Replacement Project**

### **REQUEST FOR PROPOSAL – RFP 20-01**

May 7, 2020

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**I.**  
**ADVERTISEMENT**  
**RFP NO. 20-01, CONSTRUCTION MANAGER AT RISK**

McLean Independent School District (the "District" or "Owner") is requesting Proposals for a Construction Manager at Risk (CMAR), One-step Process (per Texas Government Code, Chapter 2269, Subchapter F) relating to its 2020 Roof Repair/Replacement Project to school facilities (the "Project"). The estimated budget for construction is approximately \$320,000.00. Proposals for the Project will be received by mail or hand delivery only at the McLean Independent School District Administration Office: Mailing Address: P.O. Box 90, McLean, Texas, 79057 or Physical Address: 600 Rowe Street, McLean, Texas 79057. CMAR shall identify its Proposal by typing on the outside of the envelope: ***"Proposal for Construction Manager at Risk for 2020 Roof Repair/Replacement Project, RFP No. 20-01."*** Proposals received after 3:00 p.m. on May 21, 2020 will be returned unopened. Fax or electronic responses will NOT be considered.

The procurement method is CONSTRUCTION MANAGER AT RISK, ONE-STEP PROCESS.

**RFP # 20-01, 2020 Roof Repair/Replacement Project**

**Project Objective** – Repair/replacement of roofing materials and components at all District facilities, including a District-owned single-family home.

**Estimated Total Construction Budget** – \$320,000.00  
**Estimated Final Project Completion** – September 15, 2020

**CRITERIA FOR SELECTION**

Per Texas Government Code § 2269.055, "In determining the award of a contract under this Chapter," a district may consider specified criteria with an assigned weighted value. The District will consider the criteria and weights described in Section 1.9 herein.

Owner reserves the right to reject, in its sole discretion, any or all Proposals submitted in response to this Request for Proposal ("RFP"), or any part of any Proposal and/or waive technicalities. The Owner reserves the right to seek clarification and/or request additional information. Owner will award a contract, if any, that serves the best interests of the Owner. Owner's waiver of any deviations in any Proposal will not constitute a modification of this RFP and will not preclude Owner from asserting all rights against CMAR for failure to fully comply with all terms and conditions of this RFP. All Proposals in response to this RFP become the property of the Owner and may be subject to release to any requester under the provisions of the Texas Public Information Act, Chapter 552 of the Texas Government Code, and Attorney General Opinions issued under that statute. Owner may re-issue another RFP for the services as described in this RFP or similar services at any time.

**Per Section 44.043, of the Education Code, (b) notwithstanding any other provision of this chapter, a school district:**

1. May not consider whether a vendor is a member of or has another relationship with any organizations; and
2. Shall ensure that its Proposal specifications do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

**OWNER RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS AND TO WAIVE IRREGULARITIES OR INFORMALITIES AS MAY BE DEEMED IN OWNER'S INTEREST.**

For additional information, see the Proposal Instructions to CMARs, or contact the business manager as noted below on or before **May 14, 2020**, to view and inspect the premises and specifications:

McLean Independent School District  
ATTN: Amy Calvert, Business Manager      Phone: 806-779-2571  
PO Box 90      EMAIL: amy.calvert@region16.net  
McLean, Texas 79057

Unless a prevailing wage schedule otherwise is attached hereto, the Board of Trustees, for the purpose of complying with Section 2258, Subchapter B of the Texas Government Code for all public contracts, has adopted the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as the published rates for the Owner. These rates are listed on the following website: <https://beta.sam.gov/search?index=wd>.

**IT IS THE RESPONSIBILITY OF THE CMAR TO ENSURE THAT IT AND ALL OTHER CONTRACTORS AND SUBCONTRACTORS PAY THE APPROPRIATE RATE OR HIGHER ON THE PROJECT OR BE SUBJECT TO PENALTY AS SET FORTH IN SECTION 2258.023 OF THE TEXAS GOVERNMENT CODE.**

**CONFLICT OF INTEREST.** Effective January 1, 2006, any person or entity, as well as agents of such persons, who contracts or seeks to contract with the Owner for the sale or purchase of property, goods, or services are required to file a Conflict of Interest Questionnaire with the Owner. A Conflict of Interest questionnaire is included in this RFP. The completed form must be returned as part of your Proposal submittal.

**NO ISRAEL BOYCOTT CERTIFICATION.** Any responder to this RFP must agree that, in accordance with Texas Government Code 2271.002, the following provision applies to any subsequent Agreement if: (1) the value of the Agreement is \$100,000 or more; (2) the responder is not a sole proprietor; and (3) the responder employs 10 or more full-time employees:

Contractor hereby verifies it does not and will not boycott Israel during the term of this contract. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR A FOREIGN TERRORIST ORGANIZATION.** In accordance with Texas Government Code, Chapter 2252, Subchapter F, Owner is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By submitting a Response to this RFQ, Contractor certifies to Owner that it is not a listed company under any of those Texas Government Code provisions, and thereby voluntarily and knowingly acknowledges and agrees that any contract resulting from its Response shall be null and void should facts arise leading the Owner to believe that the A/E was a listed company at the time of this procurement.

**CERTIFICATE OF INTERESTED PARTIES:** Effective January 1, 2016, Texas governmental entities must comply with the "Disclosure of Interested Parties" mandated by Texas HB 1295, as implemented by the Texas Ethics Commission. Briefly stated, all contracts requiring an action or vote by the governing body of the entity or agency before the contract may be signed (regardless of the dollar amount) or has a value of at least \$1 million will require the on-line

completion of Form 1295 "Certificate of Interested Parties," per Texas Government Code § 2252.908. Form 1295 is also required for any and all contract amendments, extensions or renewals made after January 1, 2016. Therefore, Contractor will be required to create, electronically file, and present such Form 1295 to the District using the Texas Ethics Commission's online filing application at final execution of any contract with the District.

Pursuant to Texas Government Code §2269.053, the Mclean ISD Board of Trustees has delegated and authorized the Superintendent or his designee to receive and review proposals, and recommend to the Board those CMARs he believes to provide the best value to the District based on the criteria and weights provided herein.

**WAIVER OF CLAIMS: BY TENDERING A RESPONSE TO THIS RFP, THE CMAR ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A PROPOSAL, AND THE PROCESS USED BY THE OWNER FOR SELECTING A CMAR. FURTHER, BY RESPONDING AND FOR BEING CONSIDERED FOR THIS PROJECT, THE CMAR FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST OWNER AND ANY OF ITS TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, REJECTION OR RECOMMENDATION OF ANY PROPOSAL SUBMITTED IN RESPONSE TO THIS RFP.**

## II. PROPOSAL INSTRUCTIONS

### PART – GENERAL

#### 1.1 RECEIPT AND OPENING OF PROPOSALS

- A. McLean Independent School District (hereinafter referred to as “Owner” or “District”), invites Proposals for services of a CMAR. This is a one-step selection process.
- B. SUBMISSION OF PROPOSALS: Sealed Proposals shall be submitted in a sealed, opaque envelope, addressed Amy Calvert, Business Manager. Proposals shall be submitted by U.S. Postal service to:

McLean Independent School District  
Attn: Amy Calvert, Business Manager  
P.O. Box 90  
McLean, Texas, 79057

Or delivered by hand or overnight carrier to:

McLean Independent School District  
Attn: Amy Calvert, Business Manager  
600 Rowe Street  
McLean, Texas 79057

PROPOSALS SHALL BE SUBMITTED NO LATER THAN THE FOLLOWING TIME AND DATE:

**May 21, 2020 at 3:00 p.m.**

ALL ENVELOPES CONTAINING PROPOSALS SHALL BE MARKED WITH  
**"Proposal for Construction Manager at Risk for 2020 Roof  
Repair/Replacement Project, RFP No. 20-01"**

ALL PROPOSALS MUST BE RECEIVED BY THE DISTRICT BEFORE  
OPENING DATE AND TIME.

- C. LATE PROPOSALS: Owner is not responsible for lateness of mail, carrier, etc. and time/date noted at Owner's office shall be the official time of receipt.
- D. OPENING: Proposals will be opened and the following will be read aloud:  
Name of firm responding  
Fees or prices as requested
- E. LOCATION OF PROPOSAL OPENING: Proposals will be publicly opened on the date and at the time indicated in 1.1.B. above. Opening will be at the following location:

McLean Independent School District  
600 Rowe Street  
McLean, Texas 79057

- F. NO ORAL, electronic, telegraphic, telephonic or facsimile transmitted Proposal(s) will be considered.
- G. Site Visit: not later than 7 days prior to deadline. Contact the Business Manager's office at 806-779-2571 for an appointment.

## 1.2 METHOD OF PROPOSAL

- A. DOCUMENTS: Each CMAR must submit three (3) complete sets of Proposal Documents.
- B. ETHICS: The CMAR shall not accept or offer gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the Owner.
- C. CONFLICT OF INTEREST: No public official shall have a personal interest in this Proposal or any resulting contract in accordance with Local Government Code Title 5, Subtitled C, Chapter 171.

### **Notice to Proposers: Conflict of Interest Questionnaire Required by Chapter 176 of the Texas Local Government Code**

Effective January 1, 2006, any person or entity, as well as agents of such persons, who contracts or seeks to contract with the Owner for the sale or purchase of property, goods, or services (hereafter referred to as Vendors) are required to file a Conflict of Interest Questionnaire with the Owner. Each person or entity that contracts with the Owner is responsible for complying with all applicable disclosure requirements. Forms and instructions will be included in the RFP package.

- D. CERTIFICATE OF INTERESTED PARTIES: Effective January 1, 2016, Texas governmental entities must comply with the "Disclosure of Interested Parties" mandated by Texas HB 1295, as implemented by the Texas Ethics Commission. Briefly stated, all contracts requiring an action or vote by the governing body of the entity or agency before the contract may be signed (regardless of the dollar amount) or has a value of at least \$1 million will require the on-line completion of Form 1295 "Certificate of Interested Parties," per Texas Government Code § 2252.908. Form 1295 is also required for any and all contract amendments, extensions or renewals made after January 1, 2016. Therefore, CMAR will be required to create, electronically file, and present such Form 1295 to the District using the Texas Ethics Commission's online filing application at final execution of any contract with the Owner.
- E. HB 89 VERIFICATION: The 85th Texas Legislature enacted House Bill 89 (codified in chapter 2270 of the Texas Government Code). As of September 1, 2017, state law requires written verification by a for-profit company before it enters a contract with a local government (i.e., a school district) that verifies that the company does not boycott Israel and will not boycott Israel during the term of the contract. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

- F. COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR A FOREIGN TERRORIST ORGANIZATION. In accordance with Texas Government Code, Chapter 2252, Subchapter F, the District is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By execution of any Agreement resulting from this RFP 2020-01, proposer certifies to the District that it is not a listed company under any of those Texas Government Code provisions. Proposer hereby voluntarily and knowingly acknowledges and agrees that any resulting Agreement shall be null and void should facts arise leading the District to believe that the proposer was a listed company at the time of this procurement.
- G. **INDEMNIFICATION: TO THE FULLEST EXTENT PERMITTED BY LAW, THE SELECTED CMAR SHALL BE REQUIRED TO DEFEND, INDEMNIFY AND SAVE HARMLESS THE OWNER, ITS TRUSTEES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL LOSSES, EXPENSES, ATTORNEYS' FEES, CLAIMS, SUITS AND ACTIONS, OF ANY CHARACTER, NAME AND DESCRIPTION BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES, RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS, OR PROPERTY ARISING OUT OF THE AWARD OF THE CONTRACT OR ON ACCOUNT OF ANY NEGLIGENT ACT OR FAULT OF THE SELECTED CONTRACTOR, OR OF ANY AGENT, EMPLOYEE, SUBCONTRACTOR OR SUPPLIER IN THE EXECUTION OF, OR PERFORMANCE UNDER, ANY CONTRACT WHICH MAY RESULT FROM THIS RFP, AND THE SELECTED CONSTRUCTION MANAGER AT RISK SHALL PAY ANY JUDGMENT AND COSTS WHICH MAY BE OBTAINED AGAINST OR PAID BY DISTRICT ARISING OUT OF SUCH INJURY OR DAMAGES;** provided and except, however, that this indemnification provision shall not be construed as requiring the selected CMAR to indemnify or hold harmless a registered architect, a licensed engineer or agent, servant, or employee of a registered architect or licensed engineer, from liability for personal injury, death, property injury, or any expense that arises from personal injury, death or property damage, that is caused by or results 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 arising out of the construction contract and the plans, designs or specifications that are a part of the construction contract.
- H. COMPLIANCE: The selected Contractor and Proposal shall comply with all Federal, State, County and local laws, including local building codes. The selected CMAR shall not hire nor work any person not authorized to work, in accordance with immigration laws, in Texas or the United States.
- I. **WAIVER OF CLAIMS: BY TENDERING A RESPONSE TO THIS REQUEST FOR PROPOSAL, THE CMAR ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A PROPOSAL, AND THE PROCESS USED BY OWNER FOR SELECTING A CMAR. FURTHER, BY SUBMITTING A PROPOSAL, THE CMAR FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST OWNER, ARCHITECT OR ANY OF THEIR TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, RECOMMENDATION**



**OR SELECTION OF ANY PROPOSAL SUBMITTED IN RESPONSE TO THIS REQUEST FOR PROPOSAL.**

- J. Unless a prevailing wage schedule is attached hereto, the Owner, for the purpose of complying with Section 2258, Subchapter B of the Texas Government Code for all public contracts, has adopted prevailing wage rates as required by law. These rates are listed at: <https://beta.sam.gov/search?index=wd>. **IT IS THE RESPONSIBILITY OF THE CMAR TO PAY THE APPROPRIATE RATE OR HIGHER ON THE CONSTRUCTION PROJECT OR BE SUBJECT TO PENALTY AS SET FORTH IN SECTION 2258.023 OF THE TEXAS GOVERNMENT CODE.**
- K. The Owner reserves the right to require all CMARs to submit statements as to previous experience in performing comparable work. The competency and responsibility of CMARs and their proposed subcontractors will be considered in making an award.
- L. Each CMAR agrees in submitting its Proposal that no modifications, withdrawals or cancellations may be made to the Proposal during the forty-five (45) days following the time and date the Owner has ranked and selected CMARs.
- M. The Owner reserves the right to issue Addenda at any time prior to the proposal opening. All such Addenda become, upon issuance, an inseparable part of the RFP.
- N. Owner is qualified for exemption from State and Local Sales Tax pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Applicable State Sales Taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts.
- O. It is the intention of the Owner to award the work within 30 days from the date CMARs are ranked and selected by the Owner. However, the Owner may reject any or all Proposals and/or abandon the Project if it determines that the Project would not be in the best interest of the District.
- P. Awards shall be made with reasonable promptness to the CMAR whose proposal best conforms to the invitation and will be the most advantageous to the Owner based on criteria and corresponding weights set forth herein at Section 1.9.

**1.3 PREPARATION OF PROPOSAL**

- A. Make Proposal in name of principal and if co-partnership, give names of all parties.
- B. Give CMAR's complete physical address and email address.
- C. If Proposal is submitted by an agent, provide satisfactory evidence of agency authority.
- D. Fill in all prices in both words and figures.
- E. Submit Proposal in sealed, opaque envelope. No fax or electronic responses will be considered.

- F. Indicate on the outside of envelope the name of CMAR, CMAR's address, name of Project and RFP number for which Proposal is submitted.
- G. If forwarded by mail, enclose sealed envelope containing Proposal in another envelope addressed as indicated.
- H. Proposal(s) must be received prior to opening time. **ANY PROPOSAL RECEIVED AFTER THE DESIGNATED OPENING DATE AND TIME LISTED HEREIN SHALL BE RETURNED UNOPENED AND WILL BE CONSIDERED VOID AND UNACCEPTABLE.**
- I. Qualification Statements: Along with the requirements identified above, each CMAR shall complete and include a qualification statement in the Proposal package submitted. AIA-A305 Contractors Qualification Statement, or similar document.

#### 1.4 WITHDRAWAL OR REVISION OF PROPOSAL

- A. Proposal may be withdrawn or revised prior to scheduled time for opening, under following terms:
  - 1. CMAR may, without prejudice to himself, withdraw proposal after it has been deposited, provided request for such withdrawal is received in writing before time set for opening.
  - 2. After opening, no proposal may be withdrawn.
  - 3. Any interlineation, alteration, or erasure made before receiving time must be initialed and dated by the person who signed the proposal, guaranteeing authenticity.
  - 4. Once a Proposal has been opened, it may not be changed for the purpose of correcting an error to the price proposed.

#### 1.5 NON-RESPONSIVE PROPOSAL

- A. Proposal(s) are considered NON-RESPONSIVE and may be rejected for any reason unless otherwise prohibited by law, including without limitation:
  - 1. If there are unauthorized additions, conditional proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous.
  - 2. If CMAR adds any provisions reserving right to accept or reject any award, or to enter into a contract pursuant to an award.
- B. Owner reserves right to reject any or all Proposal and to waive irregularities or informalities as may be deemed in District's interest, and/or re-issue an RFP for the Project, as it may determine in its sole discretion.
- C. A Proposal that is rejected will not be evaluated and will not be considered.

## 1.6 PROPOSAL/PROPOSAL SECURITY

- A. Each individual Proposal package submitted must be accompanied by Proposal Security made payable to Owner in an amount of five percent (5%) of the fee being proposed based on the estimated construction budget. Proposal Security shall be in the form of a Cashier's Check or a Proposal (Bid) Bond, duly executed by CMAR as principal and having as surety thereon, a corporate surety company duly authorized and admitted to do business in the State of Texas and licensed by the State of Texas to issue such bond, as a guarantee that the CMAR will enter into a Contract and execute required Performance and Payment Bonds within ten (10) days of McLean Independent School District award of a contract.
- B. Each Proposal must be accompanied by information establishing that the agent signing the bond is authorized to write the bond in the amount requested, and if applicable, that reinsurance requirements, have been met, including limits and ratings or other evidence of company solvency.

CMAR must demonstrate to Owner that it can secure required bonds, issued by a corporate surety company authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue such bond, which bonds shall be written in the form acceptable to the Owner.

## 1.7 INTERPRETATIONS

- A. If CMAR is in doubt as to the true meaning or intent of the RFP Documents, CMAR must submit a written request for interpretation, directed to:

McLean Independent School District	
ATTN: Amy Calvert, Business Manager	Phone: 806-779-2571
PO Box 90	EMAIL: amy.calvert@region16.net
McLean, Texas 79057	

- B. CMAR submitting request is responsible for its prompt and actual delivery.
- C. Requests for interpretations of this RFP must be received on or before May 18, 2020, three (3) days prior to Proposal due date of May 21, 2020 at 3:00 PM.
- D. Only interpretations or clarifications answered in writing by the District's representative above will be binding.
- E. Owner is not responsible for any other explanation or interpretations, which anyone presumes to make.
- F. Any corrections, approvals, supplemental instructions or changes to the Proposal Documents will be made by written Addenda. Sole issuing authority of addenda shall be vested in the Owner.
- G. Addenda can be issued only by the Owner.
- H. Addenda will be mailed, delivered or emailed to all parties that request an RFP packet.
- I. CMARs shall acknowledge receipt of all Addenda.

