

Eagle Mountain-Saginaw Independent School District
REQUEST FOR COMPETITIVE SEALED PROPOSALS (RFCSP)

RFCSP Number: 1415-010-0

RFCSP Title: A New Elementary School

Due Date: March 3, 2015

Prior to: 2:00 p.m. C.S.T.

Sealed CSP will be received in accordance with the attached specifications. The sealed envelope containing your CSP should be plainly marked with the CSP title, number, and opening date and time. CSPs are publicly opened. You are invited to attend. **PLEASE NOTE: Late CSPs WILL NOT be accepted.**

Mail or deliver complete original and copies of CSP package to:

Eagle Mountain-Saginaw Independent School District
Attn: Lucia Cieszlak
Director of Purchasing
1200 Old Decatur Rd., **Business Building #6**
Fort Worth, Texas 76179

All questions must be submitted in writing (email preferred) and received on or before seven (7) calendar days prior to the opening date. **No verbal responses will be provided.** Please note that CSP tabulations are available on our website ([www.emsisd.com/Departments/Purchasing/Bid Tabulations](http://www.emsisd.com/Departments/Purchasing/Bid%20Tabulations)). Address questions to:

Huckabee & Associates
Attn: George Cox
Email: gcox@huckabee-inc.com

PROPOSER IDENTIFICATION: *(Please print information clearly.)*

Firm Name: _____	Date: _____
Address: _____ _____	Phone: _____ Fax: _____
City/St/Zip: _____	Email: _____
You <u>MUST</u> sign the CSP Response Form A in order for your CSP to be accepted.	

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ADVERTISEMENT FOR PROPOSAL

Eagle Mountain-Saginaw Independent School District is requesting competitive sealed proposals for **“A NEW ELEMENTARY SCHOOL”**. Proposals will be received in the Purchasing Department of the Eagle Mountain-Saginaw Independent School District, located at 1200 Old Decatur Road, **Building #6**, Fort Worth, Texas 76179, prior to **2:00 P.M. CST, TUESDAY, MARCH 3, 2015**.

Proposal will be publicly opened and read aloud upon submission for the furnishing of all labor, materials and equipment, and performing all work required for **“A NEW ELEMENTARY SCHOOL”** and in compliance with drawings, specifications, and other contract documents as prepared by Huckabee & Associates, Inc.

The project manual and drawings may be examined without charge in the Architect’s office at 4521 South Hulen, Suite 220, Fort Worth, TX 76109, telephone 817.377.2969, fax: 817.377.2303. Documents may be viewed or purchased at www.huckabee-inc.com.

Addenda will only be published on the website of Huckabee & Associates (www.huckabee-inc.com). No addenda will be mailed or faxed to any document holder.

Eagle Mountain-Saginaw Independent School District reserves the right to accept or reject any or all bids, to waive any formalities and irregularities in the bids received, and to accept the offer most advantageous to the District.

PRE-PROPOSAL MEETING:

A pre-proposal meeting will be held at **9:00 a.m. CST, Friday, February 20, 2015**, at the School Administration Board Room, 1200 Old Decatur Road, Fort Worth, TX 76179. Attendance is highly recommended.

SECTION 00 2116 INSTRUCTIONS TO PROPOSERS

INSTRUCTIONS TO PROPOSERS

1.01 RECEIPT AND OPENING OF PROPOSALS

- A. Competitive sealed proposals will be received from qualified Proposers by Lucia Cieszlak, Director of Purchasing, Eagle Mountain-Saginaw ISD, in the Purchasing Department, 1200 Old Decatur Road, Building #6, Fort Worth, Texas 76179.

The Proposals shall be received prior to **2:00 P.M. C.S.T., TUESDAY, MARCH 3, 2015.**

Upon submission of Proposals, they will be publicly opened and read aloud for the furnishing of all labor, materials, and equipment, and performing all work required for A New Elementary School for Eagle Mountain-Saginaw ISD, Fort Worth, Texas, and in compliance with Project manual and drawings, and other contract documents as prepared by Huckabee and Associates, Inc., 4521 South Hulen, Suite 220, Fort Worth, Texas 76109.

- B. The School District will receive the Proposals and evaluate the submittal according to the selection criteria in order to determine which Proposal offers the best value to the District. The District will, within forty-five (45) days of the opening of Proposals, rank each of the Proposers using the Selection Criteria. Each Proposer will be notified of the rankings. If cost objectives cannot be reached with the top ranked offer, the District will move to the second ranked offer and other offers in turn until the cost objectives are met.
- C. Refer to Part 2 of this section for information regarding the proposal evaluation process and procedures.
- D. **THERE WILL BE A PRE-PROPOSAL MEETING HELD AT 9:00 A.M., FEBRUARY, 20, 2015 AT THE SCHOOL ADMINISTRATION BOARD ROOM, 1200 OLD DECATUR ROAD, FORT WORTH, TEXAS 76179. ATTENDANCE IS HIGHLY RECOMMENDED.**

1.02 PREPARATION OF PROPOSAL

- A. The Proposer shall submit a competitive sealed proposal for the General Construction of the project as bound in the project manual, Section 00 4200 Part A and Section 00 4335 Part B. A proposal will be considered incomplete unless both Parts A and B of the Proposal are submitted. The Proposer's competitive sealed Proposal shall include all of the following items:
1. Part "A":
 - a. Proposal Section 00 4200, Part A.
 - b. Cashier's Check, Certified Check, or Bid Bond for no less than 5% of the largest possible total for the proposal submitted.
 - c. Required Forms (A through H), duly filled out and signed.
 2. Part "B":
 - a. Proposal Section 00 4335 Part "B"
 - b. Contractor's Qualification Statement AIA Document 305
- B. A Cashier's Check, Certified Check, or acceptable Bidder's Bond payable to the Eagle Mountain-Saginaw ISD, in the amount of not less than 5% of the largest possible total for the proposal submitted, must accompany each Proposal submission.
- C. The successful Proposer will be required to enter into a contract with the Eagle Mountain-Saginaw ISD and to furnish a Performance and Payment Bond of approved form through an approved bonding company duly authorized to do business in the State of Texas, and currently listed in the Department of Treasury Federal Register, in the amount of not less than 100% of the contract price, conditioned upon the performance of the contract. Performance and Payment Bonds shall be in full compliance with

Texas Government Code Chapter 2253. Bonding Companies using “Reinsuring Insurance Companies” to expand the Bonding Companies Bonding Limits will not be acceptable unless also approved by the Owner.

1.03 ESTIMATED BUDGET

The estimated budget for this project is \$19.9 million.

1.04 PROJECT DATES

The following are the project dates:

- A. Start on/about April 15, 2015
- B. Substantial completion July 5, 2016

1.05 WAGE RATES

- A. Attention is called to the fact that the Contractor must comply with all Federal, State and Local labor laws, including Chapter 2258 Texas Government Code Title 10, which requires that the Contractor pay not less than the following prevailing wage rates and rates for legal holidays and overtime, which have been ascertained by the awarding body, as follows:

1.06 2014 NORTH TEXAS COMMERCIAL CONSTRUCTION INDUSTRY WAGE SURVEY

Classification	Average Basic Hourly Rate	Average Health & Welfare	Average Pension	Average Vacation	Average Total Package
AC Mechanic	\$23.93	\$2.22	\$0.00	\$3.54	\$29.69
AC Mechanic Helper	\$16.56	\$1.72	\$0.00	\$3.54	\$21.81
Bricklayer/Stone Mason	\$21.50	\$1.70	\$0.00	\$0.00	\$23.20
Bricklayer/Stone Mason Trainee	\$15.50	\$1.70	\$0.00	\$0.00	\$17.20
Bricklayer/Stone Mason Helper	\$13.00	\$1.70	\$0.00	\$0.00	\$14.70
Carpenter	\$17.55	\$2.46	\$0.00	\$0.23	\$20.24
Carpenter Helper	\$14.52	\$0.00	\$0.00	\$0.00	\$14.52
Concrete Cutter/Sawyer	\$19.00	\$0.00	\$0.00	\$0.00	\$19.00
Concrete Finisher	\$15.20	\$0.24	\$0.31	\$0.28	\$16.03
Concrete Finisher Helper	\$14.75	\$0.24	\$0.32	\$0.28	\$15.59
Concrete Form Builder	\$15.89	\$0.09	\$0.36	\$0.31	\$16.65
Concrete Form Builder Helper	\$14.25	\$0.12	\$0.31	\$0.28	\$14.96
Drywall Mechanic	\$16.87	\$1.66	\$0.47	\$0.45	\$19.45
Drywall Helper	\$15.25	\$2.84	\$0.00	\$0.43	\$18.52
Drywall Taper	\$16.13	\$2.84	\$0.00	\$0.43	\$19.40
Drywall Taper Helper	\$11.00	\$0.00	\$0.00	\$0.00	\$11.00
Electrician (Journeyman)	\$22.44	\$1.22	\$3.48	\$0.84	\$27.97
Electrician Apprentice (Helper)	\$17.08	\$1.01	\$0.94	\$0.65	\$19.69
Electronic Technician	\$19.33	\$0.59	\$0.59	\$0.89	\$21.39
Electronic Technician Helper	\$13.33	\$0.00	\$0.00	\$0.00	\$13.33
Laborer Common	\$12.07	\$1.82	\$1.09	\$0.95	\$15.93
Laborer Skilled	\$14.79	\$1.53	\$1.43	\$0.77	\$18.51
Lather	\$12.83	\$0.33	\$0.33	\$0.33	\$13.82
Metal Installer (Miscellaneous)	\$21.00	\$0.00	\$0.00	\$0.00	\$21.00
Painter	\$14.80	\$1.85	\$2.35	\$0.88	\$19.88
Painter Helper	\$10.68	\$1.94	\$3.54	\$0.87	\$17.03
Pipefitter	\$22.06	\$0.28	\$3.48	\$0.00	\$25.82
Pipefitter Helper	\$16.65	\$0.28	\$3.48	\$0.00	\$20.41
Plasterer	\$16.61	\$0.49	\$0.49	\$0.49	\$18.08
Plasterer Helper	\$16.89	\$0.28	\$3.48	\$0.00	\$20.65
Plumber	\$21.32	\$1.36	\$3.48	\$3.54	\$29.69
Plumber Helper	\$15.10	\$2.43	\$0.00	\$3.54	\$21.07
Reinforcing Steel Setter	\$15.50	\$0.00	\$0.00	\$0.00	\$15.50
Reinforcing Steel Setter Helper	\$12.50	\$0.00	\$0.00	\$0.00	\$12.50
Roofer	\$17.20	\$1.36	\$0.00	\$0.66	\$19.22