- J. Failure to receive such Addendum does not relieve CMAR from any obligation under his Proposal as submitted.
- K. All formal written Addenda become a part of the RFP Documents.

## 1.8 INSURANCE REQUIREMENTS

The successful CMAR will be required to supply proof of insurance in accordance with the following schedule prior to the start of the Project. Owner requires that CMAR's insurance be placed only with companies that have achieved at least an "A" rating with A.M. Best. The Owner reserves the right to require higher limits of coverage depending on the size, scope, and nature of the contract. Owner must be named as an additional insured and must be provided a waiver of subrogation on all policies.

<b><u>TYPES OF INSURANCE COVERAGE</u></b>	<b><u>LIMITS OF LIABILITY</u></b>
1. Workers Compensation	Statutory
2. Employer's Liability	\$1,000,000 each accident \$1,000,000 disease each employee \$1,000,000 disease policy limit
3. Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 general aggregate
Products – completed operations	\$2,000,000 aggregate
Personal and advertising injury	\$1,000,000 per occurrence
Medical payments	\$5,000
4. Business Automobile Liability	\$1,000,000 combined bodily injury each person \$500,000 bodily injury each occurrence \$100,000 property damage each occurrence
5. Contractual Liability	\$1,000,000 per occurrence \$1,000,000 general aggregate
6. Umbrella/Excess Liability	\$1,000,000 minimum amount
7. Builder's Risk	Amount of Contract Sum

(Property damage deductible not to exceed \$25,000 per occurrence).

**NOTE\* Any deviations from the types and amounts of coverage stated above should be specified in the Proposal, and could be a basis for not selecting a Proposal.**

## 1.9 METHOD OF AWARD – ONE-STEP SELECTION PROCESS

The procurement method is CONSTRUCTION MANAGER-AT-RISK, ONE-STEP PROCESS, as set out in under Texas Government Code, Chapter 2269, Subchapter F.

- A. The Owner will use the following criteria and weights:

<b><u>CRITERIA</u></b>	<b><u>AVAILABLE POINTS</u></b>
1. Price	0 – 25 points
2. Reputation and experience of CMAR	0 – 15 points
3. Quality of goods or services of CMAR	0 – 15 points
4. Safety Record of CMAR	0 – 10 points

<b><u>CRITERIA</u></b>	<b><u>AVAILABLE POINTS</u></b>
5. CMAR's proposed personnel	0 – 10 points
6. Whether financial capability is appropriate to size and scope of Project	0 – 10 points
7. Other relevant factors:	
a. Ability of CMAR to complete on time	0 – 5 points
b. Long term cost to Owner to acquire CMAR's goods and services	0 – 5 points
c. Past relationship with Owner	0 – 5 points
<b>TOTAL</b>	<hr/> 100 points

Using these criteria and weights, the District will evaluate and rank proposals to determine the CMAR that presents the best value to the District.

- B. Per Section 44.043, of the Education Code, (b) notwithstanding any other provision of this chapter, a school district:
1. May not consider whether a vendor is a member of or has another relationship with any organizations; and
  2. Shall ensure that its bid specifications do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

- C. Minimum Standards: CMARs are required to affirmatively demonstrate their responsibility by meeting the following minimum requirements:

1. Have adequate financial resources;
2. Be able to comply with the required or proposed schedules;
3. Have a satisfactory record of performance;
4. Have a satisfactory record of integrity and ethics; and
5. Be otherwise qualified and eligible to receive an award.

The Owner may require other information sufficient to determine CMAR's ability to meet these minimum standards listed above.

- D. In addition to requirements of the RFP Documents, Owner may require additional information to establish responsibility of CMAR. Owner may further require identification of proposed subcontractors, suppliers and/or other persons and/or organizations proposed for portions of the Project and substantial data to determine their qualifications and experience. If requested, CMAR must submit all data to Owner. Owner may also consider and use as part of the evaluation, the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Project when such data is required to be submitted in the RFP Documents or prior to the award of Contract.
- E. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Proposal and to establish the responsibility, qualifications and financial ability of CMAR, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Project in accordance with the RFP Documents to Owner's satisfaction within the prescribed time.

- F. If the Contract is to be awarded, it will be awarded to the best-qualified CMAR whose evaluation, by Owner, indicates to be in the best interests of the Owner.
- G. Evaluation of Alternates - Any and/or all/none of the alternates may be considered in evaluation. Owner may award Contract on base Proposal plus any and/or all/none of the alternates.
- H. Unbalanced Proposal - If the best CMAR's Proposal is significantly unbalanced either in excess of or below reasonable cost analysis values normally associated with the work, the Proposal will be considered as non-responsive and will not be considered for award. The Owner reserves the right to evaluate and determine the next qualified Proposal for consideration of award.
- I. Owner anticipates selection within thirty (30) days after Proposal opening, with contract negotiations to begin immediately thereafter.
- J. As provided in this RFP, under state regulations and District policy, discussions may be conducted with responsible CMARs who submit Proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of any responsiveness to this RFP's requirements. Proposals shall be accorded fair treatment with respect to any opportunity for discussion, and such revisions may be permitted after submission and before award for the purpose of obtaining the best and final Proposal. In conducting these discussions, there shall be no disclosure of any information derived from proposals submitted by competing CMARs.

#### 1.10 CONFIDENTIAL DATA

Any data that is to be considered as confidential in nature must be clearly marked as such by CMAR and will be treated as confidential by Owner only to the extent allowable by the Texas Public Information Act, Texas Government Code §552.001, *et seq.*

#### 1.11 ASSIGNMENT

The successful CMAR shall not sell, assign, transfer or convey a Contract, in whole or in part, without the prior written consent of Owner.

#### 1.12 VENUE

This RFP and any resulting contract will be governed and construed according to the laws of the State of Texas, and venue for any legal proceeding arising out of or related to this RFP shall be in a state district court in the county where the District's Administrative Offices are located.

#### 1.13 CONTRACT

This RFP is not a contract. The Owner will begin contract negotiations with the CMAR that is selected as the highest ranked CMAR as described below. If a contract cannot be executed between the Owner and the highest ranked CMAR, the Owner reserves the right to end negotiations and proceed to negotiate a contract with the next highest ranked CMAR, and so on until a contract for the 2020 Roof Repair/Replacement Project is obtained.

### **AIA A133-2009**<sup>1</sup>

The selected CMAR will be expected to execute the standard AIA Document A133-2009 Standard Form of Agreement between Owner and Construction Manager as Constructor, **as amended by the Owner** (McLean ISD A133 Amendment), the sample form of which is attached hereto at Exhibit "B." Exceptions or deviations to the sample Amendment should be tendered in writing with CMAR's proposal.

### **AIA A201-2007**

The AIA A201-2007, General Terms and Conditions, **as amended by the Owner**, shall apply, and the awarded CMAR will be expected to execute an amendment to the standard AIA Document A201-2007 (McLean ISD A201 Amendment), the sample form of which is attached hereto at Exhibit "B." Exceptions or deviations to the sample Amendment should be tendered in writing with CMAR's proposal.

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<sup>1</sup> The District reserves the right to use an alternate form of contract if it determines in its sole discretion such contract would be better suited for the Project and is consistent with applicable law.

### III. SCOPE OF SERVICES / CONTRACT

#### **Project Description, RPF NO. 20-01**

##### **RFP # 20-01, 2020 Roof Repair/Replacement Project**

**Project Objective** – Repair/replacement of roofing materials and components at all District facilities, including a District-owned single-family home, as more fully detailed in Exhibit “A” attached hereto and incorporated herein<sup>2</sup>. Roofs and all accessory systems to maintain compliance with current applicable codes, all of which shall be in accordance with these proposal documents and manufacturer’s specifications and warranty.

**It is anticipated that the project construction will begin in June, 2020. All work must be completed between June and September 15, 2020.**

**As the Work progresses, all roofs shall be covered and made water tight daily to protect District facilities from weather and keep them free from damage. CMAR agrees that it is liable to the District for all damage sustained to District facilities for its failure to properly secure the Work and protect District facilities from the weather.**

**Construction Budget** – Estimated at approximately \$320,000.00

**Estimated Project Final Completion Date** - September 15, 2020.

**Liquidated Damages** - \$500/day if not finally completed by September 15, 2020.

#### **Contract Form and Scope of Services**

The Owner will contract directly with a CMAR for performing pre-construction services and general construction of the Project. The CMAR will then conduct the subcontractor selection/bidding and contract with all subcontractors required for the work pursuant to Texas Government Code §2269.255. The Owner reserves the right to contract separately with other suppliers, vendors, consultants and contractors as deemed in the best interest of the Owner’s Project. For construction work, this currently includes:

- Independent testing and commissioning, including materials testing and inspection, HVAC testing and balancing, etc., as may be applicable for this project.
- Other contractors deemed necessary as recommended by the Owner or its architect.

The CMAR will be reimbursed for the cost of the Work plus a Fee. For purposes of this Proposal, the terms of the contract will be the AIA Document A133-2009 with the Owner’s “Amendments to AIA Document A133,” and AIA-201-2007 General Conditions of the Contract for Construction with the Owner’s “Amendment to General Conditions,” copies of which are attached hereto at Exhibit “B”. **CMARs should identify in their Proposal any exceptions taken or additions/modifications that are requested to be considered by the Owner.**

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<sup>2</sup> The scope of work detailed in Exhibit A may not be exhaustive; other work may be required and the scope of work may be expanded as the Project progresses.



**Objections to the contract type or format not included within the Proposal submission may result in disqualification of the Proposal.<sup>3</sup>**

The selected CMAR will provide a Guaranteed Maximum Price for the development of the Project.

The CMAR will participate in pre-construction services by providing input for scheduling, budgeting, development of documentation, inventory of existing materials, bidding of sub-contractors, and construction of the Project and for “constructability” issues.

The CMAR shall publicly advertise and receive bids/Proposals from subcontractors for all portions of the work. Subcontractor bids or Proposals shall be reviewed and approved as set out in Texas Government Code §2269.255.

Payment and performance bonds will be required of the CMAR for 100% of the entire Project. The Owner will make all construction payments directly to the CMAR, for its distribution of payments to subcontractors and suppliers as appropriate.

**THE OWNER MAY ELECT TO PROCURE CERTAIN MATERIALS/EQUIPMENT DIRECTLY, WITH COORDINATION AND SCHEDULING SUPPORT FROM THE CMAR. THE EQUIPMENT WOULD THEN BE ASSIGNED TO THE CMAR WITH THE FULL ACCEPTANCE OF RESPONSIBILITIES FOR COORDINATION AND INSTALLATION.**

The Owner has business impact and related costs for late completion. Liquidated damages are addressed in the Contract Documents identified above.

#### **Bid Phase**

Sealed Proposals for subcontractors shall be solicited and received in accordance with the terms of the Construction Contract Documents, the Texas Government Code and the Texas Education Code, as applicable.

**Pre-Construction Services Fees**, if any, are to be included but separated from the Construction Services Fee. Pre-Construction Services may include Scheduling, Budgeting and Cost Estimating as follows:

1. An estimate of probable construction cost based on preliminary construction documents and visual site visits.
2. A Project schedule identifying critical path and long lead items.
3. Continually monitor and maintain the construction portion of the Project budget. Provide substantially detailed estimates as an evaluative tool in the selection of design alternatives.
4. Provide cost saving analysis for systems and configurations. Evaluate quality, initial cost, maintenance and appropriateness.
5. Develop, monitor and maintain a Project schedule for bidding and construction.
6. Assess the availability of all building components in regard to the Project schedule.
7. Coordinate the bidding and issue of pre-purchase orders for long lead items, if required.

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<sup>3</sup> The District reserves the right to use an alternate form of contract if it determines in its sole discretion such contract would be better suited for the Project and is consistent with applicable law.

8. Make recommendations and provide references for manufacturers, suppliers and other subcontracts considered during design.
9. Review the Construction Contract Documents during development and report to the Architect or Owner on constructability and coordination of the information presented. The CMAR is not responsible for the Architect's quality control but is to identify areas in the documents requiring additional information or clarification.
10. If applicable, attend design meetings with the Architect, Architect's consultants and Owner when requested.

**Construction Phase**

The CMAR shall be responsible for all general construction services for the project. Basic Services shall include all permitting, estimating, scheduling, administration and on-site management required for the successful construction of the Project.

#### IV. PROPOSAL RESPONSE GUIDELINES

Information included in your response to this RFP will be evaluated and used to determine the ranking of CMAR firms. Clarity and completeness are encouraged. Repetition and duplication of information in multiple locations is discouraged. The information provided will be used to evaluate and score the responses in the categories and weights as published herein.

Under each category of response, as applicable, indicate why your firm is the most desirable to the Owner and why your Proposal represents the best value for the Owner. Please note that how you respond to this issue can impact multiple categories in the evaluation criteria.

**Bidders' response to this RFP shall include:**

1. **Fee Proposal Form for Work** as CMAR, completed and executed on the attached Form. The Fee for Pre-Construction Services, if any, shall be presented as a lump sum amount (inclusive of overhead and profit). The Fee for Construction Period Services shall be based on a percentage amount times final construction cost with a guaranteed maximum price to be determined.
2. **List of categories** that are included in the Fee for Construction Services. Describe how your fee is calculated; distinguish between what is included in your fee vs. the cost of the job (General Conditions.)
3. **List of Anticipated General Conditions Items**, or items not included in the Fee for Construction Period Services. General Conditions costs are scope and schedule dependent, and as such the actual dollar amounts are not requested at this time. The list of items is being requested to assist in understanding the items included in the Fee verses items included in General Conditions.
4. **AIA Document A305, Contractor Qualification Statement.**
5. **Project Related Experience List** including relevant recent project work for educational facilities including dates, sizes of contracts and references for the same, and delivery method used.
6. **Project Related Experience List** for relevant recent work as a CMAR. Include dates, size of contracts, extent of pre-construction services and references for the same.
7. **Experiences with Concepts for Work as a CMAR.** Describe your organization's concepts for working in a team relationship with the Owner and Architect, if applicable, during the design and construction of major Project. Describe your organization's methods for estimating costs, and for scheduling during the design/documents phases. Which (one or more) of those Project listed above best exemplify these concepts and experience?
8. **Resumes and References for Key Personnel** proposed for this Project. Resumes of key personnel must show experience in Project of similar size, complexity and related challenges. Provide references that can substantiate their experience and background in similar types of facility construction. The CMAR's site staff during construction is anticipated to include a project manager, a full time Superintendent on-site, Project/Field Engineer and clerical support. CMAR shall not change the team staffing of this Project without the consent of the Owner.
9. **Example of Proposed Accounting Method** for a CMAR contract on similar work.

10. **Describe your organization's concept for cost contingencies** both during design and during construction. What amount of the construction budget would you desire and recommend to be designated as "Owner's Contingency"? What is your organization's concept for the disposition of contingency funds after the completion of the Project?
11. **Acknowledge that a Certificate of Insurance** will be provided with the coverages and amounts indicated in the Agreement and Conditions.

## V. EVALUATION

The Superintendent or his designee shall review all proposals immediately upon opening and make a recommendation to the Board based on the criteria and weights provided herein. The Board, based on the criteria and weights provided herein, may accept such recommendation or may rank CMAR as it deems fit.

Proposals will be taken and reviewed immediately upon opening at the date and time stated herein. A short list of CMARs may be interviewed, but the Owner reserves the right to make its selection strictly on the Proposals submitted or to eliminate any Construction Manager(s) from the selection as late as the day prior to any potential interview if the Owner determines the Proposal is insufficiently responsive to merit further consideration.

**Interviews, if conducted, will be at a properly posted Board meeting of the Owner. It is anticipated any interview will be 20 minutes, with 15 minutes for the CMAR presentation and remaining time for questions and discussion. As to the Project Team, the Project Manager, Superintendent and Lead Estimator should be in attendance as a minimum. The chemistry and comfort of the team is vital to the selection. The CMAR's focus on the interview should be specific to this Project and the Owners concerns, including:**

1. What has the CMAR done recently that is similar to this in schedule, complexity, scope, building type and construction?
2. What experience do the individuals proposed for the Project have with similar and related work?
3. What are your thoughts on the schedule? Issues most problematic portions? What strategies, tactics can be used to expedite, offsite work/preparation prior to onsite access, onsite tactics or strategies?
4. How will you estimate major trades before they are brought onto the team? How do we get them onboard as early as needed and still keep them competitive?
5. What is your experience in early procurement of equipment (switchgear, HVAC equipment, etc.)? How is it best done? Schedule lead times? Can you do it if the Subcontractor is not yet on the team?
6. What unique leverages/advantages do you offer the Project? Knowledge, experience, subcontractor market issues, vendor/equipment supplier issues, city processes, etc.
7. Use of local sub-contractors, how do you generate interest from qualified firms?

**PROPOSAL FORM**  
for  
**CMAR for 2020 Roof Repair/Replacement Project**  
**RFP 20-01**

**MCLEAN INDEPENDENT SCHOOL DISTRICT**

Submitted by: \_\_\_\_\_

Date: \_\_\_\_\_ Phone No.: \_\_\_\_\_

To: (mail or hand delivery)

McLean Independent School District  
Attn: Amy Calvert, Business Manager  
Mailing Address: P.O. Box 90, McLean, Texas, 79057  
Physical Address: 600 Rowe Street, McLean, Texas 79057

Having examined the documents for RFP 20-01 prepared by McLean Independent School District, dated May 7, 2020, and having examined site conditions, the undersigned proposes to perform all work as CMAR for the above-named Project(s). With an agreed upon GMP, the undersigned proposes to furnish all labor, equipment and materials to complete the above-named Project(s).

**PROPOSED FEES**

**Based on your company's plan to complete this Project, indicate your proposed fees and prices for the Scope of Work for this Project.** Base the computed fees below on the estimated construction budgets as stated in this Proposal.

**Pre-Construction Services:** \$ \_\_\_\_\_

**General Conditions Cost Estimate:** \$ \_\_\_\_\_

i. (itemize/attach list of categories)

**Other Costs (if any specify below):**

1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____

TOTAL	\$ _____
(from all costs above)	

Construction Services \_\_\_\_\_% (\$ \_\_\_\_\_)  
(inclusive of all of mark up and expenses to be paid)

Savings Split (if any) CMAR \_\_\_\_\_% Owner \_\_\_\_\_%

## ATTACHMENTS

Acknowledge by initialing in the blank that the following items are attached to this Proposal:

- Proposal Bond \_\_\_\_\_
- Felony Conviction Notice \_\_\_\_\_
- Non-Collusion Affidavit \_\_\_\_\_
- Statement of Qualifications (AIA – A305) \_\_\_\_\_
- Conflict of Interest Questionnaire \_\_\_\_\_
- Verification of Compliance with State and Federal Laws \_\_\_\_\_
- Disclosure of Interested Parties (Form 1295) \_\_\_\_\_

If the undersigned is notified of the acceptance of this Proposal within fifteen (15) days after delivery of this Proposal, CMAR agrees and pledges to be Substantially Complete on the entire work on or before the dates specified. If the work is not complete by such date, the CMAR and/or its Surety shall be liable for and shall pay to the District for each calendar day of delay beyond the scheduled dates until the work is Substantially Completed and Finally Completed, the amount of liquidated damages is set out in the Contract Documents.

**Proposal Guarantee:** The undersigned furnishes herewith the Proposal guarantee in the amount of 5% of the Total Proposal amount and attaches it to this Proposal. This Proposal guarantee warrants that the undersigned will not withdraw his Proposal for the period of forty-five (45) days after the scheduled closing time for the receipt of Proposals, and if this Proposal is accepted, the undersigned will enter into a formal contract (prepared by the District) and that the required 100% performance bond and the 100% payment bond will be provided to the District. In the event of the withdrawal of this Proposal within the period stipulated above, or failure of the undersigned to enter into a contract or provide the required bonds within ten (10) days after the undersigned has received notice of the acceptance of this Proposal, the undersigned shall be liable to the District for the full amount of the Proposal guarantee.

It is understood that the District reserves the right to accept or reject any and all Proposals and to waive all informalities and irregularities. It is further agreed that this Proposal shall be valid for a period of forty-five (45) days from the date of opening thereof.

**WAIVER OF CLAIMS:** BY TENDERING A PROPOSAL IN RESPONSE TO THE DISTRICT'S RFP 2020-01, THE CMAR ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A PROPOSAL, AND THE PROCESS USED BY THE DISTRICT FOR SELECTING A CMAR. BY SUBMITTING A PROPOSAL, THE CMAR FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST DISTRICT AND ITS TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY PROPOSAL SUBMITTED IN RESPONSE TO THIS RFP.

## ACKNOWLEDGEMENT OF PROPOSAL

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Person: \_\_\_\_\_

Office Phone: \_\_\_\_\_

Mobile Phone: \_\_\_\_\_

e-mail: \_\_\_\_\_

Fax: \_\_\_\_\_

It is understood that the Owner reserves the right to reject any or all Proposals, or waive any informalities in the Proposal process.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title (Seal, if a Corporation)

State whether Corporation,  
Partnership or Individual

\_\_\_\_\_  
Name of Contracting Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**THIS PROPOSAL FORM MUST BE SUBMITTED BY 3:00 PM, May 21, 2020.**



## MCLEAN INDEPENDENT SCHOOL DISTRICT

### RFP 20-01

#### FELONY CONVICTION NOTICE REQUIREMENTS

(Texas Education Code Sec. 22.08341. Criminal History Record Information Review Of Certain Contract Employees)

CONTRACTOR : \_\_\_\_\_

CONTRACT : 2020 Roof Repair/Replacement Project, RFP 20-01  
*(description of work to be performed for which this notice is requested)*

Texas Education Code §44.043, Notification of Criminal History, Subsection (a), states, “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. This notice must include a general description of the conduct resulting in the conviction of a felony.”

**Subsection (b) states, “a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in this conviction. The district must compensate the person or business entity for services performed before the terminated contract.”**

**THIS NOTICE IS NOT REQUIRED OF A PUBLICLY HELD CORPORATION**

McLean ISD Board Policy CH (LEGAL) also states the following with regard to criminal history information:

“The District may obtain criminal history record information that relates to an employee of, or applicant for employment by, a person that contracts with the Owner to provide services if:

1. The employee or application has or will have continuing duties related to the contracted services; and,
2. The duties are or will be performed on school property or at another location where students are regularly present.”

**MCLEAN INDEPENDENT SCHOOL DISTRICT**

**RFP 20-01**

**FELONY CONVICTION NOTICE**

In accordance with the above-described statutory provisions, I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following furnished information is true to the best of my knowledge.

VENDOR: \_\_\_\_\_

AUTHORIZED COMPANY OFFICIAL: \_\_\_\_\_  
(print name)

*Choose the following, as applicable:*

- A. My firm is a publicly-held corporation and, therefore, this reporting requirement is not applicable.

SIGNATURE OF COMPANY OFFICIAL: \_\_\_\_\_

OR

- B. My firm is not owned nor operated by anyone who has been convicted of a felony.

SIGNATURE OF COMPANY OFFICIAL: \_\_\_\_\_

OR

- C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

NAME OF FELON (S): \_\_\_\_\_

DETAILS OF CONVICTION(S): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF COMPANY OFFICIAL: \_\_\_\_\_

**MCLEAN INDEPENDENT SCHOOL DISTRICT**

**RFP 20-01**

**NON-COLLUSIVE BIDDING CERTIFICATION**

The undersigned affirms that they are duly authorized to execute a contract, that this company, corporation, firm, partnership or individual has not prepared this bid/Proposal in collusion with any other bidder, and that the contents as to prices, terms and conditions have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this bid/Proposal.

Vendor: \_\_\_\_\_

Street Address: \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Bidder Signature: \_\_\_\_\_

Bidder (Print Name): \_\_\_\_\_

Position with Company: \_\_\_\_\_

Signature of Company Officer: \_\_\_\_\_

Company Officer Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**McLEAN ISD**  
**VERIFICATION OF COMPLIANCE WITH STATE AND FEDERAL LAWS**

**Certification of Eligibility**

By submitting a bid in response to the solicitation, CMAR certifies that at the time of submission, it is not on the Federal Government's list of suspended, ineligible, or debarred entities. In the event of placement on the list between the time of bid submission and time of award, the CMAR will notify the District. Failure to do so may result in terminating the contract for default.

**Certification Regarding Employment Assistance Prohibited**

CMAR certifies and agrees that it shall not assist an employee, contractor or agent of the District or of any other school district in obtaining a new job if the proposer knows or has probable cause to believe that the individual engaged in sexual misconduct regarding a minor or student in violation of the law. Routine transmission of an administrative or personal file does not violate this prohibition.

**Relating to State Contracts with and Investments in Companies that Boycott Israel**

Effective September 1, 2017, CMAR verifies that it/he/she does not boycott Israel and will not boycott Israel during the term of this contract. The term "Boycott Israel" is defined by Texas Government Code Section 808.001, effective September 1, 2017.<sup>4</sup>

**Relating to State Contracts with and Investment in Companies that do Business with Iran, Sudan, or any known foreign terrorist organizations**

Effective September 1, 2017, CMAR verifies that it/he/she does not do business with Iran, Sudan, or any known foreign terrorist organizations and will not do business with Iran, Sudan, or any known foreign terrorist organizations during the term of this contract. The term "foreign terrorist organization" is defined by Texas Government Code Section 806.001, effective September 1, 2017.

**Certification of Compliance with Texas Family Code**

As per Section 14.52 of the Texas Family Code, added by S.B. 84, Acts, 73<sup>rd</sup> Legislature, R.S. (1993), all contractors must complete and submit with the proposal the certification as follows:

I, the undersigned vendor, do hereby acknowledge that NO sole proprietor, partner, majority shareholder of a corporation or an owner of 10% or more of another business entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement. I understand that under this provision, a sole proprietorship, partnership, corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation or other entity in which a sole proprietor, partner, majority shareholder or a corporation or an owner of 10% or more of another entity is 30 days or more delinquent in paying child support under a court order or a written repayment agreement is NOT eligible to bid or receive a state contract.

**CMAR Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title** \_\_\_\_\_ **Date:** \_\_\_\_\_

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<sup>1</sup> *Definition:* "boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**CONFLICT OF INTEREST QUESTIONNAIRE**  
For vendor doing business with local governmental entity

**FORM CIQ**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

**2** ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

**4** Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

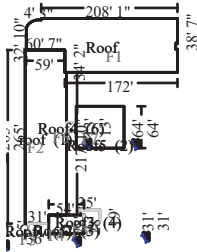
## **EXHIBIT A**

### **Exhibit A- Project Details<sup>5</sup>**

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<sup>5</sup> The scope of work detailed in Exhibit A may not be exhaustive; other work may be required and the scope of work may be expanded as the Project progresses.

**001-11A: Elementary/High School Building**  
**001-11A: Elementary/High School Building: Roof**



40678.49 Surface Area  
1759.87 Total Perimeter Length

406.78 Number of Squares

DESCRIPTION	QUANTITY
Remove Single ply membrane - Mechanically attached - 45 mil	411.24 SQ
Single ply membrane - Mechanically attached - 45 mil	432.00 SQ
5% waste added.	
Remove Flash parapet wall only - PVC/TPO	412.00 LF
Flash parapet wall only - PVC/TPO	412.00 LF
Remove Aluminum termination bar / flashing for membrane roofs	428.00 LF
Aluminum termination bar / flashing for membrane roofs	428.00 LF
Remove Drip edge - PVC/TPO clad metal	1,638.87 LF
Drip edge - PVC/TPO clad metal	1,638.87 LF
Remove Pitch pan / pocket - up to 6" x 6" x 4" - galvanized	8.00 EA
Pitch pan / pocket - up to 6" x 6" x 4" - galvanized	8.00 EA
Remove Curb flashing - PVC/TPO	380.00 LF
Curb flashing - PVC/TPO	380.00 LF
Central air - condenser unit - Detach & reset	8.00 EA
Remove Exhaust cap - through roof - 6" to 8"	6.00 EA
Exhaust cap - through roof - 6" to 8"	6.00 EA
Remove Protrusions - pipe jack *	31.00 EA
Protrusions - pipe jack *	31.00 EA
Remove Two way vents*	44.00 EA
Two way vents*	44.00 EA
Remove Rain cap *	13.00 EA
Rain cap *	13.00 EA
Remove Roof drain - PVC/ABS - 2" to 6" outlet	3.00 EA
Roof drain - PVC/ABS - 2" to 6" outlet	3.00 EA
Black or Galvanized pipe - Detach & reset	621.00 LF
Telehandler/forklift (per month) - no operator	1.00 MO
Equipment Operator - per hour	80.00 HR
Temporary toilet (per month)	1.00 MO
Job-site cargo/storage container - 40' long - per month	2.00 MO
2 for 1 months	
Dumpster load - Approx. 40 yards, 7-8 tons of debris	5.00 EA

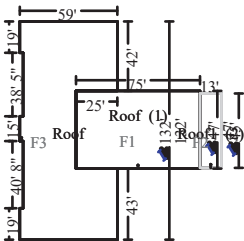


## CONTINUED - Roof

### 001-11A: Elementary/High School:Roof Code Upgrades

DESCRIPTION	QUANTITY
Sheathing - fiberglass gypsum panel - 1/4"*	42,735. SF 00
Actual deck area, 40,700 sf x 5% waste. 42,735 sf allowed.	
Insulation - ISO board, 1 1/2"	427.35 SQ
Includes 5% waste	
Insulation - ISO board, 1"	427.35 SQ
Includes 5% waste	

### 001-1A: Old High School Building: 001-1A: Old High School Building: Roof:



#### Roof

10564.38 Surface Area	105.64 Number of Squares
657.98 Total Perimeter Length	

DESCRIPTION	QUANTITY
Tear off, haul and dispose of 4 ply built-up roofing	105.64 SQ
Area includes actual vertical area.	
Remove Insulation - perlite board, 1"	105.64 SQ

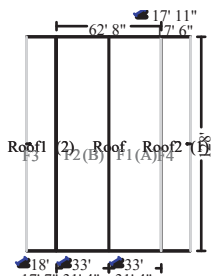
**CONTINUED - Roof**

<b>DESCRIPTION</b>	<b>QUANTITY</b>
Area includes actual vertical area.	
Remove Single ply membrane - Mechanically attached - 45 mil	110.64 SQ
Area includes areas of oversized parapet material.	
Single ply membrane - Mechanically attached - 45 mil	116.17 SQ
Area includes 5% waste	
Additional charge for high roof (2 stories or greater)	105.64 SQ
Additional charge for high roof (2 stories or greater)	105.64 SQ
Remove Sheathing - fiberglass gypsum panel - 1/4"*	105.64 SF
Sheathing - fiberglass gypsum panel - 1/4"*	110.92 SF
Area includes 5% waste	
Remove Flash parapet wall only - PVC/TPO	657.98 LF
Flash parapet wall only - PVC/TPO	657.98 LF
Remove Aluminum termination bar / flashing for membrane roofs	657.98 LF
Aluminum termination bar / flashing for membrane roofs	657.98 LF
Remove Curb flashing - PVC/TPO	20.00 LF
Curb flashing - PVC/TPO	20.00 LF
Central air - condenser unit - Detach & reset	13.00 EA
Remove Exhaust cap - through roof - 6" to 8"	19.00 EA
Exhaust cap - through roof - 6" to 8"	19.00 EA
Remove Protrusions - pipe jack *	8.00 EA
Protrusions - pipe jack *	8.00 EA
Remove Two way vents*	8.00 EA
Two way vents*	8.00 EA
Black or Galvanized pipe - Detach & reset	288.00 LF
Remove Roof scupper - aluminum	4.00 EA
Roof scupper - aluminum	4.00 EA
Crane and operator - 115 ton capacity	24.00 HR
Debris chute - per week - 30" x 4' section	27.00 WK
9 sections- 3 weeks.	
Debris chute hopper - per week - 30" x 4' section	3.00 WK
Debris chute mounting hardware - per week	3.00 WK
General Demolition - per hour. Assemble and disassemble debris chute*	48.00 HR
Temporary toilet (per month)	1.00 MO
Job-site cargo/storage container - 40' long - per month	1.00 MO
Dumpster load - Approx. 40 yards, 7-8 tons of debris	7.00 EA

**001-1A: Old High School Bldg: Roof Code Upgrades**

DESCRIPTION	QUANTITY
Insulation - ISO board, 2"	110.64 SQ
Insulation - ISO board, 3 1/2"	110.64 SQ

**001-1B: Mclean Elementary/HS: Old Gymnasium Bldg:  
Main Level**



**Roof**

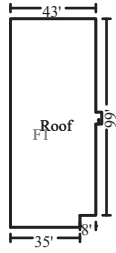
13060.63 Surface Area	130.61 Number of Squares
844.07 Total Perimeter Length	128.00 Total Ridge Length

DESCRIPTION	QUANTITY
Duro-last spot repair. Clean, patch areas.*	60.00 EA

**001-1H: Administration Building:  
001-1H: Administration Building: Roof**

## Capital Claims Service Inc.

P.O. Box 265  
Plugerville Tx 78691



### Roof

4485.00 Surface Area  
302.00 Total Perimeter Length

44.85 Number of Squares

#### DESCRIPTION

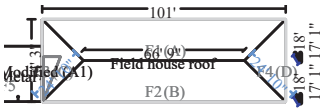
#### QUANTITY

Roofing Repair - Minimum Charge - Labor and Material	1.00 EA
Clean and patch one impact.	

### 002-2A: Football field House:

#### 002-2A: Football field House: Roof

### Field house roof



3576.44 Surface Area  
247.38 Total Perimeter Length  
99.43 Total Hip Length

35.76 Number of Squares  
66.78 Total Ridge Length

#### DESCRIPTION

#### QUANTITY

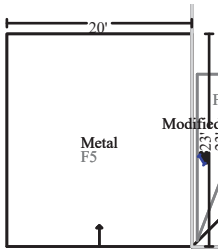
Remove Laminated - comp. shingle rfg. - w/out felt	35.76 SQ
Roofing felt - 30 lb.	35.76 SQ
Laminated - comp. shingle rfg. - w/out felt	41.33 SQ
Remove Drip edge	247.38 LF
Drip edge	247.38 LF
Remove Exhaust cap - through roof - 6" to 8"	2.00 EA
Exhaust cap - through roof - 6" to 8"	2.00 EA
Remove Flashing - pipe jack	5.00 EA
Flashing - pipe jack	5.00 EA
Remove Flashing - pipe jack - lead	2.00 EA
Flashing - pipe jack - lead	2.00 EA
Remove Roof vent - turbine type	1.00 EA
Roof vent - turbine type	1.00 EA
Remove Furnace vent - rain cap and storm collar, 5"	2.00 EA
Furnace vent - rain cap and storm collar, 5"	2.00 EA

**Capital Claims Service Inc.**

P.O. Box 265  
Plugerville Tx 78691

**CONTINUED - Field house roof**

DESCRIPTION	QUANTITY
Remove Flashing - pipe jack - split boot	1.00 EA
Flashing - pipe jack - split boot	1.00 EA
Remove Modified bitumen roof	2.00 SQ
Modified bitumen roof	2.00 SQ

**Metal**

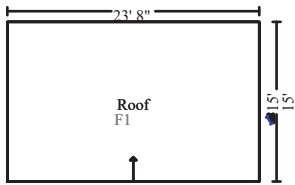
460.00 Surface Area  
63.00 Total Perimeter Length

4.60 Number of Squares

**002-2A: Football field House: Roof Code Upgrades**

DESCRIPTION	QUANTITY
Roof vent - turbine type	1.00 EA
Roof area ventilation issue.	