Roofer Helper	\$14.10	\$1.36	\$0.00	\$0.66	\$16.12
Sheet Metal Worker	\$18.43	\$1.60	\$0.00	\$2.10	\$22.13
Sheet Metal Worker Helper	\$14.19	\$1.60	\$0.00	\$2.10	\$17.88
Sprinkler System Installer	\$24.50	\$5.26	\$3.36	\$0.60	\$33.72
Sprinkler System Installer Helper	\$15.00	\$5.26	\$3.38	\$0.50	\$24.14
Steel Worker Structural	\$19.75	\$2.21	\$6.44	\$1.55	\$29.95
Crane, Clamsheel, Backhoe, Derrick, D'Line	\$18.03	\$2.22	\$0.15	\$3.54	\$23.94
Forklift	\$17.00	\$1.61	\$0.38	\$0.38	\$19.37
Foundation Drill Operator	\$15.00	\$0.00	\$0.00	\$0.00	\$15.00
Front End Loader	\$12.93	\$2.00	\$0.13	\$0.00	\$15.06
Truck Driver	\$18.23	\$1.90	\$0.00	\$2.10	\$22.23
Welder	\$20.04	\$1.36	\$3.48	\$3.54	\$28.41
Welder Helper	\$15.00	\$0.28	\$3.48	\$0.00	\$18.76

1.07 PROPOSAL GUIDELINES

- A. Attention is called to the fact that the Owner is exempt from the payment of the State Sales Tax normally levied against material costs. The contract sum, as identified by the Proposal, shall not include any allowance for the payment of State Sales Tax on materials required to complete the work. The successful Proposer, upon award of the contract, will be furnished with a permit number, which will enable him to purchase the required materials without payment of such taxes.
- B. The Project Manual and Drawings may be examined, without charge, in the Architect's office at 4521 South Hulen, Suite 220, Fort Worth, Texas 76109. Documents may be viewed or purchased at www.huckabee-inc.com.
- C. The Architect will supply Project Manual and Drawings to various plan rooms where it appears to be in the Owner's interest to do so.
- D. All definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, and the Supplementary General Conditions included in the Project Manual are applicable to the Instructions to Proposers.
- E. Contract Documents include the Advertisement or Invitation for Proposal, Instructions to Proposers, the Proposal Form, and the proposed contract documents (drawings and project manual), including any addenda issued prior to receipt of competitive sealed proposals.
- F. Addenda are written or graphic instruments issued prior to the execution of the contract which modify or interpret the proposal documents, including drawings and project manual, by additions, deletions, clarifications or corrections and should be acknowledged by the Proposer on the Proposal form. Addenda will become part of the contract documents when the construction contract is executed. **ADDENDA WILL ONLY BE PUBLISHED ON THE WEBSITE OF THE HUCKABEE & ASSOCIATES (www.huckabee-inc.com). NO ADDENDA WILL BE MAILED OR FAXED TO ANY PLANHOLDER.**
- G. Each Proposer, by making a competitive sealed proposal, represents that he has carefully studied, compared, and understands the contract documents including any and all addenda items.
- H. Each Proposer, by making a competitive sealed proposal, represents that he has familiarized himself with and understands the local conditions under which work is to be performed, including prevailing subsurface conditions.
- I. All competitive sealed proposals must be prepared on the form provided by the Architects and submitted with all other required material in accordance with the Instructions to Proposers. When the proposal contains multiple "Bid Items", it shall be understood that the Owner may award each Proposal Item separately, or in any combination that the Owner chooses.
- J. A proposal is invalid if it has not been deposited at the designated location prior to the time and date for receipt of proposals indicated in the Advertisement or Invitation for Proposal or prior to any extension thereof issued to the Proposers.

- K. Unless otherwise provided in any supplement to the Instruction to Proposers, no Proposer shall modify, withdraw or cancel his proposal or any part thereof for forty-five days after the time designated for the receipt of proposals in the Advertisement or Invitation for Proposal.
- L. Prior to the receipt of competitive sealed proposals, Addenda will be **ONLY BE PUBLISHED ON THE WEBSITE OF HUCKABEE & ASSOCIATES** (www.huckabee-inc.com). Addenda issued after the receipt of competitive sealed proposals will be mailed or delivered only to the selected Proposer.
- M. Each Proposer shall carefully study and compare the proposal documents, and not later than seven days prior to the date for receipt of competitive sealed proposals, shall make written request to the Architect for interpretation or correction of any ambiguity, inconsistency or error therein which he may discover. Any interpretation or correction will be issued in a written addendum by the Architect. Only a written interpretation or correction by an addendum shall be binding. No Proposer shall rely upon any interpretation or correction given by any other method.
- N. Each Proposer represents that his competitive sealed proposal is based upon the material and equipment described in the contract documents.
- O. No substitution will be considered unless written request has been submitted to the Architect for approval at least ten days prior to the date for receipt of proposals. Each such request shall include a complete description of the proposed substitute, the name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data and any other data or information necessary for a complete evaluation.
- P. If the Architect approves any proposed substitution, such approval will be set forth in an Addendum.
- Q. Should the particular equipment, which any bidder proposes to install, require other space conditions other than those shown on the drawings, he shall arrange for such space with the Architect before submitting a bid. Should changes become necessary because of failure to comply with this requirement, the contractor shall be fully responsible for making such changes. The contractor shall be required to submit working drawings of all equipment, which varies from the drawings and the project manual, and any interference must be eliminated before work proceeds.
- R. The Proposer acknowledges the right of the Owner to reject any or all proposals and to waive any informality or irregularity in any proposal received. In addition, the Proposer recognizes the right of the Owner to reject a proposal if the Proposer failed to furnish any required bid security or to submit the data required by the contract documents, or if the proposal is in any way incomplete or irregular.
- S. By submitting a proposal, each proposer agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the Bid Documents; or the Contract Documents; acceptance or rejection of any proposals; and award of the Contract.
- T. In case of ambiguity or lack of clearness in stating the price in the Proposal, the Owner reserves the right to adopt the price written in words or to reject the Proposal.

1.08 GUARANTEES

- A. Besides guarantees required elsewhere, contractor shall guarantee the work in general for one year. Contractors shall be held responsible for and must make good any defects arising or discovered in any part of his work within one year period noted on the form, and in certain other parts as required by the project manual for a long period. Where detailed specifications call for guarantees as above specified, they shall cover the special features called for.
- B. In addition to guarantees called for elsewhere in the project manual, the contractor shall guarantee all of his work for a period of one year after the date of substantial completion against defective material or faulty workmanship that may arise within that period.
- C. All guarantees must be submitted to the Architect before the final payment request will be approved.

- D. All guarantees must be submitted to the Architect in the following form as prerequisite to acceptance for payment.

GUARANTEE FOR _____

We hereby guarantee the _____

which we have installed in the _____

at _____

for _____ (____) years from the date of full completion and acceptance by the Owner.

We agree to repair or replace to the satisfaction of the Architect, and at no expense to the Owner, any or all work that may prove defective in workmanship or materials, or is not meeting the specification requirements within that period (ordinary wear and tear and unusual abuse or neglect excepted) together with any other work which may be damaged or displaced in so doing.

In the event of our failure to comply with the above-mentioned conditions within a reasonable time after being notified in writing, we, collectively and separately, do hereby authorize the Owner to proceed to have the defects repaired and made good at our expense, and will pay the costs and charges therefore immediately upon demand.

Signature of Subcontractor _____

Date _____

Signature of Contractor _____

(Space intentionally left blank)

1.09 CERTIFICATION OF PROJECT COMPLIANCE

CERTIFICATION OF PROJECT COMPLIANCE	Completion of this form is required under provisions of 61.1036(c)(3)(F) TAC for all public school district construction projects.
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1. PROJECT INFORMATION

Facility:

Address:

City:

DISTRICT:

ARCHITECT/ENGINEER:

CONTRACTOR/CM:

CONTRACT DATE:

DATE DISTRICT AUTHORIZED PROJECT:
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BREIF DESCRIPTION OF PROJECT:**2. CERTIFICATION OF DESIGN AND CONSTRUCTION**

The intent of this document is to assure that the school district has provided to the architect/engineer the required information and the architect/engineer has reviewed the School Facilities Standards as required by the State of Texas, and used his/her reasonable professional judgment and care in the architectural/engineering design and that the contractor has constructed the project in a quality manner in general conformance with the design requirements and that the school district certifies to project completion.

3. The District certifies that the educational program and educational specifications of this facility along with the identified building code to be used have been provided to the architect/engineer.

DISTRICT:**BY:****DATE:**

4. The Architect/Engineer certifies the above information was received from the school district, and that the building(s) were designed in accordance with the applicable building codes. Further, the facility has been designed to meet or exceed the design criteria relating to space (minimum square footage), educational adequacy, and construction quality as contained in the School Facilities Standards as adopted by the Commissioner of Education, July 9, 2003, and as provided by the district.

ARCHITECT/ENGINEER:**BY:****DATE:**

5. The Contractor certifies that this project has been constructed in general conformance with the construction documents as prepared by the architect/engineer listed above.