**002-2C: Football Restroom Bldg:****002-2C: Football Restroom Bldg: Roof**



## Roof

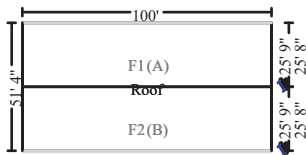
355.00 Surface Area  
77.33 Total Perimeter Length

3.55 Number of Squares

DESCRIPTION	QUANTITY
Remove Modified bitumen roof	3.55 SQ
Modified bitumen roof	3.55 SQ
Oversized drip edge*	77.33 LF

## 003-3A: Gerald Tate Agricultural Center:

### 003-3A: Gerald Tate agricultural Center: Roof



## Roof

5152.45 Surface Area  
303.05 Total Perimeter Length

51.52 Number of Squares  
100.00 Total Ridge Length

DESCRIPTION	QUANTITY
Remove Metal roofing - ribbed - 26 gauge - 1 1/8" to 1 1/2"	156.00 SF
Metal roofing - ribbed - 26 gauge - 1 1/8" to 1 1/2"	156.00 SF
This is repair only of 2 damaged roof panels.	
Detach & Reset Metal roofing - ribbed - 26 gauge - 1 1/8" to 1 1/2"	156.00 SF
Remove Ridge cap - metal roofing	10.00 LF
Install Ridge cap - metal roofing	10.00 LF
Remove Gutter / downspout - box - galvanized - 7" to 8"	148.00 LF
Gutter / downspout - box - galvanized - 7" to 8"	148.00 LF
Tandem axle dump trailer - per load - including dump fees	1.00 EA



**004-999: Superintendent's Residence: Land Imp:**

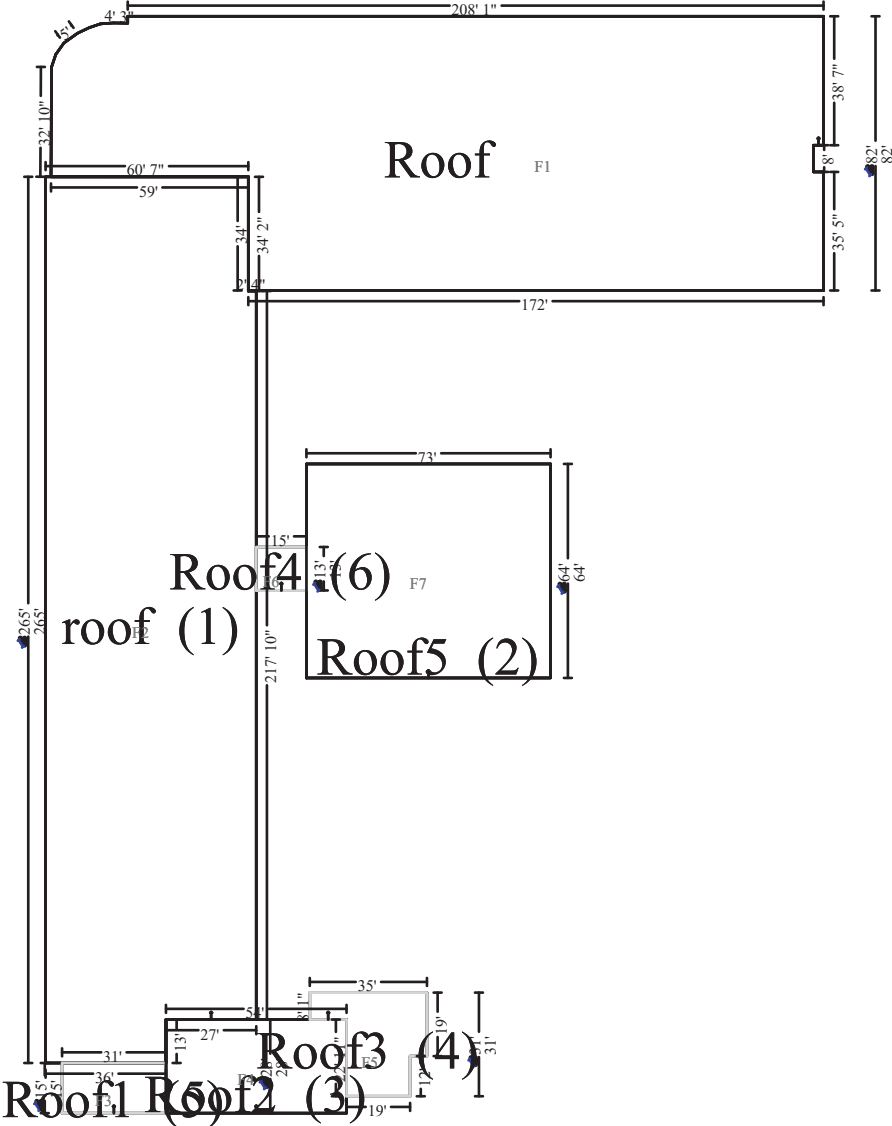
**Fence**

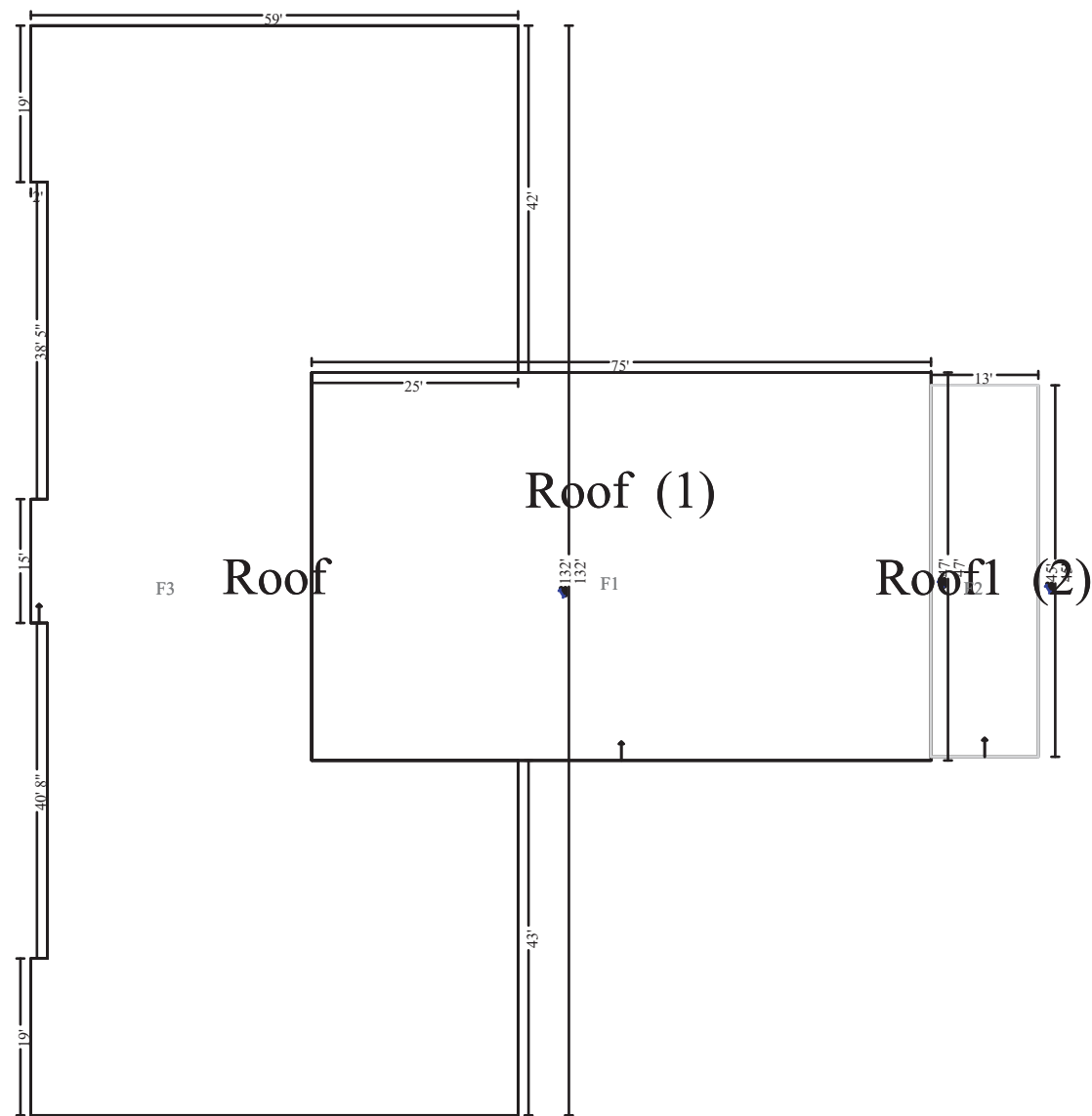
DESCRIPTION	QUANTITY
Fencing - Labor Minimum	1.00 EA
Material Only Wood gate 5'- 6' high - cedar or equal	3.00 LF
Haul debris - per pickup truck load - including dump fees	1.00 EA
No betterment on repair	

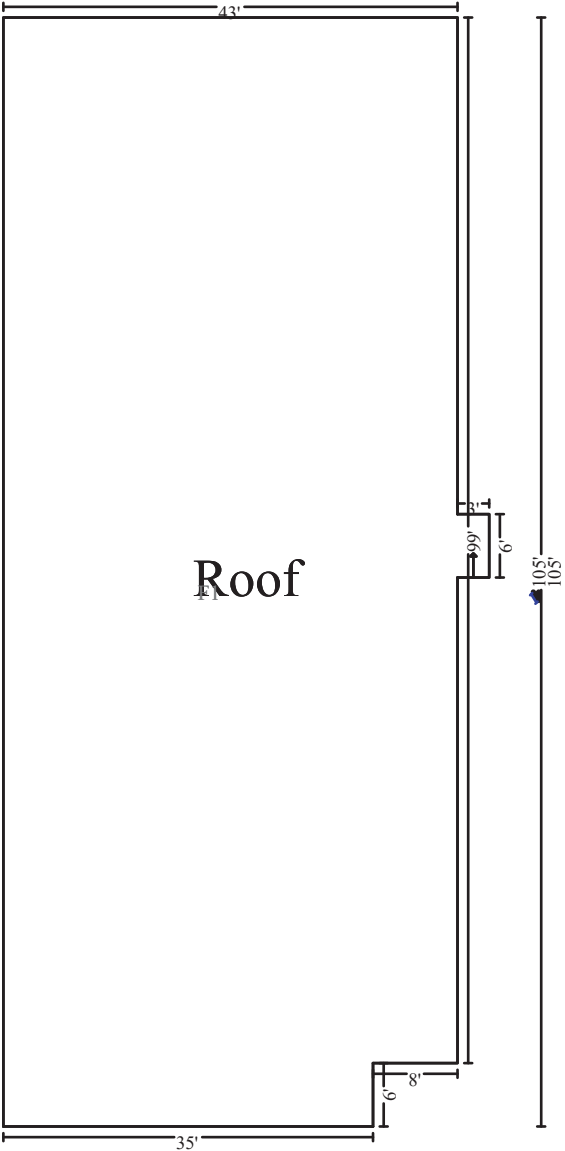
**Grand Total Areas:**

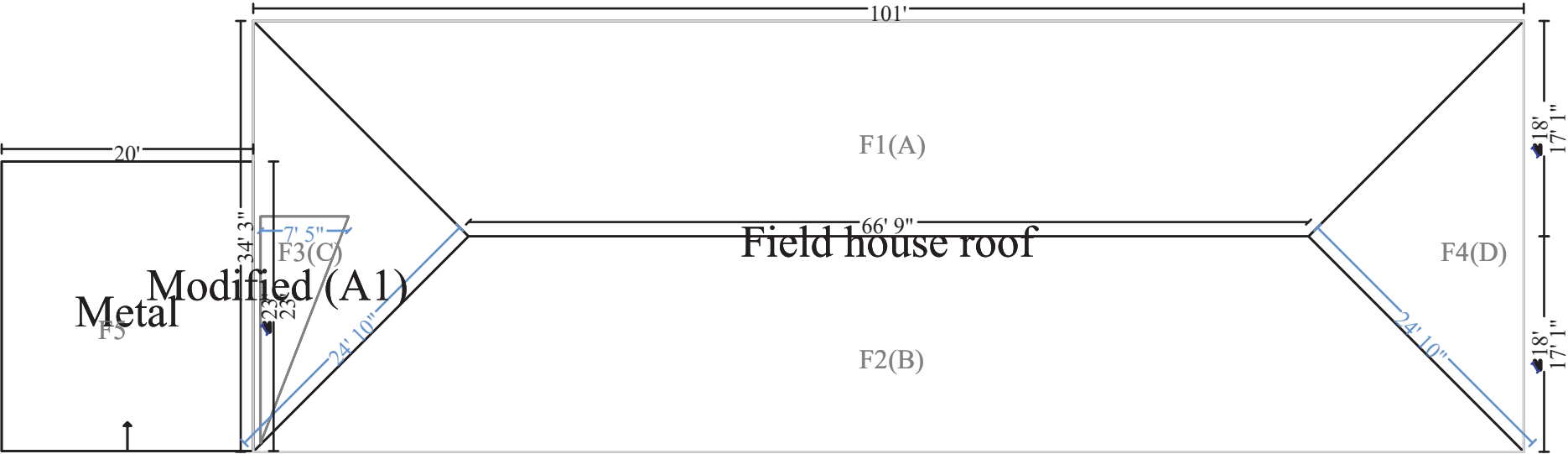
0.00 SF Walls	0.00 SF Ceiling	0.00 SF Walls and Ceiling
0.00 SF Floor	0.00 SY Flooring	0.00 LF Floor Perimeter
0.00 SF Long Wall	0.00 SF Short Wall	0.00 LF Ceil. Perimeter
0.00 Floor Area	63.00 Total Area	0.00 Interior Wall Area
23,500.33 Exterior Wall Area	0.00 Exterior Perimeter of Walls	
81,285.24 Surface Area	812.85 Number of Squares	4,516.58 Total Perimeter Length
398.86 Total Ridge Length	99.43 Total Hip Length	

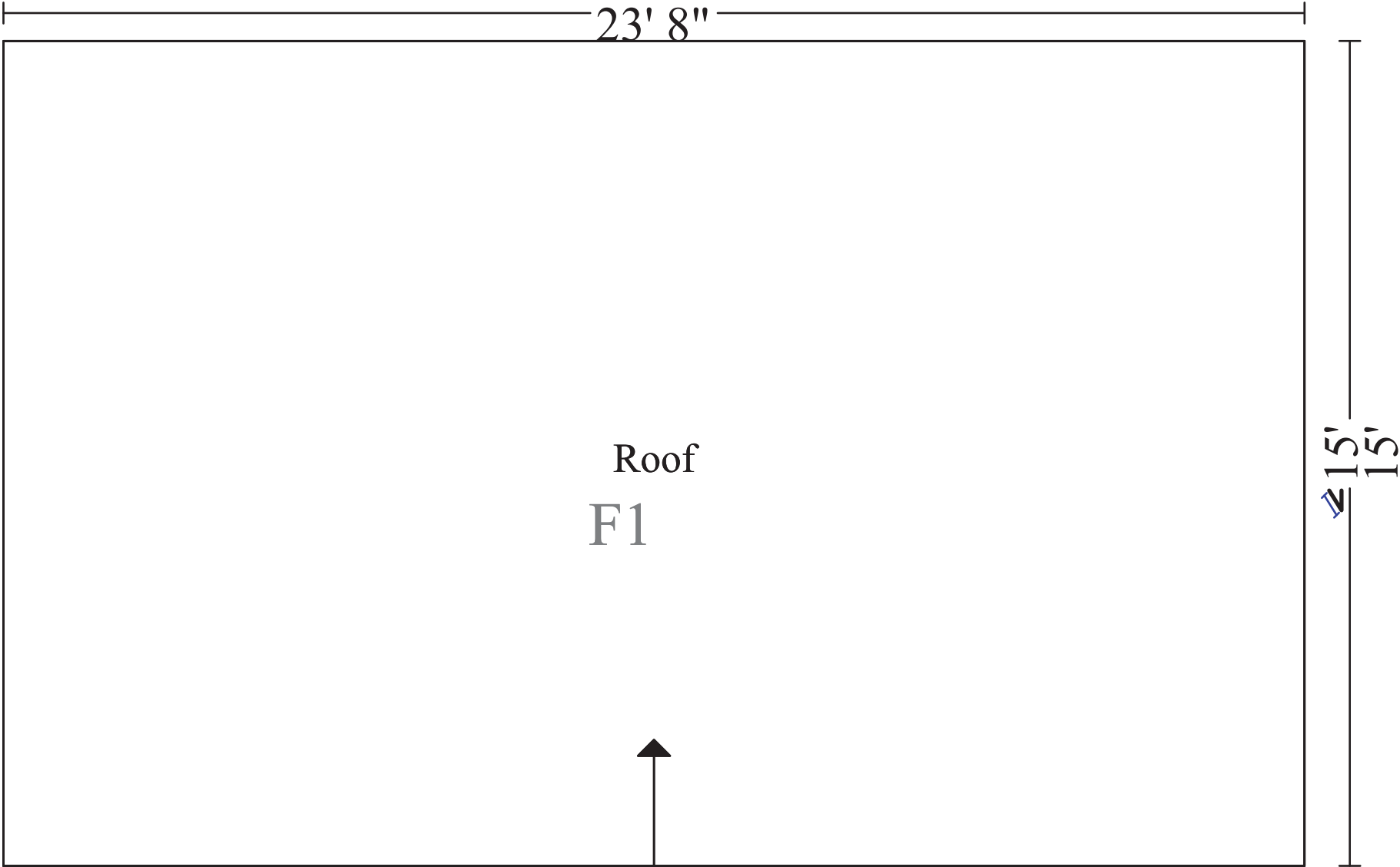


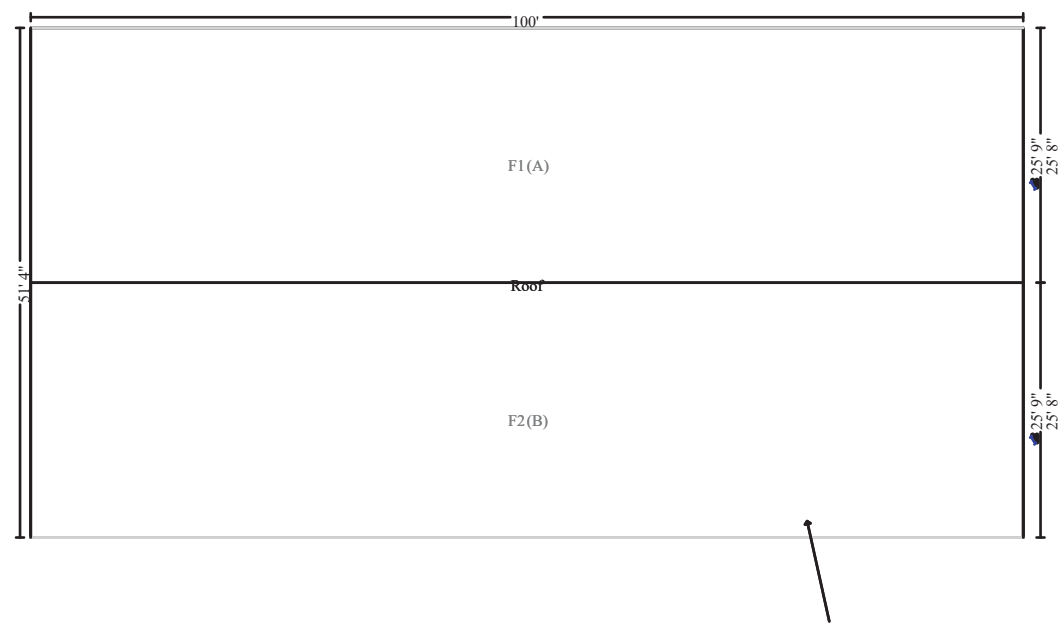




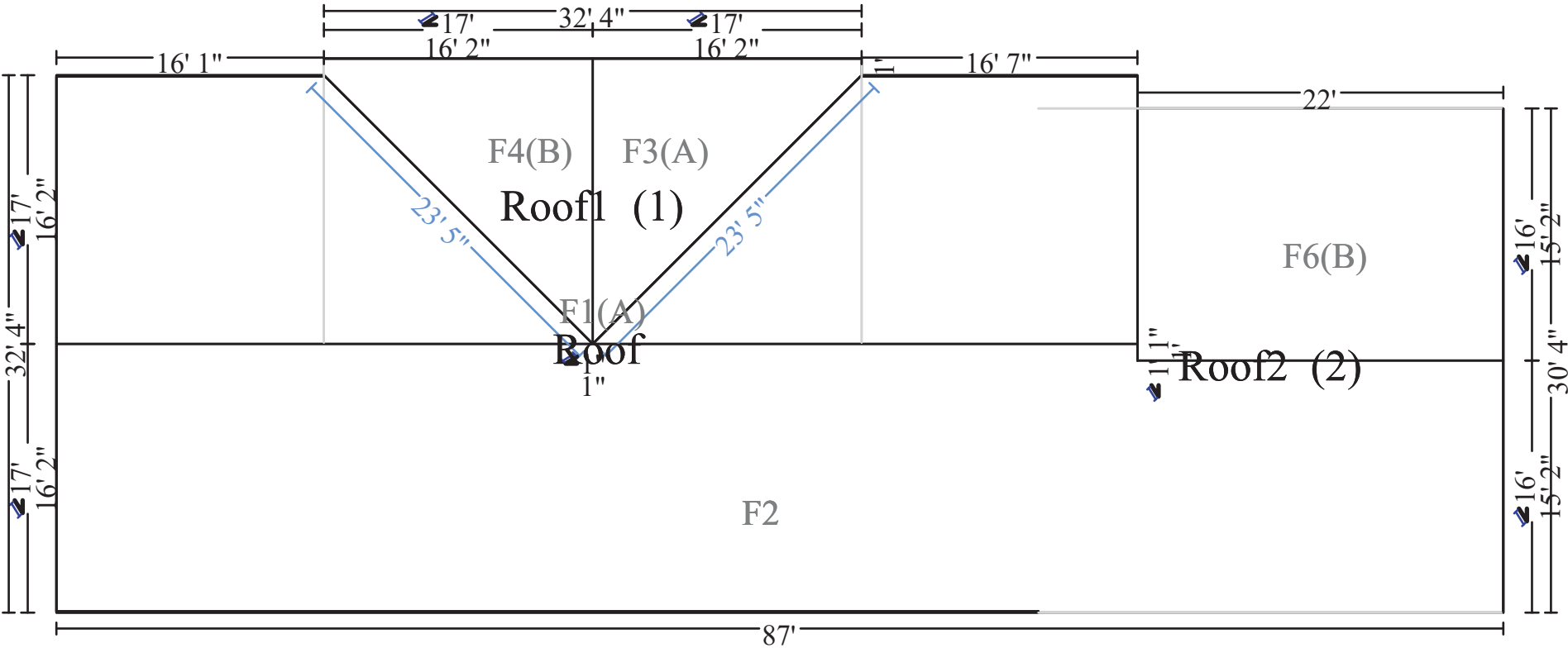


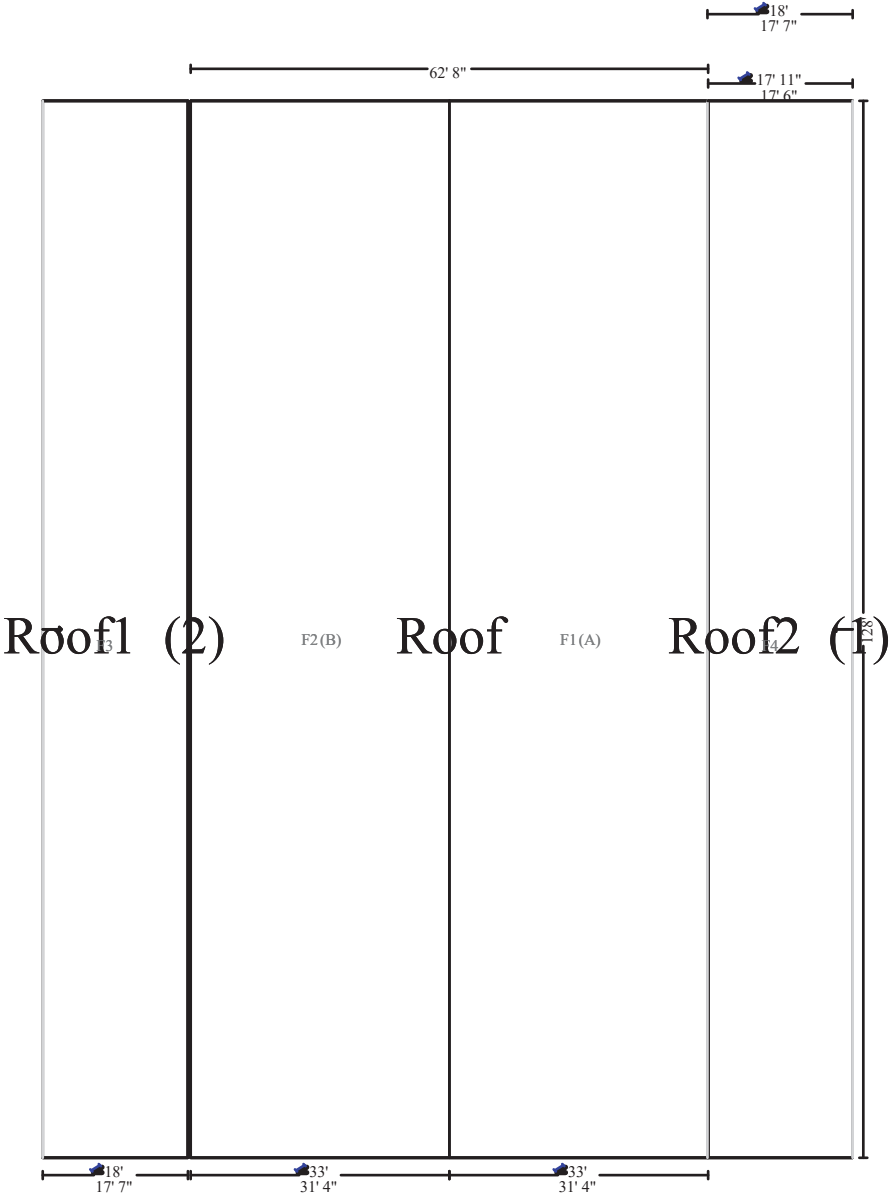






Wind damage to gutter and a couple of roof panels. \0A West







## **Exhibit B**

Mclean ISD Sample Amendments to AIA documents A133-2009 and AIA A201-2007<sup>6</sup>

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<sup>6</sup> The District reserves the right to use an alternate form of contract if it determines in its sole discretion such contract would be better suited for the Project and is consistent with applicable law.

**AMENDMENTS TO THE STANDARD FORM OF AGREEMENT**  
**BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR**  
**AIA DOCUMENT A133™ - 2009**

**CONTRACT DATE:** May \_\_, 2020

**OWNER:** McLean Independent School District  
Attn: Oscar Muniz, Superintendent  
600 Rowe Street  
McLean, Texas 79057  
(806) 779-2301  
Email: oscar.muniz@region16.net

**CONSTRUCTION  
MANAGER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**PROJECT:** 2020 Roof Repair/Replacement Project

WHEREAS McLean Independent School District (hereinafter referred to as "Owner") and \_\_\_\_\_, Construction Manager (hereinafter referred to as "Construction Manager" or "Contractor"<sup>1</sup>) desire to enter into a contract under which Construction Manager will perform construction services relating the above-referenced Project on behalf of Owner;

WHEREAS Owner and Construction Manager have agreed to enter into AIA Document A133™-2009 Agreement ("Agreement") as the basic form for that contract; and

WHEREAS certain terms and conditions of the contract must be modified to comply with applicable laws and policies affecting Owner and Construction Manager on this Project, Owner and Construction Manager hereby agree that the following provisions replace, modify, amend and/or delete the identically numbered paragraphs, or are in addition to the paragraphs, contained in the attached Agreement (AIA Document A133™-2009) and become a part of said Agreement for all intents and purposes; any references to a particular section within said Agreement shall mean a reference to such section, as amended, if applicable; and,

<sup>1</sup> The term "Contractor" and "Construction Manager" as used in the Contract Documents may be used interchangeably as a reference to \_\_\_\_\_.

WHEREAS, those paragraphs that have NOT been replaced, modified, amended and/or deleted as so stated by the identically numbered paragraphs herein, shall remain in effect as written in the AIA Document A133™-2009 Agreement, and to the extent that this Amendment conflicts with the terms of the original A133™-2009 Agreement, this Amendment controls.

1. § 1.1 is amended to read as follows:

**1.1** The Contract Documents consist of this Agreement, as amended, Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Geotechnical Reports, Addenda and Amendments issued prior to or contemporaneously with the execution of this Agreement, all sections of the Project Manual, other documents listed in this Agreement, Modifications issued after execution of this Agreement, the Proposal signed by the Construction Manager, the Request For Proposals, and Contractor's proof of payment, and performance bonds and proof of insurance, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment, and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. Any reference to AIA Document A201-2007 in this Agreement shall be construed as the AIA Document A201-2007, as amended. Any reference to Contract Documents or any documents included in the Contract Documents shall refer to the Contract Documents as amended for this Project.

2. § 1.1.1 is added as follows:

**1.1.1** Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is signed by Construction Manager and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein, which are incorporated herein by reference for all intents and purposes.

3. § 1.1.2 is added as follows:

1.1.2 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion, or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Oscar Muniz, Owner's Superintendent of Schools, or his successor.

4. § 1.1.3 is added as follows:

1.1.3 The Board designates the authorized representatives identified on the front page to act on its behalf as provided in paragraph 3.2 of this Agreement.

5. § 2.1.3 is amended to read as follows:

**2.1.3 Project Schedule**

When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; dates of Substantial Completion and Final Completion, and the occupancy requirements of the Owner. If updated Project schedules indicate that previously-approved schedules may not be met, then the Construction Manager shall make appropriate recommendations to the Owner and Architect and, upon written approval of both, shall implement necessary corrective action.

6. § 2.1.5.2 is amended to read as follows:

**2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time

as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations 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 Board of Trustees' consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget.

7. § 2.1.6 is amended to read as follows:

**2.1.6** The Construction Manager shall develop bidders' interest in the Project. To the extent not inconsistent with the Construction Manager's requirements under Texas Local Government Code §2269.256, the Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

8. § 2.2.1 is amended to read as follows:

**2.2.1** When all elements of the Construction Documents are at least 90 per cent complete, as mutually agreed upon by the Owner, the Construction Manager, and the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for 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, including contingencies described in Section 2.2.4; the general conditions; and the Construction Manager's Fee. If any Guaranteed Maximum Price proposal submitted to the Owner exceeds previously-approved estimates or the Owner's budget, then the Construction Manager shall make appropriate recommendations to the Owner and Architect for cost reductions, including but not limited to, substitution of materials or revisions or alterations to the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's Board of

Trustees' consent. In the event that the quality or scope identified in the proposal are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner, are within the Owner's budget, and meet the Owner's requirements for dates of Substantial Completion and Final Completion. The Construction Manager may propose separate Guaranteed Maximum Prices for separate Works within the Project, as schedules and efficiencies dictate. The Construction Manager will work with the Architect to achieve a Guaranteed Maximum Price that is fully acceptable to Owner and is within the Owner's budget for the Work and for the Project.

9. § 2.2.3 is amended to read as follows:

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, general conditions, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 The date of Final Completion upon which the proposed Guaranteed Maximum Price is based, which date shall be not more than 30 days after the date of Substantial Completion; and
- .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.

10. § 2.2.4 is amended to read as follows:

**2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Guaranteed Maximum Price will contain 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 for costs incurred in the Work from unforeseeable causes,

or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Guaranteed Maximum Price documents, the correction of minor defects not relating to design, delays in receipt of materials, and additional costs relating to Subcontractor defaults not reimbursed by the Subcontractor's bonding company. The Construction Manager, with Owner's representative's written approval, may utilize the Construction Contingency for any of the above items within the Cost of the Work without the necessity of a Change Order, without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Any unforeseeable causes or unanticipated details which exceed the Construction Contingency shall be borne by the Construction Manager at the Construction Manager's sole risk. All savings will accrue and be available for use, only as detailed above, by the Construction Manager until the Construction Manager's final accounting. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner. Upon final accounting, all remaining monies in the Construction Contingency shall accrue to the Owner. The Guaranteed Maximum Price shall also include 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 and without additional Board of Trustees approval, but with subsequent notice to Owner's Board of Trustees. Any unused Owner's contingency shall accrue to the Owner.

11. § 2.2.6 is amended to read as follows:

**2.2.6** The Owner's Board of Trustees shall be allowed not less than thirty (30) 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 Board of Trustees accepts the Guaranteed Maximum Price Amendment by Board action within thirty (30) days after District's receipt, the Amendment will not become effective. Following acceptance of a Guaranteed Maximum Price Amendment, the Owner shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

12. § 2.2.9 is amended to read as follows:

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



13. § 2.2.10 is added as follows:

**2.2.10** The Construction Manager shall diligently prosecute and achieve Substantial and Final Completion of the Entire Work as provided in the AIA A201-2007, as amended.

14. § 2.3.1.1 is amended to read as follows:

**2.3.1.1** 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 A201-2007.

15. § 2.3.1.2 is deleted in its entirety.

16. § 2.3.2.1 is amended to read as follows:

**2.3.2.1** The Construction Manager shall publicly advertise and solicit through competitive purchasing, as required by law, competitive sealed proposals from Subcontractors for the performance of all major elements of the Work. The Owner shall then approve or disapprove, with the advice of the Construction Manager and the Architect, the proposals recommended by the Construction Manager. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Pursuant to Texas Local Government Code §2269.255, the Construction Manager may seek to perform portions of the Work required to be publicly advertised. If the Construction Manager submits its own proposal for any portion of the Work, it shall do so in the same manner as required of all subcontractors. Owner shall decide whether or not Construction Manager's proposal for self-performing portions of the Work offers the best value to Owner. In opening proposals, neither Construction Manager nor Owner shall disclose the contents of a proposal during the selection process to anyone who is not an employee of the Construction Manager, Architect, Engineer, or Owner. All proposals shall be made public within seven days after the Owner's approval. If Construction Manager's proposal is selected by the Owner, the proposed cost for the self-performed work shall be paid to the Construction Manager, pursuant to progress payments, as if Construction Manager were a subcontractor. Such payments to Construction Manager shall be included in the Cost of the Work, but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work.

17. § 2.3.2.2 is amended by deleting the entire section and replacing it with the following:

**2.3.2.2** Pursuant to Texas Local Government Code §2269.255, if during the course of recommending proposals, the Construction Manager recommends to Owner a



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

18. § 2.3.2.2.1 is added as follows:

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

- .1 The successful proposer's responsibility to provide workers' compensation insurance in accordance with Texas Labor Code Chapter 406;
- .2 The successful proposer's responsibility to pay prevailing wages pursuant to Texas Government Code Chapter 2258;
- .3 A notice of the sales tax exemption for the Work and the procedure for obtaining any required exemption verification or certificate;
- .4 The notice regarding trench and shoring safety required by Texas Health and Safety Code Section 756.023;
- .5 The successful proposer's responsibility to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance;
- .6 The successful proposer's responsibility to require all construction workers, whether proposer's own forces or the forces of 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;
- .7 The successful proposer's responsibility to follow, and shall require all employees, agents or subcontractors to follow, applicable ordinances of the municipality in which the Project is located;
- .8 The successful proposer's responsibility to verify that, to the extent required by law, it does not boycott Israel, and it will not boycott Israel during the terms of this Contract; and
- .9 To the extent required by law, the successful proposer's responsibility to affirm that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If the successful proposer has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

19. § 2.3.2.2.2 is added as follows:

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

20. § 2.3.2.8 is amended to read as follows:

**2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress, including changes to the Work approved 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 2.3.2.7 above.

21. § 2.3.3 is added as follows:

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

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

22. § 2.3.4 is added as follows:

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

23. § 3.1.2 is deleted in its entirety.

24. § 3.1.4 is amended to read as follows:

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

25. § 3.1.4.2 is amended to read as follows:

**3.1.4.2** The Owner shall furnish surveys as provided in Section 2.2.3 of AIA A201-2007.

26. § 3.1.4.3 is amended to read as follows:

**3.1.4.3** 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 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.

27. § 3.2 is amended by deleting the existing section and replacing it with the following:

**3.2.** Owner's Board of Trustees shall designate one or more authorized representatives to act on its behalf in the day-to-day administration of the Project, to issue stop work orders, and to authorize expenditures within Owner's contingency. The Board designates as its authorized representatives, the following individual: Oscar Muniz, Owner's Superintendent of Schools, or his successor."

28. § 3.3 is amended by deleting the existing language and replacing it with the following:

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

29. § 4.2.2 is amended to read as follows:

**4.2.2** As set out in the Texas Prompt Payment Act, Texas Government Code, Chapter 2251, payments are due and payable within forty-five (45) days of receipt of the Construction Manager's invoice and application for payment and certified as owing by the Architect. Amounts unpaid more than forty-five (45) days after the invoice receipt for the Architect shall bear interest in accordance with Texas Government Code Section 2251.025.

30. § 5.1 is amended to read as follows:

**5.1** For the Construction Manager's performance of the Work as described in Section

2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee plus the general conditions, the total of which shall not exceed the Guaranteed Maximum Price.

31. § 5.1.1 is amended to read as follows:

**5.1** The Construction Manager's Fee: [REDACTED]  
*(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, and not as a percentage of the Contract Sum. No Construction Manager's fee shall be paid on the Construction Manager's Contingency or the Owner's Contingency until funds are allocated from those contingencies to the Cost of the Work.

32. § 5.1.2 is amended to read as follows:

**5.1.2** The method of adjustment of the Construction Manager's Fee for changes in the Work: Only by agreement of Owner's Board of Trustees.

33. § 5.1.3 is amended to read as follows:

**5.1.3** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: See AIA Document A201, Section 7.1.4.

34. The original § 5.1.4 is renumbered to § 5.1.4.1, and a new § 5.1.4 is added as follows:

**5.1.4 GENERAL CONDITIONS**

All charges, if any, for general conditions (costs to be reimbursed) shall be delineated separately in the Guaranteed Maximum Price Amendment, and may include only the following: on-site Project Manager; on-site Project and Site Superintendents; on-site Assistant Superintendents; minor construction as allowed by Texas Local Government Code §2269.255; office trailer expenses; on-site sanitary facilities; project sign; safety/first aid; on-site technology; temporary water and power; project site office supplies and office equipment; plan reproduction; construction photographs; dumpsters; final clean-up; equipment rental; fuel; small tools; and items described in more detail below.

35. The new § 5.1.4.1 is amended to read as follows:

**5.1.4.1** Rental rates for Construction Manager-owned equipment shall be subject to the

Owner's prior approval and shall not exceed \_\_\_\_\_ percent (\_\_\_\_%) of the standard rate paid for rental of similar equipment at the place of the Project.

36. § 5.1.4.2 is added as follows:

**5.1.4.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

37. § 5.1.4.3 is added as follows:

**5.1.4.3** 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 with the Owner's prior approval.

38. § 5.1.4.4 is added as follows:

**5.1.4.4** Actual rental charges for temporary facilities, machinery, equipment and hand tools not included in Section 6.5.1 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.

39. § 5.1.4.5 is added as follows:

**5.1.4.5** The general conditions shall not include the following: all reimbursement for profit; indirect costs; all telephone bills for all personnel; all facsimile charges; home office personnel and benefits assigned to the Project; home office overhead and expenses; home office personnel relocation; all home office accounting, audit, legal and data processing fees and expenses; and all travel, meals and lodging.

40. § 5.1.5 is deleted in its entirety.

41. § 5.2.1 is amended to read as follows:

**5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it may be amended from time to time and approved by Owner's Board of Trustees. To the extent the Contract Sum exceeds the Guaranteed Maximum Price; the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation

from the Owner.

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

42. § 5.2.2 is amended to read as follows:

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

43. § 6.1.1 is amended to read as follows:

**6.1.1** The term Cost of the Work shall mean the following costs necessarily incurred by the Construction Manager in the proper performance of the Work, except those costs compensated as general conditions under Section 5.1.4 above. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1. through 6.7. Cost of the Work that exceeds the Guaranteed Maximum Price shall be borne by the Construction Manager.