CONTRACTOR/CM:**BY:****DATE:**

6. The District certifies completion of the project (as defined by the architect/engineer and contractor).

DISTRICT:**BY:****DATE:**

PROPOSAL EVALUATION PROCESS AND PROCEDURES

2.01 COMPETITIVE SEALED PROPOSAL EVALUATION AND RANKING PROCEDURES

- A. The following procedures shall be used to evaluate and recommend a construction contractor for selection by the School District through the use of Competitive Sealed Proposals, as authorized in Texas Government Code 2269.

2.02 PROPOSAL EVALUATION COMMITTEE

- A. For each construction project utilizing the Competitive Sealed Proposal method of procurement, the School Board shall convene a Proposal Evaluation Committee (Committee) may be comprised from of the following individuals:
1. School Board Members
 2. School Administration
 3. District's Financial Officer or Consultant
 4. Staff
 5. Project Architect
 6. Project Engineer
 7. Program Manager

2.03 PROPOSAL EVALUATION COMMITTEE FUNCTION

- A. The Committee shall perform an evaluation of all submitted Proposals and shall recommend an order of selection ranking of all Proposers to the School Board. The following procedures shall be used by the Committee in the evaluation process:
1. As soon as possible following the public opening of Proposals, the Committee shall meet to conduct a preliminary examination of each Proposal for compliance with the published requirements.
 2. The Committee shall conduct thorough discussions and evaluations of all Proposals.
 3. Within forty-five (45) days after publicly opening the Proposals, the Committee shall produce a ranking of Proposers in the order of the best value to the School District.
 4. The recommended ranking shall be based on the data furnished by the Proposers in response to the request for Competitive Sealed Proposals. The following is a list of rating categories and values for each category. To provide the best value to the School District, these categories and values may be revised by the Committee based on the project type and conditions at the time Proposals are requested. Unless modified by addendum prior to opening of the Proposals, the following listing of categories and values shall be utilized by the Committee:

RATING CATEGORY VALUE

Proposed Construction Contract Amount	50.00
Proposed Construction Contract Time	5.00
TAB 2 – Schedule	6.00
TAB 3 – Key Project Personnel	10.00
TAB 4 - Subcontractors	10.00
TAB 5 – Project Experience	10.00
TAB 6 - Financial Background	5.00
TAB 7 - Claims and Suits	2.00
TAB 8 - Quality Control Program	2.00
TOTAL OF WEIGHTED VALUE	100.00

B. GENERAL EVALUATION PROCEDURES

1. Proposed Construction Contract Amount and Proposed Construction Contract Time will be rated using mathematical processes described below. Each of the other listed rating categories shall be evaluated on a scale of zero to ten. Each rating category response will be evaluated and the Committee shall produce a single evaluation determination in each category for each Proposal received.

C. PROPOSED CONSTRUCTION CONTRACT AMOUNT EVALUATION

1. This evaluation ranking shall be based on a value of ten (10) assigned to the lowest proposed amount. Each successive Proposer's contract amount shall be scored as follows; Low Proposer amount divided by the next low Proposer amount, and multiply that figure by 10 equals the score for that Proposer.
2. These resulting ratings are then multiplied by the value of this rating category, producing the construction contract amount score for each Proposer.

D. PROPOSED CONSTRUCTION CONTRACT TIME EVALUATION

1. The evaluation ranking of Proposed Construction Contract Time shall be accomplished by the same mathematical process as the Contract Amount Evaluation. (Refer to Item 2.3.B.1) The value of ten (10) is assigned to the shortest Proposed Construction Contract Time.
2. These resulting ratings are then multiplied by the value of this rating category, producing the construction contract amount score for each Proposer.

E. SCORING

1. Proposers may receive equal rating in the Proposed Construction Contract Amount or the Proposed Construction Contract Time category if their proposed amounts in these categories are identical.
2. With the exception of the Proposed Construction Contract Amount and Proposed Construction Contract Time ratings, all other category rating determinations among Proposers may receive identical values if, in the opinion of the Committee, the qualification data provided by Proposers are determined to be equal for a selected category.
3. Upon determining a rating for each category, a categorical score for each Proposer shall be calculated by multiplying the category value by the Committee determined rating.
4. The total score for a Proposer shall be determined by adding the scores received for each category. The maximum score attainable for all categories shall be one thousand (1,000).
5. The Committee shall produce a tabulation of scores, which identifies the Proposers their Proposed Construction Contract Amounts, their Proposed Construction Contract Times, and their individual total scores.

2.04 COMPETITIVE SEALED PROPOSALS PREPARATION AND SUBMISSION**A. PREPARATION**

1. The Proposal shall be based on conditions at the project site, the project Drawings and Specifications and any addenda issued.
2. A Proposal showing omissions, alterations, conditions, or carrying riders or other qualifiers, which modifies the Proposal, may at the Owner's discretion, be rejected as irregular.
3. The various sections of the Proposal data should be separated by tabbed dividers. The tabs must identify the sections by number and name rather than simply a number or alphabet.

B. SUBMISSION

1. If the Proposer chooses to issue a "No Response" (N/R) to a question on the Proposal, an explanation of this action is required. Failure to provide an adequate explanation may be viewed by the Owner as an incomplete response and may subject the entire Proposal to rejection or at a minimum a score of zero (0) will be given for that category.
2. Only one Proposal may be submitted by each Proposer. If two or more Proposals are submitted, either in one envelope or in separate envelopes, such multiple Proposals may be subject to rejection.
3. Proposals received after the advertised time for the Proposal opening will be ineligible and will be returned unopened.
4. After all Proposals are opened, but before the names of the Proposers and the monetary Proposals are read aloud, they will be examined by the presiding official to determine if they are complete, in proper form and properly signed.
5. A Proposer will receive no compensation or reimbursement of expenses incurred in of the preparation of a Competitive Sealed Proposal submission.

6. The Owner reserves the right to reject any or all Proposals, and waive any and/or all formalities.

2.05 PUBLIC INFORMATION AND NOTICE OF CONFIDENTIALITY

- A. The Owner considers all Proposal information, documentation and supporting materials submitted in response to this Proposal request to be non-confidential and/or non-proprietary in nature, and therefore, shall be subject to the public disclosure under the Texas Public Information Act (Texas Government Code, Sec. 552.001, et seq.) after the award of the contract.
- B. The Proposer must identify and designate those portions of their technical Proposal that contains trade secrets or other proprietary data. If the Proposal includes such data, the Proposer shall:
 1. Mark the cover sheet of the Technical Proposal with the following phrase: “This Proposal includes data that shall not be disclosed outside the School District and the A/E design team and shall not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the Proposal.”
 2. Mark each sheet and the specific data on that sheet that the Proposer wishes to restrict with the following phrase: “Use or disclosure of the specifically marked data is subject to the restrictions regarding confidentiality cited on the cover sheet of this Proposal.”

2.06 OWNERSHIP OF COMPETITIVE SEALED PROPOSAL

- A. Submitted Proposals, documentation and supporting material shall become the property of the Owner.

2.07 SITE INVESTIGATION

- A. It is the responsibility of each Proposer to examine the project site, existing improvements and adjacent property and be familiar with existing conditions before submission of Proposal.
- B. After investigating the project site and comparing the Project Manual and Drawings with the existing conditions, the Proposer should immediately notify the A/E of any conditions for which requirements are not clear, or about which there is any question regarding the extent of the work involved.
- C. Should the successful Proposer fail to make the required investigation and should a question arise after award of the contract as to the extent of the work involved in any particular case, after receiving recommendations from the A/E, the Owner will make the interpretation of the Contract Documents.

2.08 EVALUATION AND CONTRACT AWARD PROCESS

- A. Proposals will be opened publicly to identify the names of the Proposer and their respective proposed contract amount. Other contents of the Proposals will be afforded security sufficient to preclude disclosure of the contents prior to award or rejection action.
- B. After submittal, the Owner may opt to interview each Proposer prior to the actual evaluation of the Proposals.
- C. Proposals will be evaluated by the Proposal Evaluation Committee as set forth in 2.2.A. The criteria for evaluation and selection of the successful Proposer for this award will include the factors listed in 2.3.A.4.
- D. Within forty-five (45) calendar days after opening the Proposals, the Owner will evaluate and rank each Proposal with respect to the published selection criteria described under Paragraph 2.3. After opening and ranking, an award may be made on the basis of the initially submitted Proposal, without discussion, clarification or modification, or the Owner may discuss with the selected Proposer any element of the Proposal. Other than the data read at the Proposal opening, the Owner shall not disclose any information derived from the Proposals submitted by competing firms in conducting such discussions. If the Owner determines that it is unable to reach a satisfactory agreement with the first ranked Proposer, the Owner will terminate discussions with that Proposer. The Owner will then proceed with negotiations with each successive Proposer as they appear in the order of ranking until an agreement is reached, or until the Owner has rejected all Proposals. After termination of discussions with any Proposer, Owner will not resume discussions with that Proposer.

- E. Immediately following the Owner's approval of the order of ranking of Proposers and the Owner's contract award or Proposal rejection action, the Proposers will be notified via U.S. mail and/or facsimile message.
- F. The Owner reserves the right to accept or reject any or all alternates or to accept any combination of alternates considered advantageous to the Owner.
- G. The award or rejection action regarding this Proposal is at the sole discretion of the Owner and the Owner makes no warranty regarding this Proposal that a contract will be awarded to any Proposer.
- H. The Owner agrees that if the Contract is awarded, it will be awarded to the Proposer offering the best value to the Owner, based upon the published selection criteria, and upon its ranking evaluation. The Owner is not bound to accept the lowest priced Proposal if that Proposal is judged not to be the best value for the Owner, as determined by the Owner.

END OF SECTION

SECTION 00 4200
PROPOSAL FORM
PART "A" - BASE BID

DATE _____

1.01 TO: LUCIA CIESZLAK, DIRECTOR OF PURCHASING, EAGLE MOUNTAIN-SAGINAW ISD, FORT WORTH, TEXAS.

- A. Having carefully examined the project manual, drawings, and related documents entitled: A New Elementary School as prepared by Huckabee & Associates, Inc., Architects and Planners, Fort Worth, Texas, as well as the premises and conditions affecting the work, the undersigned proposes to furnish all materials, labor and equipment, and perform all work required by the contract documents for the construction of the A New Elementary School project, in accordance with said documents, of which this Proposal is a part, for the following sum:

- B. PROPOSAL ITEM NO. 1: For the construction of A New Elementary School for Eagle Mountain-Saginaw ISD in compliance with and as shown on the drawings and herein specified for the sum of:

\$ _____

- C. ALTERNATE NO. 1: Provide natural stone veneer as herein specified in Section 04 4301 and where shown on the drawings in lieu of concrete stone masonry,

(choose one) **Add / Deduct** the sum of:

\$ _____

(choose one) **Add / Deduct** _____ consecutive calendar days if alternate is accepted.

- D. Refer to Section 01 1400 Work Restrictions for specific project schedule. The Contractor acknowledges that they have read and understand the project schedule as stated in Section 01 1400. Please initial as acknowledged _____ (initials).
- E. The undersigned acknowledges _____ addenda to the project manual and drawings.
- F. The undersigned agrees, if awarded the contract, to execute and deliver to the Owner, at the time of the signing of the contract, a Performance and Payment Bond of approved form through an approved bonding company duly authorized to do business in the State of Texas, and currently listed in the Department of Treasury Federal Register, which is acceptable surety within their Uni underwriting limitations on bonds, in favor of the Eagle Mountain-Saginaw ISD as specified in the Instructions To Proposers contained in the project manual.
- G. The undersigned further agrees that the Certified Check, Cashier's Check, or Proposal (Bid) Bond in the amount of five (5%) percent of his Proposal, payable to the Eagle Mountain-Saginaw ISD, accompanying this Proposal, is left in escrow with the Owner, that its amount is the measure of liquidated damages the Owner will sustain by the failure of the undersigned to execute and deliver the above-named agreement, or in furnishing the 100% Payment and Performance Bonds within ten (10) days of written notification of the award of the contract to him, then the Certified Check, Cashier's Check, or Proposal Bond shall become the property of the Owner; but if this Proposal is not accepted within forty-five (45) days of the time set for the submission of proposals, or if the undersigned executes and delivers said contract and bonds, the check shall be returned to him on receipt thereof.
- H. For each day that the completion of the project extends beyond the stipulated completion dates, the Contractor agrees to pay to the Owner the sum of One Thousand Five Hundred and no/100 Dollars

(\$1,500.00) per day, and that this is the amount of liquidated damages the Owner will sustain for each day the time of completion of the project extends beyond the stipulated dates.

- I. If he is notified of the acceptance of this Proposal within forty-five (45) days of the time set for the opening of proposals, he agrees to execute a contract for the above work for the above-stated compensation in the form of the Standard Agreement of the American Institute of Architects.
- J. The undersigned agrees that the following unit prices may apply on any additions to, or deductions from the work, which prices shall include overhead, profit, taxes, and all other related costs. The unit prices shall be installed, in-place prices for materials/systems as specified. The quoted unit prices will be valid, and the quoted unit prices will be in force on any work. A singular cost shall be provided below to be used for both additions and deductions. If different prices are provided for additions and deductions the average of the absolute values will be used. The materials and work shall be in compliance with the specifications. The Contractor shall not be compensated for work that is not authorized by the Architect or Owners Laboratory (e.g. over drilling of piers and additional concrete and reinforcement for over drilled piers)

UNIT PRICING MATERIAL/SYSTEM	UNITS	COST (\$)/UNIT
Excavation (Dirt or Caliche)	Cubic Yard	_____
Excavation (Rock)	Cubic Yard	_____
Backfilling (On Site)	Cubic Yard	_____
Reinforcing Steel, Straight or Bent	Pound	_____
Structural Concrete	Cubic Yard	_____
Uncased Drilled Piers - Complete including reinforcing, concrete, accessories and drilling		
18" Diameter	Lineal Foot	_____
24" Diameter	Lineal Foot	_____
Cased Drilled Piers - Complete including reinforcing, concrete, accessories, drilling and casing		
18" Diameter	Lineal Foot	_____
24" Diameter	Lineal Foot	_____

- J. It is further agreed that extended periods of labor strikes, unusual and destructive weather conditions that are beyond the normal weather patterns, and other generally recognized "Acts of God" will be cause for an approved extension of the above-stipulated completion of time schedule. It is also agreed that a request for extension of time will be made in writing by the Contractor to the Architect within fifteen (15) days after the time of occurrence for any consideration to be given the request. It is agreed that no additional funds are allowed for Extensions of Time.
- K. Contractor has read and agrees with all provisions and articles of the contract documents.

Respectfully submitted,

Contractor: _____

Per: _____

(Space intentionally left blank)

FORM A**CSP RESPONSE FORM**

The undersigned, in submitting this CSP and endorsement of same, represents that he/she is authorized to obligate his/her firm, that he/she is an equal opportunity employer and will not discriminate with regard to race, color, religion, sex, national origin, age or disability unrelated to job performance of this CSP; that he/she will abide by all the policies and procedures of EM-S ISD; and that he/she has read this entire CSP package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements in **ALL** sections of this CSP.

Failure to manually sign this CSP Response Form will be reason for the CSP to be rejected.

SUBMITTED BY:

Firm: _____
(OFFICIAL Firm Name)

***MUST BE SIGNED IN INK TO BE
CONSIDERED RESPONSIVE***

By:  _____
(Original Signature)

Name: _____
(Typed or Printed Name)

Title: _____
(Type or Printed Title) _____ (Date)

Contact
Representative: _____

Address: _____

City/ST/Zip: _____

Phone #: _____ Fax #: _____

Email: _____

Taxpayer Identification #: _____

***NOTE: Submit copy of Bidder's/
Proposer's current W-9 Form***

FORM B**DEVIATION/COMPLIANCE SIGNATURE FORM**

If the undersigned Firm intends to deviate from the Specifications listed in this CSP document, all such deviations must be listed on this page, with complete and detailed conditions and information included or attached. The District will consider any deviations in its CSP award decisions, and the District reserves the right to accept or reject any CSP based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this form, the Firm assures the District of his/her full compliance with the Terms and Conditions, Specifications, and all other information contained in this RFCSP document.

☐ No Deviation

☐ Yes Deviations

Firm's Name: _____

Authorized Company Official's Name: _____
(Typed or printed)

Title of Authorized Representative: _____
(Typed or printed)

Signature of Authorized Company Official: _____

Date Signed: _____

If yes is checked, please list below. Attach additional sheet(s) if needed.

FORM C**NON-COLLUSION STATEMENT**

“The undersigned affirms that he/she is duly authorized to execute this CSP, that this company, corporation, firm, partnership or individual has not prepared this CSP in collusion with any other proposer, and that the contents of this CSP as to prices, terms or conditions of said CSP 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 CSP.”

Firm's Name: _____

Firm's Name: _____

Authorized Company Official's Name: _____
(Typed or printed)

Title of Authorized Representative: _____
(Typed or printed)

Signature of Authorized Company Official: _____

Date Signed: _____

Firm hereby assigns to purchaser any and all claims for overcharges associated with this CSP which arise under the antitrust laws of the United States, 15 USCA Section 1 and which arise under the antitrust laws of the State of Texas, Business and Commerce Code, Section 15.01.

FORM D**CRIMINAL BACKGROUND CHECK AND FELONY CONVICTION NOTIFICATION****(a) CRIMINAL BACKGROUND CHECK**

Firm will obtain history record information that relates to an employee, applicant for employment, or agent of the Firm if the employee, applicant, or agent has or will have continuing duties related to the contracted services; and the duties are or will be performed on school property or at another location where students are regularly present. The Firm certifies to the EMSISD before beginning work and at no less than an annual basis thereafter that criminal history record information has been obtained. Firm shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony, or misdemeanor involving moral turpitude, as defined by Texas law, from EMSISD's property or other location where students are regularly present. EMSISD shall be the final decider of what constitutes a "location where students are regularly present." Firm's violation of this section shall constitute a material breach and default.

(b) FELONY CONVICTION NOTIFICATION

Texas Education Code, Section 44.034, 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 owner or operator of the business entity has been convicted of a felony." The 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 the conviction." The district must compensate the person or business entity for services performed before the termination of the contract.

THE FELONY CONVICTION NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION.

I, the undersigned agent for the firm named below, certify that the information concerning criminal background check and notification of felony convictions has been reviewed by me, the following information furnished is true to the best of my knowledge, and I acknowledge compliance with this section.

Firm's Name: _____

Authorized Company Official's Name: _____
(please print clearly or type)

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

Signature of Company Official: _____ Date: _____

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

Signature of Company Official: _____ Date: _____

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: _____ Date: _____

FORM D – CONTINUES ON NEXT PAGE ...

PAGE 1/2

FORM D – CONTINUED

PAGE 2/2

Contractor is responsible for the performance of the persons, employees and/or sub-contractors Contractor assigns to provide services for the Eagle Mountain-Saginaw ISD pursuant to this CSP on any and all Eagle Mountain-Saginaw ISD campuses or facilities. Contractor will not assign individuals to provide services at an Eagle Mountain-Saginaw ISD campus or facility who have a history of violent, unacceptable, or grossly negligent behavior or who have a felony conviction, without the prior written consent of the Eagle Mountain-Saginaw ISD Purchasing Department.

FORM E

NONRESIDENT BIDDER'S CERTIFICATION

Texas Government Code Chapter 2252 relates to bids by nonresident contractors. The pertinent portions of the Act are as follows:

Section 2252.001(3)

“Nonresident bidder” means a bidder who is not a resident.

Section 2252.001(4)

“Resident bidder” means a bidder whose principal place of business is in this state, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

Section 2252.002

A governmental entity may not award a governmental contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located.