44. § 6.2.1 is amended to read as follows:

**6.2.1** Wages of construction workers directly employed by the Construction Manager to perform any portion of 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 Texas Local Government Code § 2269.255.

45. § 6.2.2 is deleted in its entirety.

46. § 6.2.3 is amended to read as follows:

**6.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, to the extent not compensated under General Conditions, as amended.

47. § 6.2.4 is amended to read as follows:

**6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3, to the extent not compensated under General Conditions, as amended.

48. § 6.2.5 is deleted in its entirety.

49. § 6.5.2 is deleted in its entirety.

50. § 6.5.4 is deleted in its entirety.

51. § 6.5.5 is deleted in its entirety.

52. § 6.6.1 is amended to read as follows:

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

53. § 6.6.2 is amended to read as follows:

**6.6.2** 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.

54. § 6.6.4 is amended to read as follows:

**6.6.4** Fees of laboratories for tests required by the Contract Documents and paid by the Construction Manager, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents.

55. § 6.6.5 is amended to read as follows:

**6.6.5** 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 the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

56. § 6.6.6 is deleted in its entirety.



57. § 6.6.7 is amended to read as follows:

**6.6.7** Deposits lost for causes directly resulting from the Owner's action or decisions.

58. § 6.6.8 is deleted in its entirety.

59. § 6.6.9 is deleted in its entirety.

60. § 6.7.3 is deleted in its entirety.

61. § 6.7.4 is amended to read as follows:

**6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8 or other provisions of or amendments to this Agreement. However, 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.

62. § 6.8.1 is amended to read as follows:

**6.8.1** 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 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Delay damages or claims;
- .10 Storage costs, unless with prior written Owner approval;
- .11 All costs intentionally deleted from Section 6 above, including all subsections;



and

.12 All items included in either general conditions under Section 5.1.4 above, or the Construction Manager's Fee in Section 5.1.1 above.

63. § 6.9.1 is amended to read as follows:

**6.9.1** Construction Manager shall take advantage of all available discounts, rebates, and refunds for supplies, materials and equipment connected with the Work and which conform to the Contract Documents, which discounts, rebates, and refunds shall accrue to the benefit of the Owner. 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.

64. § 6.10.2 is amended to read as follows:

**6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction in writing, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1., 2.3.2.2, 2.3.2.2.1, 2.3.2.2.2 and 2.3.2.3. If the Owner fails or refuses to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2, 2.3.2.2.1, 2.3.2.2.2 and 2.3.2.3.

65. § 6.11 is amended to read as follows:

**6.11** The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors, and other representatives shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts. Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of four (4) years after the date of Final Completion, or for such longer

period as may be required by law.

66. § 7.1.3 shall be amended by deleting the entire section and replacing it with the following:

**7.1.3** The Construction Manager shall submit monthly Applications for Payment to both the Architect and Program Manager, if applicable, on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect and Program Manager, if applicable, approve the application, then they shall submit a Certificate for Payment to the Owner. The Architect and 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 and Program Manager, if applicable, shall have seven (7) days from date of receipt from the Construction Manager of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect and Program Manager, if applicable, to the Construction Manager within forty-five (45) days of receipt of the Certificate for Payment from the Architect and Program Manager, unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code §2251.025.

67. § 7.1.6 is amended to read as follows:

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

68. § 7.1.7 is amended to read as follows:

**7.1.7** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Article 7 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the

Owner, suitably stored off the site at a location agreed upon in writing;

- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors or other representatives in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .7 Subtract retainage of **five percent (5%)** of the remaining amount, including the Construction Manager's Fee, of the progress payment.
- .8 The progress payment amount determined in accordance with this Section shall be further modified under the following circumstances:
  1. Add, if Final Completion of the Work is thereafter materially delayed by Owner or Owner's agents through no fault of the Construction Manager, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007, as amended.
  2. If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees due Construction Manager at any time.
  3. If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner, then any final payment to Construction Manager shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

69. § 7.1.8 is amended to read as follows:

**7.1.8** The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on Subcontracts shall be the same percentage of retainage withheld from Construction Manager. The Construction Manager shall execute subcontracts that contain the same terms and conditions as those contained in this Agreement.

70. § 7.1.10 is amended to read as follows:

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

71. § 7.2.1 is amended to read as follows:

**7.2.1** 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, if any, that extend beyond final payment; and to satisfy other requirements, if any, which Owner agrees in writing necessarily extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect and approved by Program Manger, if applicable;
- .4 Construction Manager has provided all documents that may be required by AIA Document A201-2007, as amended; and
- .5 Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after Board approval.

72. § 7.2.1.1 is added as follows:

**7.2.1.1** The amount of the final payment shall be calculated 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 shall determine as the cost for completing incomplete Work and the value of unsettled claims.
- .7 Subtract all previous payments made by the Owner.
- .8 In no event shall the sum 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 the Construction Manager, the Construction Manager shall reimburse the difference to the Owner, plus interest as allowed by law.

73. § 7.2.2 is amended to read as follows:

**7.2.2** The Owner's auditors or other representatives will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager: Based upon such Cost of the Work as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors 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 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

74. § 7.2.3 is amended to read as follows:

**7.2.3** If the Owner's auditors or other representatives report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within the time line established in Section 15.2 of A201-2007 after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this time period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

75. § 7.2.4 is amended to read as follows:

**7.2.4** If, subsequent to final payment and at the Owner's prior written request, the Construction Manager incurs costs described in Section 6.1.1 that are not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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 Price.

76. § 7.3 and subparts are added as follows:

### **7.3 LIQUIDATED DAMAGES**

**7.3.1 Substantial Completion.** Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Substantial Completion of the Project and Owner shall sustain damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadlines. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and damages caused by failure of Construction Manager to complete the Work within the allotted or agreed extended times of Substantial Completion, that such sums are liquidated damages and shall not be construed 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 substantially 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 increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial Completion, shall be construed as a breach of this Agreement. It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from the Final Payment made to the Construction Manager a sum equal to \$500 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

**7.3.2 Final Completion.** In addition, timely Final Completion is an essential condition of this Agreement. Construction Manager agrees to achieve Final Completion of the Agreement within 30 calendar days of the designated or agreed extended date of Substantial Completion. It is specifically understood and agreed by and between Owner and Construction Manager that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Construction Manager's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Construction Manager that the amounts stated below are the minimum value of the costs and damages caused by failure of Construction Manager to complete the Work within the allotted or agreed



extended times for Final Completion, that such sums are liquidated damages and shall not be construed as a penalty. 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 finally 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 the following categories of damages to the Owner: potential hazards to students, staff and visitors, additional architectural, engineering, program management fees (and fees of any other consultants); increased administrative or operational expenses; additional attorney's fees; increased maintenance and custodial costs and additional, utilities, security and clean-up costs, and other increased costs. Failure to complete the Work within the designated or agreed extended dates of Final Completion, shall be construed as a breach of this Agreement. Owner and Construction Manager agree that should Construction Manager fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Construction Manager and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of \$500 per day. Owner may deduct such liquidated damages from any Payment made to Construction Manager before or at Final Payment; or, if sufficient funds are not available, then Construction Manager shall pay Owner, the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

**7.3.3** Such liquidated damages shall be in addition to, and not in lieu of, any other rights, claims or remedies Owner may have against Construction Manager. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.”

77. Article 8 is amended to read as follows:

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance as set in in Article 11 of the AIA Document A201-2007, which may arise out of or result from the Construction Manager's operations under this Contract, whether such operations be by Construction Manager, or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable Prior to performing the Work, the Construction Manager shall provide separate performance and payment bonds in accordance with AIA Document A201- 2007 Section 11.4.

78. § 9.1 is amended to read as follows:

**9.1** 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 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision or recommendation by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

79. § 9.2 is deleted in its entirety.

80. § 9.3 is deleted in its entirety.

81. § 10.1.1 is amended to read as follows:

**10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 14.1.2. or 14.1.4 of A201-2007.

82. § 10.2.2 is deleted in its entirety.

83. § 10.3 is amended to read as follows:

**10.3** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price, if established, and Contract Time may be increased as provided in Section §4.3.2 of AIA Document A201-2007.

84. § 11.4 is amended to read as follows:

**11.4** The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Construction Manager shall not assign this Agreement without the written consent of the Owner's Board of Trustees. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If the Construction Manager attempts to make such 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 Project in accordance with law, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

85. Subsections to § 11.5 is added as follows:



- 11.5.1** 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.
- 11.5.2** Construction Manager shall require all construction workers, whether Construction Manager's own forces, or the forces of Construction Manager's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the construction worker by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.
- 11.5.3** Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents. As a material consideration of the making of this Agreement, the Modifications to this Agreement shall not be construed against the maker of said Modifications.
- 11.5.4** By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in the contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 11.5.5** 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.
- 11.5.6** 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. Governing law and venue shall be as specified in AIA Document A201-2007 Section 13.1.
- 11.5.7** As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.
- 11.5.8** Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

- 11.5.9** The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Contractors, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Construction Manager or Contractors or any of its subcontractors. As part of that responsibility, Construction Manager shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Construction Manager's employees, Contractors, subcontractors, and all other persons carrying out the Contract.
- 11.5.10** Construction Manager shall follow, and shall require all employees, agents, Contractors or subcontractors to follow, applicable ordinances of the municipality in which the Project is located. In addition, if not covered by the municipality's tree ordinance, Construction Manager shall barricade and protect all trees on the Project.
- 11.5.11** Construction Manager shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Construction Manager's and Construction Manager's Contractor's, and Subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Construction Manager's forces or Construction Manager's, Contractor's or subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.
- 11.5.12** The Construction Manager may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Construction Manager from engaging Contractors or subcontractors to perform various phases of the Project, but Construction Manager shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.
- 11.5.13** To the extent required by law, by executing this Agreement, Construction Manager verifies that it does not boycott Israel, and it will not boycott Israel during the terms of this Contract.
- 11.5.14** To the extent required by law, Construction Manager 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 Construction Manager has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

86. § 12.2 is amended to read as follows:

**12.2** The following documents are included in the Contract, in addition to those listed

in Section 1.1:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction, as amended
- .4 Other documents:
  - .1 Amendments to General Conditions of the Contract for Construction AIA Document A201 – 2007
  - .2 Amendments to the Standard Form of Agreement Between Owner and Construction Manager as Constructor AIA Document A133 - 2009

EXECUTED this \_\_\_\_\_ day of May, 2020.

**OWNER:**  
MCLEAN INDEPENDENT SCHOOL  
DISTRICT

**CONSTRUCTION MANAGER:**

By: \_\_\_\_\_  
Oscar Muniz, Superintendent

By: \_\_\_\_\_  
\_\_\_\_\_

**AMENDMENTS TO GENERAL CONDITIONS  
OF THE CONTRACT FOR CONSTRUCTION  
AIA DOCUMENT A201™ - 2007**

**CONTRACT DATE:** May \_\_, 2020

**OWNER:** McLean Independent School District  
Attn: Oscar Muniz, Superintendent  
600 Rowe Street  
McLean, Texas 79057  
(806) 779-2301  
Email: oscar.muniz@region16.net

**CONSTRUCTION  
MANAGER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**PROJECT:** 2020 Roof Repair/Replacement Project

WHEREAS, McLean Independent School District (hereinafter referred to as "Owner), and \_\_\_\_\_, Construction Manager (hereinafter referred to as "Contractor"<sup>1</sup>) desire to enter into an Agreement under which Contractor will perform services relating to the above-described project (the "Project").

WHEREAS Owner and Contractor have agreed to enter into an AIA Document A133™-2009, Standard Form of Agreement between Owner and Construction Manager as Constructor, as amended, and the related General Conditions of the Contract for Construction, AIA Document A201™-2007, as amended, as the basic form for that Agreement; and

WHEREAS certain terms and conditions of that Agreement need to be modified to comply with applicable laws and policies affecting Owner and Contractor in the construction of the Project. Owner and Contractor hereby agree that the following provisions replace, modify, amend and/or delete the identically numbered paragraphs,

<sup>1</sup> The term "Contractor" and "Construction Manager" as used in the Contract Documents may be used interchangeably as a reference to \_\_\_\_\_.

or are in addition to the paragraphs, contained in the attached General Conditions of the Contract for Construction (AIA Document A201™-2007) and become a part of said Agreement for all intents and purposes; any references to a particular document or section within said Agreement shall mean a reference to such document or section, as amended, if applicable; and,

WHEREAS, those paragraphs that have NOT been replaced, modified, amended and/or deleted as so stated by the identically numbered paragraphs herein, shall remain in effect as written in the AIA Document A201™-2007 General Conditions, and to the extent that this Amendment conflicts with the terms of the original A201™-2007 General Conditions, this Amendment controls.

1. §1.1.1 is amended to read as follows:

**1.1.1** The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Contractor (hereinafter the Agreement) and consist of: the Agreement, as amended; Conditions of the Contract, as amended; General, Supplementary and other Conditions, including Drawings, Specifications, all sections of the Project Manual, including the Owner's Request for Bids or Proposals and Contractor's Bid or Proposal; Addenda issued prior to execution of the Contract; other documents listed in the Agreement, as amended; and, Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

2. §1.1.1.1 is added as follows:

**1.1.1.1** The Agreement, as amended, represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of the Agreement shall be valid, binding, and enforceable only if signed by Contractor and the authorized representative of Owner's Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents. The Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein. Any reference to any Contract Document shall mean the document as amended and/or supplemented for this Project.

3. §1.1.2 is amended to read as follows:

### **1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract, as amended, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification signed by Contractor, approved by Owner's Board of Trustees, and signed by the representative of Owner's Board of Trustees who is authorized to sign contracts. As a material consideration for the making of the Contract, modifications to the Contract shall not be construed against the maker of said modifications. 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.

4. §1.1.2.1 is added as follows:

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

5. §1.1.3 is amended to read as follows:

### **1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all of Contractor's responsibilities as to all labor, parts, supplies, skill, supervision, 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 and creative work. "Construction Documents" means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractors and other documents, including those in electronic form, prepared by the Architect and the Architect's

consultants and shall set forth in detail the 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. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC §61.1040 and the standards as may be set forth in the Agreement between Owner and Architect. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. The Construction Documents shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of construction documents.

6. §1.1.8 is amended to read as follows:

**1.1.8 PROJECT MANUAL**

The Project Manual is a volume assembled for the Work which includes the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications, and any addenda to such documents issued prior to execution of the Contract between Owner and Contractor.

7. §1.1.9 is added as follows:

**1.1.9 BIDS or BIDDING**

The terms "Bids" or "Bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44, Texas Government Code Chapter 2269, or other applicable statute(s).

8. §1.1.10 is added as follows:

**1.1.10 CONTRACT SUM**

"Contract Sum" shall mean the Guaranteed Maximum Price, when the Agreement is a Construction Manager at Risk Agreement (A133-2009), and the Contract Sum, when the Agreement is a Contractor Agreement (A101-2007).

9. §1.2.1.1. is added follows:

**1.2.1.1** During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless he shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of his Proposal. The Architect, in case of such conflict, may interpret or construe the 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.

10. §1.2.4 is added as follows:

**1.2.4 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 date of execution of the Agreement by the last party to execute said Agreement shall apply. It shall be the responsibility of the Architect to address revisions or amendments to applicable codes or standards which arise after the date of execution of the Agreement 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 superseded more stringent specified requirements.

11. §1.5 and all of its subsections are amended and replaced in entirety to read as follows:

**1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, INSTRUMENTS OF SERVICE 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 and Architect's Instruments of Service, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Construction Documents or Architect's Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any reserved rights.

**1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce the Construction Documents and Architect's Instruments of Service provided to them 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 and Architect's Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Construction Documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the copyright holder. All copies



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

12. §1.6 is amended to read as follows:

**1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Construction Documents, Architect's Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

13. §2.1 and all of its subsections are amended and replaced in entirety to read as follows:

**2.1 GENERAL**

**2.1.1** The Owner is the McLean Independent School District, as identified in the Contract Documents. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, or agree to an extension to the date of Substantial or Final Completion. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or his designee(s) the authority to approve changes to the Work where such changes are within the Owner's Contingency or the Contractor's contingency, and which do not exceed **\$10,000** or will not increase the dates for Substantial or Final Completion by more than **three (3)** days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or his designee(s), and notice of such approved changes shall be given to the Board at its next regular meeting; except as otherwise provided in the Contract Documents, the Architect does not have such authority. Neither Architect nor Contractor may rely upon the direction of any employee of Owner who has not been designated in writing by the Superintendent or Board of Trustees; Owner shall not be financially responsible for actions taken by the Architect or Contractor in reliance upon direction from unauthorized persons.

**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 Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents.

14. §2.2.1 is amended to read as follows:

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

15. §2.2.3 is amended to read as follows:

**2.2.3** If requested by the Contractor in writing prior to the start of the Work, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, but the Contractor shall exercise proper precautions relating to the performance of the Work having to do with such matters, including personal examination of the site.

16. §2.2.4 is amended to read as follows:

**2.2.4** 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, any Claim based upon lack of such information or services shall be waived.

17. §3.1.4 and its subsections are added as follows:

**3.1.4** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in this state and properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

18. §3.2.1 is amended to read as follows:

**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 a Proposal that he has carefully examined the Contract Documents, any soil test reports, drainage studies, geotechnical or other reports and the site of the Work, and that, from his own investigations, he has satisfied himself as to the nature and location 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 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 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 visit the site or to carefully study and compare the Contract Documents prior to execution of the Work.

19. §3.2.2 is amended to read as follows:

**3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are not 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, however, shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work involving an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect.

20. §3.2.3 is amended to read as follows:

**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 to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

21. §3.2.5 is added as follows:

**3.2.5** Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, 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. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the particular campuses involved in the Project, and shall

notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos-containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site. If applicable, Contractor shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing or painting work in schools built prior to 1978 involving lead-based paint.

22. §3.2.6 and its subsections are added as follows:

**3.2.6** 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.

23. §3.3.2 is amended to read as follows:

**3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, while on Owner's property, to refrain from committing any criminal conduct, using tobacco products, possessing or drinking alcoholic beverages, possessing or using illegal drugs or any controlled substance, carrying or possessing weapons, except as allowed by law and Board Policy, 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. Contractor shall also require adequate and appropriate dress and identification of Contractor's employees, subcontractors, and all other persons carrying out the Work. Owner may require all of Contractor's 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. If so, such identification tags shall contain the worker's name in a typeface large enough to be seen from a reasonable distance. 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 pursuant to Article 14. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner.

24. §3.3.4 is added as follows:

**3.3.4** The Contractor shall efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and subcontractors, and ensure their workmanship shall be of the highest quality, in every respect, as usually recognized in the building industry. Poor or inferior workmanship, as determined by the Architect, Engineer, Construction Manager or inspecting authorities is to be removed and replaced to conform to the highest quality standards of the trades concerned, or otherwise corrected.