I certify that _____ is a

Resident Bidder of Texas as defined in Texas Government Code Section 2252.001(4)

Signature of Authorized Company Official:

Authorized Company Official's Name: _____

|||||

I certify that _____ is a

Nonresident Bidder of Texas as defined in Texas Government Code Section 2252.001(3) and our principal place of business is:

City and State: _____

Signature of Authorized Company Official:

Authorized Company Official's Name: _____

FORM F**DEBARMENT OR SUSPENSION CERTIFICATION FORM**

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transaction to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement of goods or services equal to or in excess of \$100,000. Contractors receiving individual awards of \$100,000 or more and all sub-recipients must certify that the organizations and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, this Firm:

- (1) Certifies that no suspension or debarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, common rule.

Firm's Name: _____

Authorized Company Official's Name: _____
(Typed or printed)

Title of Authorized Representative: _____
(Typed or printed)

Signature of Authorized Company Official: _____

Date Signed: _____

FORM G**CONFLICT OF INTEREST QUESTIONNAIRE****FORM CIQ****For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of person doing business 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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?

☐

Yes

☐

No

B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

☐

Yes

☐

No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date

FORM H**NOTIFICATION OF HAZARDOUS MATERIALS AFFIDAVIT**

STATE OF TEXAS

_____ COUNTY

Before me, undersigned authority on this day personally appeared _____, _____ known to me to be the person whose name is subscribed below, who, on oath stated:

"As the appropriate official of the company, contractor, or subcontractor submitting this affidavit in conjunction with a bid submitted to the Eagle Mountain-Saginaw ISD, I acknowledge that this company, contractor, or subcontractor has been notified that copies of the Asbestos Hazard Emergency Response Act (AHERA) for the school(s) where such company, contractor or subcontractor has been contracted to perform work are available at the Eagle Mountain-Saginaw ISD, Fort Worth, Texas. I understand that it is our responsibility to familiarize ourselves with such plans and that it is our responsibility to inform every worker that we use on this project as to the availability of these plans.

We also acknowledge that we will be required to obtain clearance from the Eagle Mountain-Saginaw ISD, prior to executing any work on this project."

Name of Company: _____

By: _____

Title: _____

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before my hand at _____, Texas this the _____ day of _____, 20____, A.D.

Notary Public in and for _____ County, Texas

END OF SECTION

SECTION 00 4335
PROPOSAL FORM PART "B" QUALIFICATIONS

DATE _____

**LUCIA CIESZLAK, DIRECTOR OF PURCHASING, EAGLE MOUNTAIN-SAGINAW ISD,
FORT WORTH, TEXAS.**

THE CONTRACTOR SHALL PROVIDE THE FOLLOWING INFORMATION IN THE SEQUENCE AND FORMAT PRESCRIBED HEREIN AND AS OUTLINED IN THE INSTRUCTIONS TO PROPOSERS SECTION 00 2116, PARAGRAPH 2.04.A AND 2.04.B. SUPPLEMENTAL MATERIALS PROVIDING ADDITIONAL INFORMATION MAY BE ATTACHED, BUT THE INFORMATION REQUESTED BELOW IS TO BE PROVIDED IN THIS FORMAT AND TABBED AS NOTED.

TAB 1: FIRM INFORMATION

Name of Firm: _____

Address of Principal Office: _____

Phone Number: _____

Fax Number: _____

Email Address and/or Web Address: _____

Form of Business Organization (Corporation, Partnership, Limited Liability Partnership, Individual, Joint Venture, other?): _____

Year Founded: _____

Primary individual to contact: _____

TAB 2: SCHEDULE:

The Proposer shall submit a schedule for this project.

State your organization's project plan or proposed approach to this project.

If selected, this proposed schedule shall become part of the Owner – Contractor Agreement AIA Document A101-2007 under Article 9.1.7.

TAB 3: KEY PROJECT PERSONNEL:

Given the scope and schedule of the project, identify all proposed personnel for this project including but not limited to the Project Manager, Estimator, and Superintendent who would work on the project. Provide a resume and references for each individual. Note current projects on which individual is working including the project name, location, contract amount, percent complete, and the completion date of those projects. Also note the length of tenure with your company (hire date) for each proposed individual. Provide an organizational chart for this project noting whether the individual is On Site or Off Site. This organizational chart shall become part of the Owner – Contractor Agreement AIA Document A101-2007 under Article 9.1.7. Members of the proposed team, once approved, shall not be changed without prior written approval of the Owner.

TAB 4: SUBCONTRACTORS:

Provide a list of all the major Subcontractors and Suppliers for each category listed below for this project.

- Earthwork
- Concrete
- Steel Fabrication
- Roofing

- Site Utilities
- Masonry
- Landscape and Irrigation
- Waterproofing

- Glass and Glazing
- Resilient Floor Covering/Carpet
- Terrazzo Flooring
- Sprinkler System
- Mechanical (HVAC)
- Electrical
- Fire Alarm
- Public Address
- Drywall
- Ceramic Tile/Quarry Tile
- Painting
- Plumbing
- HVAC Controls
- Technology
- Security
- Synthetic Turf and/or Running Tracks

You may provide a maximum of three (3) proposed Sub-contractors for each category. However, no additional Sub-contractors will be considered after submission of this list.

Provide a resume and references for each firm and previous experience with the General Contractor. Only two (2) copies of the resumes are required. Provide resumes in a separate binder.

TAB 5: PROJECT EXPERIENCE:

List all educational projects and all other major projects constructed by your firm within the last five (5) years in similar scope and size to the project herein. For each project provide the name of the project; nature of the project/function of the building; size (square feet); locations; cost; completion date; name and contact person, address and phone number of both the Owner and Architect; and the manner in which your organization was selected (Bid, RFP, CM or other method).

TAB 6: FINANCIAL BACKGROUND:

Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

Current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses).

Non-current assets (e.g., net fixed assets, other assets).

Current liabilities (e.g., accounts payable, notes payable (current), accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes).

Non-current liabilities (e.g., notes payable).

Capital accounts and retained earnings (e.g., capital, capital stock, authorized and outstanding shares par value, earned surplus and retained earnings).

Name and address of firm preparing attached financial statement and date thereof.

Is the attached financial statement for the identical organization named under item 1 above? If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent, and subsidiary).

Provide name, address, phone for bank reference.

Surety: Name of bonding company, name and address of agent. State total bonding capacity and total current bonding obligations with and without this project.

Please note that this information will be reviewed by the Owners Financial Officer or Consultant acting in that capacity. Reference Item 2.5 Supplementary Instructions to Proposers, Section 00 2116 for information regarding confidentiality.

TAB 7: CLAIMS AND SUITS:

List all lawsuits, requested arbitration and mediation with regard to construction contracts in the last ten (10) years.

List all judgments, claims, arbitration proceedings, mediation or suits pending or anticipated against your organization.

If your company has been in business less than ten (10) years then include any former company information if applicable.

TAB 8: QUALITY PROGRAM:

State your organization's overall approach to quality control for this project.

END OF SECTION

SECTION 0 I – EM-S ISD TERMS AND CONDITIONS

1. GENERAL INSTRUCTIONS

- 1.1 In submitting a CSP, Proposer understands and agrees to be bound by the terms and conditions herein stated which shall be incorporated into any future contracts relating to this CSP between the contractor and the Eagle Mountain-Saginaw Independent School District. By submitting a CSP, each proposer agrees to waive any claim it has or may have against the Eagle Mountain-Saginaw Independent School District arising out of or in connection with the administration, evaluation, or recommendation of any CSP; waiver of any requirements under the CSP documents; acceptance or rejection of any CSPs; and award of Contracts, if any.
- 1.2 To be considered a responsive CSP all forms and documents herein requested (refer to Submittal Checklist section), must be completed with all required information, **signed** and returned **sealed** in an envelope or other appropriate package adequate to conceal and contain the contents prior to the CSP date and time. Each CSP shall be properly identified with the CSP Number, CSP Title, Name of Company submitting CSP, and the established time and date to be opened.
- 1.3 The CSP response **must be signed** by an individual authorized to contractually bind the company submitting the CSP. Failure to sign the CSP will cause it to be rejected as non-responsive. CSPs must give full firm name and address of proposer. Person signing CSP should show title or authority to bind his/her firm in a contract.
- 1.4 If any exceptions are taken to any portion of this CSP, the Proposer must clearly indicate the exception taken and include a full explanation on the Deviation/Compliance Form or as a separate attachment to the CSP. The failure to identify exceptions or proposed changes will constitute acceptance by the Proposer of the CSP as proposed by the District. The District reserves the right to reject a CSP containing exceptions, additions, qualifications, or conditions.
- 1.5 CSPs **must be received** in the Purchasing Department office **prior to** the hour and date specified in this document or any subsequent Addenda. No other published dates will be binding. **LATE CSPS WILL NOT BE ACCEPTED.** No oral, telegraphic, telephonic, electronic mail, or facsimile transmitted CSPs will be considered. The clock located in the EMSISD Purchasing Department is considered the official time for receiving and opening CSPs.
- 1.6 Sealed CSPs shall be mailed or otherwise delivered to the following address:

Eagle Mountain-Saginaw Independent School District
Attention: Lucia Cieszlak
Director of Purchasing
1200 Old Decatur Rd., Business Building #6
Fort Worth, Texas 76179
- 1.7 All questions regarding this invitation **must be submitted in writing** (email preferred) to Huckabee & Associates, Attn: George Cox (gcox@huckabee-inc.com). Requests for information/interpretation must be received on or before seven (7) calendar days prior to the opening date. Only questions answered by formal written addenda will be binding.
- 1.8 Addenda will be published on the website of Huckabee & Associates (www.huckabee-inc.com). It is the responsibility of each proposer to obtain all addenda that pertains to this CSP. **Proposers who submit a CSP without acknowledging receipt of all addenda issued may be deemed to have submitted a CSP not responsive to this solicitation.** Failure to receive such addenda does not relieve

proposer from any obligation under the CSP submitted. All formal written addenda become a part of the CSP documents. Proposers shall acknowledge receipt of all addenda in the CSP Response Form.

- 1.9 On May 25, 2007, the Texas Senate passed House Bill No. 1491, providing clarification to Chapter 176 of the Texas Local Government Code, which imposes new disclosure and reporting obligations on vendors and potential vendors to local government entities beginning on January 1, 2006. Failure to abide by these new statutory requirements can result in possible criminal penalties.

Vendors that do business with a school district are required to file a questionnaire to identify any potential conflicts of interest. The CONFLICT OF INTEREST QUESTIONNAIRE can be downloaded from the District internet/web address at <http://www.emsisd.com> or the Texas Ethics Commission web address at http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm

Note: The Eagle Mountain-Saginaw Independent School District will not provide any further interpretation or information regarding these new requirements under House Bill No. 1491.

- 1.10 It is the policy of the Eagle Mountain-Saginaw Independent School District not to discriminate on the basis of sex, disability, race, color, or national origin in its educational programs and/or activities, nor in its employment practices.
- 1.11 In order to ensure the integrity of the selection process, Proposer's employees, officers, agents, or other representatives shall not lobby or attempt to influence a vote or recommendation related to the Proposer's response, directly or indirectly, through any contact with school board members or other district officials from the date this CSP is released until the award.
- 1.12 This CSP is subject to cancellation by the District if any person significantly involved in initiating, negotiating, securing, drafting, or creating the offer on behalf of Eagle Mountain-Saginaw Independent School District, is at any time while the CSP is in effect, an employee of any other party to the CSP in any capacity or a consultant to any other party of the CSP with respect to the subject matter of the CSP.
- 1.13 Any board member who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the District, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation. Vernon's Texas Codes Annotated, Local Government Code, Ch. 171.
- 1.14 Contractors (owners, officers, employees, volunteers, etc.) may not work on district property where students may or may not be present when they have charges pending, have been convicted, received probation or deferred adjudication for the following:
- A. Any offense against a child
 - B. Any sex offense
 - C. Any crimes against persons involving weapons or violence
 - D. Any felony offense involving controlled substances
 - E. Any felony offense against property
 - F. Any other offense the District believes might compromise the safety of students, staff, or property
- 1.15 All contractors, subcontractors and their employees must submit to the Eagle Mountain-Saginaw ISD, Human Resources Department – attention: Karen Duke, proof of a satisfactory criminal record history of all individuals working on District property through background checks conducted as required by Senate Bill 9. The criminal record history must be obtained by the successful bidder before any work is performed. The information regarding the requirements for conducting a criminal records check is

posted on The Texas Department of Public Safety's website, www.txdps.state.tx.us by clicking open Crime Records. The cost for each criminal records check is approximately \$100.00.

- 1.16 Use or possession of weapons, fire arms, tobacco, alcohol beverages, controlled substances, and/or drugs, even in vehicles, is strictly prohibited on school district property. Any harassment of employees, students, or volunteers is also strictly prohibited.
- 1.17 Vendors who perform work inside the EMSISD facilities are hereby notified that our buildings may contain asbestos containing materials. This notification is required by both the State of Texas Department of State Health Services and the Federal EPA Asbestos regulations. These guidelines cover both EMSISD's responsibilities and the Employer's responsibility to their employees. As a Vendor it is your responsibility to check each building prior to performing any work in that facility. These building materials may include but are not limited to: ceiling tile, floor tile and mastic, sheetrock, tape and bed compound, thermal pipe insulation, spray-on ceiling material, calks, and roofing products. As there have been numerous asbestos containing products manufactured over the years, you must check each building's Asbestos Management Plan. This plan is normally kept in the main office. Check with the school secretary and she will allow you to look at it. It is the vendor's responsibility to notify all employees working for them that EMSISD facilities may contain asbestos and where their employees may find the facility's Asbestos Management Plan. Again, it is the Vendor's responsibility to check the Asbestos Management Plan for each facility prior to working in the facility and then to notify their employees performing the actual work. The information is found in section eight (8) for all asbestos that are remaining in the building. If after looking in the Asbestos Management Plan you are uncertain about whether the area you will be working in contains asbestos or not, please contact Jim Schiele, Assistant Superintendent for Business and Auxiliary Support Services, at 817-232-0880 for further assistance.

2. WITHDRAWING CSP

CSPs deposited with the Owner can be withdrawn, upon written request, prior to the time set for opening CSPs. A CSP may not be withdrawn after the CSPs have been opened, and the Proposer, by submitting a CSP, warrants and guarantees that the CSP has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes.

CSPs cannot be altered or amended after opening time. Any alterations made before opening time **must** be initialed by proposer or his/her authorized agent.

3. CONSIDERATION OF CSP

CSPs must be signed, sealed and delivered to the Eagle Mountain-Saginaw Independent School District Purchasing Department office PRIOR TO the CSP due date and time. Unsigned, unsealed or late CSPs will not be considered. After CSPs are opened and publicly read aloud, the CSPs will be tabulated for comparison on the basis of the CSP prices and quantities shown in the CSP.

The Eagle Mountain-Saginaw Independent School District Board of Trustees reserves the right to reject any or all CSPs, to waive technicalities, and to re-advertise for new CSPs, or proceed to do the work otherwise in the best interests of the District.

CSPs received after the date and time specified **will not** be considered. The Purchasing Department will notify those firms submitting late CSPs and will hold documents for pick-up for five (5) business days following late CSP notification. **All late CSPs which are not picked up by the Proposer within five business days will be discarded.**

4. IRREGULAR CSP

CSPs will be considered irregular if they show any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate CSPs, failure to return all forms and copies, or irregularities of any kind.

However, the District reserves the right to waive any irregularities and to make the award in the best interests of the District.

5. REJECTION OF CSP

The District reserves the right to reject any or all CSPs, and all CSPs submitted are subject to this reservation. CSPs may be rejected, among other reasons, for any of the following specific reasons:

- A. CSP received after the time limit for receiving proposals as stated in the advertisement.
- B. CSP containing any irregularities.
- C. Unbalanced value of any items.
- D. Improper, insufficient, or lack of bid bond.
- E. Where the Proposer, any Sub-contractor or Supplier, or the surety on any bond given, or to be given, is in litigation with the District or where such litigation is contemplated or imminent, in the sole opinion of the District.

6. DISQUALIFICATION OF PROPOSERS

Proposers may be disqualified and their CSPs not considered, among other reasons, for any of the following specific reasons:

- A. Reason for believing collusion exists among the Proposers.
- B. Reasonable grounds for believing that any Proposer is interested in more than one CSP for the work contemplated.
- C. Where the Proposer, any Sub-contractor or Supplier, or the surety on any bond given, or to be given, is in litigation with the District or where such litigation is contemplated or imminent, in the sole opinion of the District.
- D. The Proposer being in arrears on any existing Contract or having defaulted on a previous Contract.
- E. Lack of competency as revealed by pertinent factors, including but not necessarily limited to, experience and equipment, financial statement and questionnaires.
- F. Uncompleted work that in the judgment of the District will prevent or hinder the prompt completion of additional work if awarded.
- G. Where the Proposer has failed to perform in a satisfactory manner on a previous Contract.

7. CONFIDENTIAL OR PROPRIETARY MARKINGS

Any portion of the CSP that Proposer considers confidential or proprietary information, or to contain trade secrets of Proposer, must be marked accordingly. This marking must be explicit as to the designated information. This designation may not necessarily guarantee the non-release of the information under the Public Information Act or as otherwise required by law, but does provide the District with a means to review the issues thoroughly and, if justified, request an opinion by the Attorney General's office prior to releasing any information requested under the Public Information Act.

8. TERMS OF PAYMENT

Terms of payment to the successful Proposer will be contingent upon the terms offered based on invoices submitted to and approved by the District for payment. Invoices shall be fully documented in accordance with the specifications and contain individual pricing for each item. Invoices will be paid upon completion of delivery and acceptance. Invoices must reflect only the amount due for goods or the portion of the services performed, materials and equipment furnished for the period covered by each invoice.

The original invoice should be mailed to:

Eagle Mountain-Saginaw Independent School District
ATTN: Accounts Payable
1200 Old Decatur Rd., Bldg. #6
Fort Worth, Texas 76179

9. TAX EXEMPT STATUS

The Eagle Mountain-Saginaw Independent School District is exempt from Federal Excise Tax. **DO NOT INCLUDE TAX IN CSP PRICES.** Excise Tax Exemption Certificate will be furnished upon request.

10. RIGHTS TO INSPECT AND AUDIT

The Vendor (and Vendor's suppliers, vendors, sub-contractors, insurance agents, and other agents) shall maintain and the District shall have the right to examine records, documents, books, accounting procedures and practices and any other supporting evidence deemed necessary by the District to substantiate compliance with the terms of this agreement. Such right of examination shall include reasonable access to and cooperation by all Vendors personnel who have worked on or have knowledge related to the performance of this CSP. Proprietary/Trade Secret information pertaining to this CSP may not be withheld from the District or its Authorized Representative.

11. VENDOR RESPONSIBILITIES

The Contractor shall be fully responsible for the quality and accuracy of any and all Work performed in conjunction with this CSP. Neither acceptance of such Work by the District, nor payment therefore, shall relieve the Vendor of this responsibility. If and when applicable, the Vendor shall complete all services in conformity with professional standards, and shall provide qualified personnel to meet agreed upon schedules.

12. GRATUITIES

The District may, by written notice to the Vendor, cancel this CSP without liability to Vendor if it is determined by the District that gratuities, in the form of entertainment, compensation, gifts, or otherwise, were offered or given by the Vendor, or any agent or representative of the Vendor, to any Board Member, officer, or employee of the Eagle Mountain-Saginaw Independent School District with a view toward securing a CSP or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such an agreement.

13. JURISDICTION

The Contract resulting from this CSP shall be enforceable in Tarrant County, Texas, and if legal action is necessary by either party with respect to the enforcement of any and all of its terms and conditions, exclusive venue for same shall lie in state courts in Tarrant County, Texas.