25. §3.3.5 and its subsections are added as follows:

**3.3.5** 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 § 756.023(a), Contractor 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



- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

26. §3.3.6 is added as follows:

**3.3.6** 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.

27. §3.3.8 is added as follows:

**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, 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).

28. §3.4 and all of its subsections are amended and replaced in entirety to read as follows:

### **3.4 LABOR AND MATERIALS**

**3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, labor, materials, equipment, tolls, 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. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. Before ordering any material or doing any Work,

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

- 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Owner's representative and Architect, and in accordance with a Change Order or Construction Change Directive, if necessary.

**3.4.2.1** Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (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 with a duplicate copy to Owner's representative: (i) a full explanation of the proposed substitution and submittals of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation for the substitution; (ii) a written explanation of the reasons the substitution should be considered, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating (a) the proposed substitution conforms to and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and will coordinate the Work to be complete in all respects, as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than fifteen (15) working days for review. No substitutions will be considered or allowed without the Contractor's submittals of complete substantiating data and information.

- 3.4.3** 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 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 Section 10.1.1, Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes neither the Owner nor the Architect owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct.

**3.4.5** Pursuant to Texas Education Code §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 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 business 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 subcontractors 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 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 covered 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.

**3.4.6.6** In addition, Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or subcontractor of the Contractor or a Subcontractor, 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 any other 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."

### **3.4.7 PREVAILING WAGE RATES**

**3.4.7.1** Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum Wage Schedule" provided herein. Wages listed are minimum rates only. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein. Texas Government Code § 2258, *et seq.*; Texas Labor Code § 62.051, *et seq.*

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

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

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

**3.4.7.5** If a Minimum Wage Schedule is not provided herein, the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 3141, which can be accessed on the internet at <https://beta.sam.gov/>.

29. §3.5 is amended and subsections are added to read as follows:

### **3.5 WARRANTY**

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, 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 applicable Work's Final Completion date (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Contractor's express warranty is in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner. The warranties set out in this Subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law.

**3.5.1** 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 TAC §61.1036(c)(3)(F).

**3.5.2** 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 Substantial Completion as required for the satisfactory completion of the Project. Upon written notice from the Owner or Architect, the Contractor shall promptly remedy defects as covered by Contractor's warranty. If Contractor does not respond to the written notice, either by beginning corrective work or notifying Owner in writing regarding when corrective work will begin, within ten days of Contractor's receipt of the written notice, then the Owner may take measures to

correct the Work and Contractor will be obligated to reimburse Owner's costs. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

- 3.5.3** 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 a form acceptable to the Architect.
- 3.5.4** The Contractor agrees to assign to the Owner at Final Completion of the Work, such assignment to be effective no later than Final Completion, any and all 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 such manufacturers' warranties. All forms will be required to be submitted prior to Final Payment.
- 3.5.5** The warranties of Contractor provided in Subparagraphs 3.5, 3.5.1 and 3.5.2 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.
- 3.5.6** Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty on each phase or building will expire. Contractor shall provide a copy of such schedules to Owner and Architect. Prior to termination of the warranty period, Contractor shall accompany Owner and Architect on re-inspection of each Work in the Project and Contractor shall be responsible for correcting any warranty items which are observed or reported during the warranty period. Contractor shall prosecute such warranty work without interruption until accepted by Owner and Architect, even though such work should extend beyond the warranty period. If Contractor fails to provide the schedules to Owner and Architect, Contractor's warranty obligation described herein shall continue until such inspection is conducted and deficiencies are corrected.
- 3.5.7** 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 Final Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties no later than the Date of Final Completion;

- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Bind all warranties in commercial quality 8-1/2 X 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; and
- .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.

30. §3.6 is amended to read as follows:

### **3.6 TAXES**

Owner is an exempt entity under the tax laws of the State of Texas; Texas Tax Code §151.309 and 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.

31. §3.7.1 is amended to read as follows:



**3.7.1** After Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation, Architect shall notify Contractor that Contractor may make and submit the applications for the building permit. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by Government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time the bids are received or negotiations concluded.

32.

33. §3.7.2 is amended to read as follows:

**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 invoices 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.

34. §3.7.3 is amended to read as follows:

**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.

35. §3.7.6 is added as follows:

**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 at once when the Owner's participation is required, and the Architect shall immediately notify the Owner. Connections for

temporary and permanent utilities and payment for temporary utilities services required for the Work, whether the Work is new construction or renovation of an existing facility, are the responsibility of the Contractor unless otherwise agreed. If the Work is new construction, then payment for temporary and/or permanent utility services shall be the responsibility of the Contractor until Substantial Completion.

36. §3.9.4 is added as follows:

**3.9.4** Questions about plan interpretation or directions shall be submitted by Contractor's superintendent 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.

37. §3.10.1 is amended to read as follows:

**3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.

38. §3.10.4 is added as follows:

**3.10.4** The Contractor shall perform the Work in accordance with most recent schedules submitted to the Owner and Architect and incorporated into the approved Project schedule.

39. §3.10.5 is added as follows:

**3.10.5** The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule



at any time, Contractor shall develop and deliver a recovery plan to the Owner with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts.

40. §3.12.4 is amended to read as follows:

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

41. §3.12.6 is amended to read as follows:

**3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and verified that 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.

42. §3.12.10 is amended to read as follows:

**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. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or

certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Unless the Contractor is providing professional services as allowed herein, the Contractor shall not be responsible for the adequacy of the performance and design criteria specified 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.

43. §3.12.11 is added as follows:

**3.12.11** 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.

44. §3.12.12 is added as follows:

**3.12.12** 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 the Architect or applicable law, by a licensed engineer.

45. §3.13.1 is added as follows:

**3.13.1** 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.

46. §3.13.2 is added as follows:

**3.13.2** 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.

47. §3.13.3 is added as follows:

**3.13.3** 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 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.

48. §3.14.3 is added as follows:

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

49. §3.14.4 is added as follows:

**3.14.4** Any Contractor working on the Project shall repair and/or replace, at no expense to the Owner, any sections of existing road, drives, streets, sidewalks, curbs, utilities, buildings and other structures damaged by reason of Work performed under the Contract Documents or incidental thereto, whether by his own forces or

by his subcontractors or by his material suppliers.

50. §3.15.1 is amended to read as follows:

**3.15.1** The Contractor, on a daily basis, shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor 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. 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 or surface. In the event that any finish or surface becomes defaced in any way by mechanics or workers, the Contractor or any of his Subcontractors shall clean and restore such surfaces to their original condition.

51. §3.15.3 is added as follows:

**3.15.3** The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall, as appropriate, 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.

52. §3.15.4 is added as follows:

**3.15.4** After construction is complete, Contractor shall, as appropriate: (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.

53. §3.17 is amended to read as follows:

**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.

54. §3.18 and all of its subsections are amended and replaced in entirety to read as follows:

**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, ARCHITECT, OWNER'S TRUSTEES, ARCHITECT'S CONSULTANTS, OWNER'S CONSULTANTS AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO

THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH 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 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 THIS SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT 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 §130.001, *ET SEQ.*

FURTHER, AND IN ACCORDANCE WITH TEXAS INSURANCE CODE §151.102, AS APPLICABLE, THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION SHALL NOT REQUIRE CONTRACTOR TO INDEMNIFY, HOLD HARMLESS, OR DEFEND THE PARTY(S) INDEMNIFIED HEREUNDER AGAINST A CLAIM CAUSED BY THE NEGLIGENCE OR FAULT, THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR THE BREACH OF CONTRACT OF THE OWNER, ITS AGENT OR EMPLOYEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE OWNER, OTHER THAN THE CONTRACTOR OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER.

**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** THE PROVISIONS OF SECTION 3.18 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT.

55. §4.1.3 is amended to read as follows:

**4.1.3** If the employment of the Architect is terminated, the Owner shall employ a new architect whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.

56. §4.1.4 is added as follows:

**4.1.4** Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and the Contract Documents by the duties,

responsibilities, or activities of the Architect.

57. §4.2.1 is amended to read as follows:

**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 one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract Documents.

58. §4.2.2 is amended to read as follows:

**4.2.2** The Architect will visit the site at regular intervals appropriate to the stage of construction, or as otherwise directed by Owner, to inspect the progress, quality and workmanship of the portion of Work completed, and to determine if the Work observed is being performed in a manner that, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner informed of the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent Project schedule, and (2) defects and deficiencies observed in the Work. The Architect may reject non-conforming Work and determine if the Work, when complete, will conform to the Construction Documents and Contract Documents. Contractor shall not cover up or close up portions of the Work prior to on-site observations by the Architect if covering up such Work would conceal defects or non-conforming Work. Contractor will notify Owner and Architect of any need for any third party laboratory testing to assist Owner and Architect. The Architect shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures or safety programs. Any services by Contractor made necessary by construction defect or non-conforming Work shall be performed at no additional cost to Owner.



59. §4.2.3 is amended to read as follows:

**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 made necessary by the fault, neglect, or request of the Contractor.

60. §4.2.5 is amended to read as follows:

**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.

61. §4.2.6 is amended to read as follows:

**4.2.6** The Architect shall reject Work that does not conform to the Construction Documents Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend to Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. 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, material and equipment 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 services required by this subsection shall be conducted subject to the requirements of Texas Government Code, Chapter 2269.

62. §4.2.7 is amended to read as follows:

**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, for the purpose of checking for conformance with the Construction Documents and the Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. 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 conducted for the purpose of determining the general accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems., all of which 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. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. 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.

63. §4.2.8 is amended to read as follows:

**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. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work 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.

64. §4.2.12 is amended to read as follows:

**4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

65. §4.2.13 is amended to read as follows:

**4.2.13** The Owner's decisions on matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents.

66. §5.2.1 is amended to read as follows:

**5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect shall reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Owner or Architect require additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection. All subcontractors shall be procured in accordance with Texas Government Code, Chapter 2269, as applicable. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

67. §5.2.5 is added as follows:

**5.2.5** 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.

No increases in Contract Sums shall be allowed for failure to so inspect or investigate.

68. §5.3 is amended and subsections are added to read as follows:

### **5.3 SUBCONTRACTUAL RELATIONS**

**5.3.1** 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, which the Contractor, by these Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, except 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.

**5.3.2** Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

69. §5.4.1 and its subsections are amended to read as follows:

**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 either in accordance with 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;
- .2 assignment is subject to the prior rights and obligations of the surety, if

- .3 any, obligated under bonds relating to the Contract; and  
the Subcontractor provides bonds as required by law of prime contractors  
and as by Owner.

70. §5.4.2 is amended to read as follows:

**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.

71. §5.4.3 is amended to read as follows:

**5.4.3** Owner shall only be responsible for compensating 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.

72. §5.5 is added as follows:

**5.5 NOTICE OF SUBCONTRACTOR DEFAULT**

Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

73. §6.1.1 is amended to read as follows:

**6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. 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.

74. §6.1.3 is amended to read as follows:

**6.1.3** Contractor shall cooperate with other separate contractors to ensure that the Work remains on schedule. The Contractor shall make any revisions to the 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.

75. §6.1.4 is deleted in its entirety.

76. §§6.2 and 6.2.1 are amended to read as follows:

**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 site access and opportunity for 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.

77. §6.2.3 is amended and subsection 6.2.3.1 is added to read as follows:

**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.

**6.2.3.1** 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.

78. §6.3 is amended to read as follows:

**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.

79. §7.1.3 is amended to read as follows:

**7.1.3** Changes in the Work, which are accompanied by a written request and supporting data, shall be performed under applicable provisions of the Construction Documents and the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

80. §7.1.4 is added as follows:

**7.1.4** The total Contractor mark-up for overhead, profit or fee for work performed by the Contractor's own forces shall not exceed 10% of the cost of the Change in the Work. The total Contractor mark-up for overhead, profit or fee for supervision of work performed by subcontractors' forces shall not exceed 4% of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit or fee for work performed by the subcontractor's forces shall not exceed 10% of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 14% of the total cost of the Change in the Work.

81. §7.1.5 is added as follows:

**7.1.5** Allowance balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead, profit or fee mark-up when changes in the Work are funded by one of the Allowances.

82. §7.1.6 is added as follows:

**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. Texas Education Code § 44.0411.

83. §7.2.1 and its subsections are amended to read as follows:

**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, including adjustments to fees for the Architect and Contractor; and
- .3 The extent of the adjustment, if any, in the Contract Time.

84. §7.2.2 is added as follows:

**7.2.2** In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price, unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

85. §7.3.3 and its subsections are amended to read as follows:

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon (additional mark-ups for overhead, profit and fees will not 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; or
- .4 As provided in Section 7.3.7, subject to the limitations of subparagraph 7.1.4.

86. §7.3.7 and its subsections are amended to read as follows:

**7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum then the adjustment shall be determined by the Architect on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:

- .1 Actual costs of labor, including social security, unemployment insurance, and workers' compensation insurance;
- .2 Actual costs 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, related to the Work.

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.

87. §8.1.1 is amended to read as follows:

**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.

88. §8.1.2 is amended to read as follows:

**8.1.2** The date of commencement of the Work shall be the first business day after Contractor's receipt of the written Notice to Proceed. The Notice to Proceed shall not be issued by Architect until the Agreement (or Amendment Number 1, if Contractor is a Construction Manager at Risk) has been signed by the Contractor, approved by Owner's Board of Trustees, 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, in compliance with Article 11. Issuance of the notice to proceed shall not relieve the Contractor of his responsibility to comply with Article 11.

89. §8.1.3 is amended to read as follows:

**8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.10. 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.

90. §8.2.2 is amended to read as follows:

**8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work may be

delayed to conform with the effective date of such insurance.

91. §8.2.3 is amended to read as follows:

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

92. §8.2.4 is added as follows:

**8.2.4** The Contractor is subject to liquidated damages, as specified in the Agreement, if the Work is not completed by the date of Substantial Completion or the Date of Final Completion.

93. §8.3.1 is amended to read as follows:

**8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by, fire, governmental actions, or by delay authorized in writing by the Owner; or by other causes which the Architect and Owner determine may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Architect and Owner may determine.

94. §8.3.3 is amended to read as follows:

**8.3.3** This Agreement does not permit the recovery of damages, including, without limitation, extended home office overhead expenses, general conditions or other consequential damages, by the Contractor for delay or disruption or for extensions of time due to bad weather or acts of God. Contractor agrees that the only possible compensation for any delay is an extension of time.

95. §9.1 is amended to read as follows:

**9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. In the event that the Project is a Construction Management at Risk Project, the "Contract Sum" in the Contract Documents shall be interpreted to mean the "Guaranteed Maximum Price," which shall not be exceeded.

96. §9.3.1.1 is amended to read as follows:

**9.3.1.1** Contractor agrees that, for purposes of Texas Government Code §§2251.021 and 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Certificate for Payment shall be construed as receipt of an invoice by the Owner, for purposes of Texas Government Code §§2251.021 and 2251.042.

97. §9.3.1.3 is amended to read as follows:

**9.3.1.3** Until Final Completion of the Work, as Owner shall withhold retainage as provided in the Contract Documents and as allowed by law, 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 Section 9.4.3 or 9.5. The retainage shall be paid with the Final Payment.

98. §9.3.2 is amended and subsections are added as follows:

**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 bonded warehouse.
- .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 is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site.

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.

99. §9.3 is amended to read as follows:

**9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

100. §9.3.4 is added as follows:

**9.3.4** Contractor shall submit Applications for Payment in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment (or G702CMA, if applicable) and Continuation Sheet. All blanks in the form must be completed and signatures of Contractor 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.

101. §9.3.5 is added as follows:

**9.3.5** By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the

Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmen's liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's 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 be considered sufficient cause to terminate Contractor's Contract with Owner.

102. §9.4 and all of its subsections are amended and replaced in entirety to read as follows:

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

- 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, return the Payment Application to the Contractor as provided in Section 9.3.4; certify, sign and issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code §2251.042 *et seq.*
- 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; determined that the Work has progressed to the point indicated, in the Architect's professional opinion determined that the quality of the Work is in accordance with the Construction Documents and the Contract Documents; and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents and the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Construction Documents and the Contract Documents prior to completion and to

specific qualifications expressed by the Architect in writing to the Owner. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data 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 why payment should be withheld.

103. §9.5.1 and its subsections are amended to read as follows:

- 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. Such notice to the Contractor shall be proper notice of a disputed amount under Texas Government Code §2251.042. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of
- .1 defective Work not remedied;
  - .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
  - .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
  - .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;



- .5 damage to the Owner or 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.

104. §9.5.3 is amended to read as follows:

**9.5.3** Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Architect may withhold any further Certificate for Payment to 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 this Section.

105. §9.6.1 is amended to read as follows:

**9.6.1** After the Architect has issued a Certificate for Payment for undisputed amounts, the Owner shall make payment 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 Architect's Certificate for Payment, pursuant to Texas Government Code §2251.042 *et seq.*, listing the specific reasons for nonpayment. Payments to the Contractor shall NOT be construed as releasing Contractor or his surety from any obligations under the Contract Documents or Construction Documents.

106. §9.6.2 is amended to read as follows:

**9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. 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 §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 copies of such Subcontractor payments to the Owner. 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.

107. §9.6.7 is amended to read as follows:

**9.6.7** Contractor shall provide the Owner with a payment bond as set out in Section 11.4 herein. Payments received by the Contractor 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 for which payment was made by the Owner.

108. §9.6.8 is added as follows:

**9.6.8** Contractor shall not withhold as a retainage a greater percentage from Subcontractors or materialmen than the percentage that Owner withheld as retainage from payments to Contractor.

109. §9.7 is amended to read as follows:

**9.7 FAILURE OF PAYMENT**

Pursuant to Texas Government Code §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 or the Construction Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a



dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

110. §9.8 and all of its subsections are amended and replaced in entirety to read as follows:

## **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 and the Construction 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 required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work, or the applicable portion of the Work, for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor shall certify that all remaining Work shall be completed within 30 days. Contractor shall complete Owner's Substantial Completion Certificate.

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

**9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Construction Documents or the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect shall so notify the Contractor and Owner in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to Architect for fees incurred due to Architect's additional inspections.

**9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare, sign and issue Owner's Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work or designated portion.

**9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Any remaining payment, including retainage, shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

111. §9.9.1 is amended to read as follows:

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work provided such occupancy or use is consented to by the insurer as may be required herein and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided that the Owner accepts in writing the responsibilities for security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation and property and liability insurance. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. 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.

112. §9.9.3 is amended to read as follows:

**9.9.3** Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work that does not comply with the requirements of the Contract Documents, nor shall it constitute evidence of Substantial Completion.

113. §9.9.4 is added as follows:

**9.9.4** In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Contractor shall obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

114. §9.10.1 is amended to read as follows:

**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 prepare, sign, and make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue Owner's Certificate of Final Completion and a 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 terms and conditions of the Contract Documents and the Construction 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 as a precedent to the Contractor's being entitled to final payment have been fulfilled. Final payment shall be made by the Owner in accordance with Owner's regular schedule for payments.