14. INDEMNIFICATION AND HOLD HARMLESS

The vendor shall defend, indemnify, and hold harmless the Eagle Mountain-Saginaw Independent School District, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of vendor or any agent, employee, sub-contractor, or supplier of vendor in the execution or performance of this CSP

15. CSP EVALUATION CRITERIA

In evaluating CSPs submitted and per Government Code 2269.055, the following considerations may be taken into account in determining the award.

1. the price;
2. the offeror's experience and reputation;
3. the quality of the offeror's goods or services;
4. the impact on the ability of the District to comply with rules relating to historically underutilized businesses;
5. the offeror's safety record;
6. the offeror's proposed personnel;
7. whether the offeror's financial capability is appropriate to the size and scope of the project; and
8. any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

SECTION 00 4393
PROPOSAL SUBMITTAL CHECKLIST

THE FOLLOWING ITEMS ARE TO BE SUBMITTED TO EAGLE MOUNTAIN-SAGINAW ISD, AS DESCRIBED IN SECTION 00 2116 - INSTRUCTIONS TO PROPOSERS, ON TUESDAY, MARCH 3, 2015 PRIOR TO 2:00 P.M. C.S.T.:

1.01 NOTE: ALL PROPOSALS MUST BE HAND-DELIVERED.

1.02 PROPOSAL FORM PART “A – BASE BID & REQUIRED FORMS

- A. Proposal Form – Part “A” – Base Bid Proposal – two (2) copies of Proposal Form Part A and all required forms.
- B. ☐ Bid Bond or Bid Security (Include base bid and all alternates)
- C. ☐ CSP Response Form – Form A
- D. ☐ Deviation/Compliance – Form B
- E. ☐ Non-Collusion Statement – Form C
- F. ☐ Criminal Background Check & Felony Conviction Notification – Form D
- G. ☐ Nonresident Bidder’s Certification – Form E
- H. ☐ Debarment or Suspension Certification – Form F
- I. ☐ Conflict of Interest Questionnaire – Form I
- J. ☐ Notification of Hazardous Materials Affidavit – Form H

1.03 PROPOSAL FORM PART “B” – QUALIFICATIONS

- A. ☐ Proposal Part “B” – Qualifications – five (5) copies of the information as outlined in the Proposal, Tabbed, and Bound.
- B. ☐ Contractor’s Qualification Statement AIA Document 305

END OF SECTION

DRAFT AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a Stipulated Sum*

AGREEMENT made as of the day of in the year 2015
(In words, indicate day, month and year)

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

Eagle Mountain-Saginaw Independent School District
1200 Old Decatur Road
Fort Worth, Texas 76179

and the Contractor:
(Name, address and other information)

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

Elementary School #15
In the Northwest Quadrant of Bowman Roberts and Cromwell Marine Creek Roads
Fort Worth, Texas

The Architect:
(Name, address and other information)

Huckabee & Associates, Inc.
4521 S. Hulen Street, Ste 200
Fort Worth, Texas 76109

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, as amended, Conditions of the Contract, as amended (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

§ 1.2 This 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 this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement 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. 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.

§ 1.3 The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into 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 Contract Sum, or to agree to an extension to the date of Substantial or Final Completion. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees: Dick Elkins, or successor. The Contractor shall be entitled to rely upon the signature or approval of the authorized individual identified above as evidence that the action by such individual has been duly approved by the Owner's Board of Trustees. Contractor shall not be required to follow any directive or order requiring the approval of Owner's Board of Trustees until such approval has been given as evidence by the actions of the Owner's authorized representative identified above. Should the Contractor suffer any delay in performing the Work waiting for any action by the Owner's Board of Trustees, the Contractor shall be entitled to an equitable adjustment to the Contract Time and Price to compensate the Contractor for any additional direct costs and/or performance time directly caused by such delay.

§ 1.4 The Board designates the authorized representatives identified in Paragraph 8.3 to act on its behalf in other respects.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be ~~fixed in a notice to proceed~~ the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with Article 11 of AIA Document A201-2007, as amended.

~~If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows~~

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work not later than () calendar days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

The Contractor shall achieve Substantial Completion of the entire Work not later than July 5, 2016.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Final Completion shall be 60 calendar days after the date of Substantial Completion, subject to adjustments of this Contract Time as provided in the Contract Documents.

§ 3.4 LIQUIDATED DAMAGES

§ 3.4.1 Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Substantial Completion and Final Completion of the Project and Owner shall sustain actual and direct damages as a result of Contractor's failure, neglect or refusal to achieve said deadlines. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and actual and direct damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times of Substantial or Final Completion, that such sums are liquidated direct damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees,

architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

§ 3.4.2 It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Contractor a sum equal to \$1,500 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 3.4.3 Timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Agreement within 60 calendar days of the designated or agreed extended date of Substantial Completion. Owner and Contractor agree that should Contractor fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Contractor 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 \$1,500 per day. Owner may deduct from the Final Payment made to Contractor, or, if sufficient funds are not available, then Contractor 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.

§ 3.4.4 Such damages shall be Owner's sole remedy for Contractor's failure to timely achieve Final Completion, but shall be in addition to, and not in lieu of any other rights or remedies Owner may have against Contractor for other claims or damages. Damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. 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.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be _____ (\$ _____), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit
_____	_____	_____

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
_____	_____

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the last day of the same following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment. The Contractor shall submit monthly Applications for Payment to the Architect on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect approves the application, then it shall submit a Certificate for Payment to the Owner. The Architect may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect shall have seven (7) days from date of receipt from the Contractor of an Application for Payment to approve or reject all or any part of the Application for Payment. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025. (Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 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 Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). 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 Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.
- .5 If the retainage is over 5%, then the retainage shall be deposited in an interest-bearing account and the interest earned on the retainage shall be paid to the Contractor upon completion of the Project, pursuant to Texas Government Code Section 2252.032.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 ~~(Section Intentionally Deleted) Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)~~
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007, as amended.

3 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 at any time.

4 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims.

§ 5.1.8 ~~Reduction or limitation of retainage, if any, shall be as follows:~~

~~(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)~~

§ 5.1.9 Except with the Owner's prior written approval, or as otherwise provided in Section 9.3.2 of the AIA Document A201-2007, as amended, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor ~~when~~after

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Section 12.2.2 of AIA Document A201-2007, as amended, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201-2007, as amended; and
- .3 a final Certificate for Payment has been issued by the Architect-; and
- .4 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

§ 5.2.2 The Owner's final payment of undisputed sums to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, ~~or as follows:~~ Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

~~The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

All disputes relating to this Agreement shall be resolved pursuant to the terms of Article 15 of the AIA Document A201-2007, as amended.

§ 6.2 BINDING DISPUTE RESOLUTION

~~For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:~~

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

- ☐ ~~Arbitration pursuant to Section 15.4 of AIA Document A201-2007~~
- ☐ ~~Litigation in a court of competent jurisdiction~~
- ☐ ~~Other (Specify)~~

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007, as amended.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007, as amended.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

per annum at the rate established by Texas Government Code Chapter 2251.

§ 8.3 The Owner's representative:
(Name, address and other information)

Eagle Mountain-Saginaw Independent School District
1200 Old Decatur Road
Fort Worth, Texas 76179
Attn: Cecil Howard

§ 8.4 The Contractor's representative:
(Name, address and other information)

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 The Agreement 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 shall be in Tarrant County, Texas.

§ 8.6.2 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.

§ 8.6.3 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.

§ 8.6.4 Articles 1.5 and 1.6 of AIA Document A201-2007 shall govern Contractor's use of the Construction Documents.

§ 8.6.5 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.

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

Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

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

§ 8.6.8 Contractor shall follow, and shall require all employees, agents 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, Contractor shall barricade and protect all trees on the Project.

§ 8.6.9 Contractor 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 Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

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

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

§ 8.6.12 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

§ 8.6.13 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.

§ 8.6.14 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."

§ 8.6.15 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201-2007, General Conditions of the Contract for Construction, as amended for the Project.

§ 8.6.16 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), 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. Said cost shall be included within the Contract Sum.

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

§ 8.6.18 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as 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.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor, as amended.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction, as amended.

§ 9.1.3 The Project Manual, including Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: As summarized in Exhibit A attached hereto.

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit:

§ 9.1.6 The Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or competitive purchasing requirements are not part of the Contract Documents unless the bidding or competitive purchasing requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, as amended, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Request for Proposals dated: _____, which shall take precedence over the Proposal, unless specifically agreed otherwise herein.

Proposal signed by the Contractor, dated: _____

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007, as amended.

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)~~

Type of insurance or bond

Limit of liability or bond amount (\$ 0.00)

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

OWNER (Signature)

Dick Elkins

(Printed name and title)

President, Board of Trustees

Eagle Mountain-Saginaw Independent School District

Attest:

Donna Webb

Secretary, Board of Trustees

Eagle Mountain-Saginaw Independent School District

CONTRACTOR (Signature)

(Printed name and title)

DRAFT AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Elementary School #15

In the Northwest Quadrant of Bowman Roberts and Cromwell Marine Creek Roads

Fort Worth, Texas

THE OWNER:

(Name and address)

Eagle Mountain-Saginaw Independent School District

1200 Old Decatur Road

Fort Worth, Texas 76179

THE ARCHITECT:

(Name and address)

Huckabee & Associates, Inc.

4521 S. Hulen Street, Suite 220

Fort Worth, Texas 76109

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ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~

§ 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 said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement 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. 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. Any reference to any Contract Document shall mean the document as amended and/or supplemented for this Project.

§ 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. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

§ 1.1.2.1 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.

§ 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. "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 which 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. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1036 and the standards set forth in Section 2.1.4 of AIA Document B201-2007, as amended. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and which shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 CONSTRUCTION DOCUMENTS INSTRUMENTS OF SERVICE

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

§ 1.1.8 PROJECT MANUAL INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

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.