115. §9.10.2 is amended and subsections are added to read as follows:

**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 G 706, 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 and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) using AIA Document G707, consent of surety, if any, to final payment and (5) except for amounts currently withheld by Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A; notarized subcontractor's lien releases; and (6) receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor

refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Section 10.5, 10.6, and 10.7
- .2 Final list of subcontractors (AIA Document G705);
- .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance, located at [http://tea.texas.gov/Finance and Grants/State Funding/Facilities Funding and Standards/Facilities Funding and Standards/](http://tea.texas.gov/Finance_and_Grants/State_Funding/Facilities_Funding_and_Standards/Facilities_Funding_and_Standards/);
- .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 Record drawings and "as built" drawings. At the completion of the Project, the Contractor shall submit one complete set of "as built" drawings, with all changes made during construction, including concealed mechanical, electrical and plumbing items. The Contractor shall submit these as electronic, sepi, or other acceptable medium, in the discretion of the Owner. The "as-built" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain a table of contents or index, and each section shall be tabbed. 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 within thirty (30) days after Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

116. §9.10.4 is amended and subsections are deleted in their entirety to read as follows:

**9.10.4** Making a final payment shall not constitute a waiver of any Claims by the Owner.

117. §9.10.5 is amended to read as follows:

**9.10.5** Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously

asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

118. §10.1.1 is added as follows:

**10.1.1** Contractor's employees, agents, Sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them maybe liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs; or act in contravention of warnings on medications while performing the Work or on Owner's premises.

119. §10.1.2 is added as follows:

**10.1.2** 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, and shall comply with all applicable federal, state and local drug and alcohol related laws and regulations. Contractor will remove any of its employees, agents, sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal, that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

120. §10.2.5 is amended to read as follows:

**10.2.5** The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The foregoing obligations of the Contractor are in addition to the obligations under Paragraph 3.18.

121. §10.2.8 is amended to read as follows:

**10.2.8** The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason. If suspended by Owner due to no fault of Contractor, then additional costs incurred by Contractor will be reimbursed by Owner.

122. §10.2.9 is added as follows:

**10.2.9** The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

123. §10.2.10 is added as follows:

**10.2.10** Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

124. §10.2.11 is added as follows:

**10.2.11** If either party to the contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter provided, however, Contractor understands that, under Texas law, Owner has tort immunity.

125. §10.3.3 is amended to read as follows:

**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 SUBPARAGRAPH 3.18.



126. §10.3.4 is amended to read as follows:

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

127. §10.3.5 is deleted in its entirety.

128. §10.3.6 is deleted in its entirety.

129. §10.5 and its subsections are added as follows:

**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.

**10.5.2** Final Payment shall not be made until this written certification has been received.”

130. §10.6 and its subsections are added as follows:

**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.”

131. §10.7 is added as follows:

**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; the Federal Occupational Safety and Health Administration (OSHA) standards, The Texas Commission on Environmental Quality (TCEQ); and/or the Texas Department of State Health Services (TDSHS), whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

132. Article 11 and all of its subsections are amended and replaced in entirety to read as follows:

**ARTICLE 11 INSURANCE AND BONDS**

**11.0.1** No Work will be commenced and no equipment or materials can be shipped until all requirements of this Article have been satisfied, satisfactory evidence of insurance has been provided, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Contractor is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Contractor shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

**11.0.2** Satisfactory evidence of insurance required by this Article shall be provided to Owner and Architect not later than five business days after execution of the Contract by Owner. Satisfactory evidence shall include copies of the declaration and endorsements for such required insurance policies, provided Contractor agrees to furnish copies of actual policies upon Owner's subsequent request. In addition, Contractor shall also provide a duly-executed ACORD Form 25, or other such Certificate form(s) approved by the Texas Department of Insurance, which require no less than 30 days' notice of cancellation, naming Owner as a certificate holder. 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](http://www.ambest.com), and that permits waivers of subrogation.

**11.0.4** All insurance required herein shall name the Owner, its officers, employees, representatives or agents, as an additional insured, except Contractor's Worker's Compensation insurance.

**11.0.5** All insurance required herein shall be, by endorsement, primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**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, employees, representatives or agents.

**11.0.7** All workers on the Project must be covered by the required insurance policies of the Contractor or a Subcontractor.

**11.0.8** Nothing contained in this Article shall limit or waive Contractor's legal or contractual responsibilities to Owner or others."

## **11.1 CONTRACTOR'S LIABILITY INSURANCE**

**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 which 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, including 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 Sections 11.1.2.1 and 11.1.5);

- .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; and
- .9 Claims for damages to the Work itself, through builder's risk insurance, pursuant to Section 11.4.

**11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, written on an occurrence 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 Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The stipulated limits of liability aggregate coverages shall be for this Project:

- 1 Workers' Compensation insurance with statutory limits.
- .2 Employer's Liability insurance with minimum limits of \$1,000,000 for each employee for bodily injury by accident and for each employee for bodily injury by disease.
- .3 Commercial General Liability insurance, including liability for the Project and blanket coverage, Personal and Advertising Injury, Products-Completed Operations, Medical Payments, Bodily Injury, and Property Damage, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products-completed operations aggregate, \$1,000,000 personal and advertising injury per occurrence, and \$5,000 medical expense. Contractor shall obtain an endorsement to each

insurance policy to provide aggregate limits per location. Contractor shall cause each insurance company to delete any contractual liability exclusion with respect to the insurance, including insurance coverage for personal injury, hazards of explosion, collapse, fire, and underground property damage.

- .4 Business Automobile Liability insurance with minimum combined single limits of \$1,000,000. Contractor shall cause each insurance company to provide coverage for liability arising out of the operation of owned, hired, and non-owned vehicles.
- .5 Contractual Liability insurance with minimum limits of \$1,000,000 per occurrence, and \$2,000,000 general aggregate. Contractor shall obtain an endorsement to each insurance policy to provide aggregate limits per location. The contractual liability insurance shall not be limited to coverage for the Indemnity, Waiver, and Obligation to Defend provisions in this Contract, but, instead, the contractual liability insurance shall cover all of Contractor's obligations to the fullest extent possible under the contractual liability endorsement. Further, the contractual liability insurance shall not limit, in any way, coverage provided to Owner and its trustees, officers, employees, and agents as additional insureds under each of Contractor's insurance policies.
- .6 Builder's Risk Insurance, also known as Course of Construction insurance, with minimum limits in an amount that will cover full construction costs of the property as of the date it will be completed and ready for occupancy, the Contract Sum, any increased costs from Change Orders, profit and overhead.
- .7 Umbrella/Excess Liability Insurance with minimum limits of \$3,000,000. Contractor shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverages required in this Contract, with the same inception and expiration dates as Commercial General Liability insurance, and with coverage that "drops down" for exhausted aggregate limits under liability coverages in this Contract.

**11.1.3** Certificates of insurance and copies of policies and endorsements acceptable to the Owner and Architect shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies and endorsements required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. 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 as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information

concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor to the Owner and Architect in writing within five (5) days of Contractor's first notice of the same.

**11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**11.1.5** 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.

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

**11.1.6.1** Duration of the Project includes the time from the beginning of the Work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

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

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

**11.1.6.4** The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements,

which meets the statutory requirements of Texas Labor Code §401.011(44) for all employees of the Contractor providing services on the Project for the duration of the Project.”

**11.1.6.5** The Contractor must provide a certificate of coverage to the Owner prior to being awarded the Contract.

**11.1.6.6** If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor ~~must~~, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

**11.1.6.7** The Contractor shall obtain from each person providing services on the Project, and provide to the Owner:

- .1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2 No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

**11.1.6.8** The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

**11.1.6.9** The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

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

**11.1.6.11** The Contractor shall contractually require each person with whom it contracts to provide services on the Project to:

- .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011(44) for all of its employees providing services on the Project for the duration of the Project;
- .2 Provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided

- for all employees of the person providing services on the Project for the duration of the Project;
- .3 Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .4 Obtain from each other person with whom it contracts, and provide to the Contractor:
    - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
    - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
  - .6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
  - .7 Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

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

**11.1.6.13** The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

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



## **11.2 OWNER'S LIABILITY INSURANCE**

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

**11.2.2** The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date on which Owner begins to occupy or use any completed or partially-completed portions of the Work. If Owner occupies or uses any completed or partially-completed portion of the Work on any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work, pursuant to Paragraphs 9.9.1 and 11.4.5. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, Contractor's builder's risk shall be primary.

## **11.3 BUILDER'S RISK INSURANCE**

**11.3.1** Contractor shall obtain, at its expense, a builder's risk "all-risk" or equivalent insurance policy, including boiler and machinery insurance, in the amount of the initial Contract Sum (or, if applicable, Guaranteed Maximum Price), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Coverage shall insure 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. Owner shall be a named insured under the policy, and the insurance shall also include the interests of Contractor, subcontractors, and sub-subcontractors and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Contractor shall be responsible for maintaining said builder's risk insurance until the date of Final Completion. If this policy excludes Employee Theft or Dishonesty coverage, including Third Parties, Contractor shall obtain separate coverage sufficient to protect Owner's interest and in an amount agreeable to Owner. The insurance policies required by this Section 11.3 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. Contractor shall provide Owner 30 days prior written notice of the expiration of any policy required by Section 11.3. Contractor shall provide Owner 10 days prior written notice of cancellation due to non-payment of premium of any policy required by Section 11.3.

**11.3.2** For any claim made against the builder's risk insurance, the deductible shall not exceed \$25,000 for a Contract Sum of less than \$4 million. For a Contract Sum of \$4 million or more, the deductible shall not exceed \$50,000.

**11.3.3** The Contractor waives all rights of subrogation against Owner, its employees, officers, trustees and any of their subcontractors, sub-subcontractors, agents, and agents, for damages caused by fire or other perils to the extent covered by insurance pursuant to Article 11, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary or as an insured. Contractor, as appropriate, shall require of separate Contractors, Subcontractors, and Sub-subcontractors agents and employees of any of them, by appropriate written agreements, similar waivers, each in favor of the Owner.

**11.3.4** The Owner as fiduciary shall have power to adjust and settle a loss with insurers. The Contractor shall pay all subcontractors their just shares of insurance proceeds received by the Subcontractor, and by appropriate agreements shall require subcontractors to make payment to their sub-subcontractors in similar manner. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor under the insurance proceeds.

**11.3.5** 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.”

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

**11.4.1** 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, or Guaranteed Maximum Price, whichever is applicable. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. (If the Guaranteed Maximum Price is not known at the time that a Construction Manager at Risk contract is awarded, then the sum of the payment and performance bonds must each be in an amount equal to the Project budget. The Construction Manager at Risk shall deliver the bonds not later than the tenth day after the date the Construction Manager at Risk executes the Contract, unless the Construction Manager at Risk furnished a bid bond or other financial security acceptable to the District to ensure that the Construction Manager will furnish the required payment and performance bonds when the Guaranteed Maximum Price is established.) All bonds shall be issued by a surety company licensed, listed and



authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code §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](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more 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 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.

- 11.4.2** Upon the request of any person or entity appearing to be 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.
- 11.4.3** The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five business days after execution of the Contract by Owner. All bonds will be reviewed by the Architect for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.
- 11.4.4** All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.
- 11.4.5** 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.

133. §12.2.1 is amended to read as follows:

**12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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

134. §12.2.1.1 is added as follows:

**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.

135. §12.2.2.1 is amended to read as follows:

**12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct the nonconforming Work as provided in 12.2.2.1.1 within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct. 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.

136. §12.2.2.1.1 is added as follows:

**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 ten (10) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting 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.

137. §12.2.2.3 is amended to read as follows:

**12.2.2.3** The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to that corrected Work.

138. §12.2.6 is added as follows:

**12.2.6** Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work."

139. §12.2.7 is added as follows:

**12.2.7** The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision 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."

140. §12.2.8 is added as follows:

**12.2.8** If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Construction Documents or the Contract Documents, then an equitable deduction from the Contract Sum or Guaranteed Maximum Price shall be made by agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost of the correction to Owner.”

141. §13.1 and 13.1.1 are amended to read as follows:

**13.1 GOVERNING LAW**

**13.1.1** 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 Gray County.

142. §13.2 and all of its subsections are amended and replaced in entirety to read as follows:

**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 such 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 Contract Documents.

143. §13.5 and 13.5.1 are amended to read as follows:

**13.5 TESTS AND INSPECTIONS**

**13.5.1** Tests, inspections and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and Construction Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities with jurisdiction over the Work. 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 provided in the cost of the Work. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Provided, however, the Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) inspection services, testing of construction materials engineering and verification testing necessary for Owner's acceptance of the facility, as set out in Texas Government Code, Chapter 2269.

144. §13.5.2 is amended to read as follows:

**13.5.2** If the Architect and Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, then the Owner shall provide or contract for such additional testing, inspection or approval. Architect, Owner and Contractor shall cooperate for the timely scheduling of such test and inspections.

145. §13.6 is amended to read as follows:

**13.6 INTEREST**

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as provided by Texas Government Code §2251.025. Any such payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment for the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

146. §13.7 is amended to read as follows:

**13.7 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, but in any case not more than 10 years after the date of Final Completion of the Work. The Owner and Contractor waive all causes of action not commenced in accordance with this Section 13.7.

147. §13.8 and its subsections are added as follows:

**13.8 EQUAL OPPORTUNITY IN EMPLOYMENT**

**13.8.1** 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. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

**13.8.2** 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, or national origin.

148. §13.9 and its subsections are added as follows:

**13.9 RECORDS**

**13.9.1** Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least four (4) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

**13.9.2** If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detailing cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

**13.9.3** 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 13.9.1.

**13.9.4** Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner



has obtained a copy of all as-built drawings.

**13.9.5** In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such 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.

149. §13.10 and its subsections are added as follows:

**13.10 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION**

**13.10.1** Neither Architect nor Contractor shall use the image or likeness of Owner'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.

**13.10.2** Neither Architect nor Contractor shall disclose any confidential information which Comes into the possession of Architect or Contractor at any time during the Project, including but not limited to, the location and deployment of security devices, security access codes, student likenesses, student record information or employee information.

**13.10.3** 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, *et seq.*

150. §§13.11 and 12 are added as follows:

**13.11 NO ISRAEL BOYCOTT CERTIFICATION.** To the extent required by law, Contractor certifies that during the term of this Contract, it does not boycott Israel and will not boycott Israel. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**13.12 COMPANIES ENGAGED IN BUSINESS WITH IRAN, MCLEAN, OR A FOREIGN TERRORIST ORGANIZATION.** In accordance with Texas Government Code, Chapter 2252, Subchapter F, Owner is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under

Texas Government Code Sections 806.051, 807.051, or 2252.153. By execution of this Contract, Contractor certifies to Owner that it is not a listed company under any of those Texas Government Code provisions. Contractor hereby voluntarily and knowingly acknowledges and agrees that this Contract shall be null and void should facts arise leading the Owner to believe that the Contractor was a listed company at the time of this procurement.

151. §14.1 and subsection 14.1.1 are amended to read as follows:

**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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents.
- .4 This subsection is deleted in its entirety.

152. §14.1.3 is amended to read as follows:

**14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, then, after the 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 executed, and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.

153. §14.1.4 is amended to read as follows:

**14.1.4** If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has 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.

154. §14.2, subsection 14.2.1 and all of sub-subsections are amended and replaced in entirety to read as follows:

**14.2 TERMINATION BY THE OWNER FOR CAUSE**

**14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidence of the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in worker misconduct in violation of Article 3.3.2 or 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
- .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

155. §14.2.2 and its subsections are amended to read as follows:

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

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

in finishing the Work.

156. §14.2.4 is amended to read as follows:

**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.

157. §14.2.5 is added as follows:

**14.2.5** The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance 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.

158. §14.2.6 is added as follows:

**14.2.6** As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

159. §14.4.3 is amended to read as follows:

**14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination, but nothing more. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit for Work not executed.

160. §14.4.4 is amended to read as follows:

**14.4.4** Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

161. §15.1.1 is amended to read as follows:

**15.1.1 DEFINITION**

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of money, interpretation of the Contract terms, extension of time, or other relief with respect to the terms of the Contract, the Project or the Work. The responsibility to substantiate Claims shall rest with the Contractor.

162. §15.1.2 is amended to read as follows:

**15.1.2 NOTICE OF CLAIMS**

Claims by the Contractor must be initiated by written notice to the Owner and to the Architect. Claims by Contractor must be initiated within 21 calendar days after occurrence of the event giving rise to such Claim or within 21 calendar days after the Contractor first knew or should have known of 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 representative. The Notice shall clearly set out the specific matter of complaint, and the impact or damages which may occur or have occurred as a result thereof, to the extent that the impact or damages can be assessed at the time of the Notice. If the impact or damages cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. 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-one (91) days after the occurrence of the event giving rise to such claim or within ninety-one (91) 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 §16.071, Contractor agrees that this is a reasonable notice requirement.

163. §15.1.3 is amended to read as follows:

**15.1.3 CONTINUING CONTRACT PERFORMANCE**

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

164. §15.1.4 is amended to read as follows:

**15.1.4 CLAIMS FOR ADDITIONAL COST OR AN INCREASE IN THE CONTRACT SUM**

If the Contractor wishes to make a Claim for additional cost or an increase in the Contract Sum, written notice as provided herein shall be given to Owner and Architect before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. 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.

165. §15.1.6 is amended to read as follows:

**15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives all Claims against Owner for consequential damages arising out of or relating to this Contract including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner-caused delays or acceleration.

166. §15.1.6.1 is deleted in its entirety.

167. §15.1.6.2 is deleted in its entirety.
168. §15.2 and all of its subsections are amended and replaced in entirety to read as follows:

**15.2 RESOLUTION OF CLAIMS AND DISPUTES**

**15.2.1 Recommendation of Architect.** 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 will review Claims and within ten 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 days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished.

**15.2.5** Following receipt of the Architect's written recommendation regarding a Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum or Guaranteed Maximum Price and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to 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.

169. §15.2.6.1 is deleted in its entirety.
170. §15.2.7 is deleted in its entirety.

171. §15.2.8 is deleted in its entirety.
172. §15.3 and all of its subsections are amended and replaced in entirety to read as follows:

**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, after written recommendation by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall be a condition precedent to the initiation of any litigation arising out of such Claims. Claims for injunctive relief shall not be subject to this Section.”

**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 the mediation shall be conducted by the Center for Public Policy Dispute Resolution at the University of Texas School of Law.”

**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 within the county where the Owner’s main administrative office is located, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner’s Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

**15.3.4** Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1.

173. §15.4 and subsection 15.4.1 are amended to read as follows:

**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.

174. §§15.4.1.1, 15.4.2, 15.4.3, 15.4.4, 15.4.4.1, 15.4.4.2 and 15.4.4.3 are deleted in its entirety.

175. §15.5 is added as follows:

**15.5** Contractor stipulates that 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. 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.

176. §15.6 is added as follows:

**15.6** In any adjudication under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party.

EXECUTED this \_\_\_\_\_ day of May, 2020.

**OWNER:**  
MCLEAN INDEPENDENT SCHOOL  
DISTRICT

**CONSTRUCTION MANAGER:**

By: \_\_\_\_\_  
Oscar Muniz, Superintendent

By: \_\_\_\_\_  
\_\_\_\_\_