§ 1.1.9 PROJECT MANUAL ADDENDA

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

The following definitions apply to parties named in the Contract Documents:

Owner:

Eagle Mountain-Saginaw Independent School District
1200 Old Decatur Road
Fort Worth, Texas 76179

Architect:

Huckabee & Associates, Inc.
4521 S. Hulen Street, Suite 220
Fort Worth, Texas 76109

Contractor:

All references to "Contractor" shall include "Construction Manager at Risk" as appropriate.

Program Manager:

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

§ 1.1.10 APPROVED, APPROVED EQUAL, APPROVED EQUIVALENTS, OR EQUAL

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

§ 1.1.11 ABBREVIATIONS

AIA: American Institute of Architects

ACI: American Concrete Institute

AHERA: Asbestos Hazardous Emergency Response Act

AISI: American Iron and Steel Institute

AISC: American Institute of Steel Construction

ASA: American Standards Association

ASTM: American Society of Testing Materials

AWSC: American Welding Society Code

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act

EPA: Environmental Protection Agency

FS: Federal Specification

NES: National Electrical Code

NIC: Not in Contract. Indicates work not to be done by this Contractor under this Agreement

OSHA: Occupational Safety and Health Administration

SPR: Simplified Practice Recommendation

UL: Underwriters Laboratories, Inc.

§ 1.1.12 BIDS or BIDDING The terms "Bids" or "Bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 or Texas Government Code Chapter 2269.

§ 1.1.13 MISCELLANEOUS OTHER WORDS

§ 1.1.13.1 BUSINESS DAY

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

§ 1.1.13.2 CALENDAR DAY

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

§ 1.1.13.3 HOLIDAYS

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

§ 1.1.13.4 WORK DAY

Work days are all calendar days except Holidays.

§ 1.1.13.5 ANTICIPATED WEATHER DAYS

An allowance of regular Work Days, established as anticipated Work Days lost due to weather delays; said allowance shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather. Section 15.1.5.3 lists required Anticipated Weather Days.

1.1.14 CONTRACT SUM

"Contract Sum" shall have the same meaning as in Section 5.1 of the Agreement (A133-2009), as amended for the Project when the Project is a Construction Manager at Risk Project, and the same meaning as in Section 4.1 of the Agreement (A101-2007), as amended for the Project, otherwise.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

§ 1.2.1.1 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.

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

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

§ 1.2.4 RELATION OF SPECIFICATIONS AND DRAWINGS

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

§ 1.2.5 MATERIALS, EQUIPMENT AND PROCESSES

Exact location and arrangement of the various pieces of equipment specified shall be determined with the approval of the Architect after equipment has been selected and/or as the Work progresses. All equipment shall, insofar as possible, be installed in such a manner as will not interfere with architectural or structural portions of the building. Should changes become necessary because of a failure of the Contractor to comply with the Construction Documents or Contract Documents which results in equipment requiring more area than shown on the Construction Documents or Contract Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless the Architect has specifically accepted such substitution for use on this Project. When more than one material, process, or brand is specified for a particular item of Work, the choice shall be the Contractor's. The final selection of color and pattern will be made by the Owner from the range available within the option selected by the Contractor, unless the item is

specified to match a specific color or sample furnished. Where particular items are specified, products of those named manufacturers are required unless Contractor submits for consideration proposed substitutions of materials, equipment or processes from those set out in the Construction Documents or Contract Documents. Submittals of proposed substitutions should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal to or better than the requirements in the Construction Documents or Contract Documents. The Architect shall review and respond to proposed substitutions within fifteen (15) days of receipt. Contractor shall bear all risk caused by submitting substitutions, including all costs. The Owner may approve substitutions only when the substitution is clearly provided by the Contract to be equal in performance characteristics to the requirements of the Construction Documents or Contract Documents, equally compatible with the existing installations and complementary to the architectural design for the Work. Certain specified construction and equipment details may not be regularly included as part of the named manufacturer's standard catalog equipment, but shall be obtained by the Contractor from the manufacturer as required for the proper evaluation and/or functioning of the equipment. Reasonable minor variations in equipment are expected and will be acceptable, if approved by the Architect and Owner, however, indicated and specified performance and material requirements are the minimum. The Owner and the Architect reserve the right to determine the equality of equipment and materials that deviate from any of the indicated and specified requirements.

§ 1.2.6 STANDARDS AND REQUIREMENTS

When the Contract Documents refer to standards, building codes, manufacturers' instructions, or other documents, unless otherwise specified, then the current edition as of the 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 supersede more stringent specified requirements.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. These Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code §2269.054.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND CONSTRUCTION DOCUMENTS OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 ~~The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect.~~ The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Construction Documents 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 ~~the Architect's or Architect's consultants'~~ any reserved rights.

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit ~~Construction Documents~~~~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.

ARTICLE 2 OWNER

§ 2.1 GENERAL

~~§ 2.1.1 The Owner is the independent school district identified in the Contract Documents. person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. 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 or to terminate a contract. The Board will act as soon as reasonably possible to avoid undue delays. The Board designates authorized representatives to act on its behalf for day-to-day operations under the Contract. Unless otherwise designated in the Contract Documents, Owner's authorized representative shall be the Superintendent of Schools, who may delegate responsibilities as appropriate. Owner's Board of Trustees hereby delegates to the Superintendent of Schools or designee the authority to approve changes to the Work where such changes are within the Owner's contingency or the Contractor's contingency, and which do not exceed \$5,000.00, or will not increase the dates for Substantial or Final Completion by more than thirty(30) days. Any such change shall be confirmed in writing between the Contractor and Owner's Superintendent or designee, and notice of such approved changes shall be given to the Board at its next regular meeting. Except as otherwise provided in 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 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated, such property belonging to a political subdivision of the State of Texas. It shall be further understood that this Contract is not written for the benefit of third parties.~~

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

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

~~§ 2.1.5 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Drawings, Plans, Specifications and other Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract Documents or any Agreement with any Architect, Owner does not warrant the adequacy and accuracy of any Drawings, Plans, Specifications or other Construction Documents.~~

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the~~

~~Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. 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.~~

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

§ 2.2.3 ~~If requested in writing by the Contractor prior to the start of the Work, t~~The Owner shall furnish surveys ~~known to the Owner~~ describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~Other than the metes and bounds noted in the legal description of the site, t~~the Contractor shall not be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. ~~Other than the metes and bounds noted in the survey, if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines, or the presence or absence of easements.~~

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. ~~The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness~~ after receiving the Contractor's written request for such information or services. ~~Absent such timely notification, any Claim based upon lack of such information or services shall be waived.~~

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor ~~one copy ten~~ (10) copies of the ~~Contract Documents~~ Construction Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and other consultants' additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

the Contractor or the Contractor's authorized representative, and includes the Construction Manager at Risk, if applicable.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Section 3.12.

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

§ 3.1.4 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 the State where the Project is located 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.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 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 for the purpose of facilitating coordination and construction by the Contractor and are ~~not~~ for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; ~~however,~~ the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work involving an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect.

§ 3.2.3 Neither the Owner nor the Contractor is required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor his warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for his position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. Contractor shall take field measurements, verify field conditions, and shall carefully compare them to the Construction Documents. ~~If the Contractor performs those obligations,~~ The Contractor shall ~~not~~ be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities when the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect. Contractor shall not be entitled to additional compensation for additional Work caused by Contractor's failure to carefully study and compare the Construction Documents prior to the execution of the Work.

§ 3.2.5 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. 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.

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

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

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

- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 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 weapons, speaking profane and/or offensive language, or engaging in any inappropriate interactions of any nature whatsoever with students and employees, including talking, touching, staring or otherwise contributing to a hostile or offensive environment for Owner's students and employees. All areas of campus, other than the defined construction area, shall be off limits to Contractor's forces, unless their work assignment specifies otherwise. Contractor shall also require adequate and appropriate dress and identification of Contractor's employees, subcontractors, and all other persons carrying out the Work. Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full 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's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense. Contractor shall follow, and shall require all employees, agents or subcontractors to follow, the tree ordinance of the municipality in which the Project is located. In addition, if not covered by the municipal tree ordinance, Contractor shall barricade and protect all trees on the Project, which shall be included in the Cost of the Work. Contractor 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 Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

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

§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and sub-contractors.

§ 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 Section 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.

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

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

§ 3.3.8 Pursuant to Texas Labor Code Sec. 214.008, the Contractor and any subcontractor on the Project shall properly classify, as an employee or an independent contractor, in accordance with Texas Labor Code Chapter 201, any individual the Contractor or subcontractor directly retains and compensates for services performed in connection with this Agreement. Any Contractor or subcontractor who fails to properly classify such an individual may be subject to the penalties of Texas Labor Code Sec. 214.008(c).

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 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, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor 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 Architect and in accordance with a Change Order or Construction Change Directive.

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

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

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

§ 3.4.6 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 applicants of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator 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 §22.0834(p)(2), shall be required by the terms of their contract with Contractor or any other contracting entity (as defined in Texas Education Code §22.0834(p)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certifications to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

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

§ 3.4.7 OWNER'S ADDITIONAL REQUIREMENTS RELATED TO CRIMINAL HISTORIES

In addition, Contractor will at least annually obtain criminal history record information that relates to any employee, agent, or applicant of the Contractor, if the person has or will have duties related to the Project, and the duties are or will be performed on Owner's Project, or at an 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."

§ 3.4.8 PREVAILING WAGE RATES

§ 3.4.8.1 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 Section 2258 et seq.; Texas Labor Code Section 62.051 et seq.

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

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

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

§ 3.4.8.5 Prevailing Wage Rates: [attach Schedule as Exhibit A]. If no schedule is attached, then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 276a, which can be accessed on the internet at www.gpo.gov/davisbacon/, or determined by any local contractor association, whichever is less.

§ 3.5 WARRANTY

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

§ 3.5.2 Contractor shall certify that the Project has been constructed in general conformance with the Architect's or Engineer's plans, specifications, and Construction Documents, as modified from time to time pursuant to the terms of the Contract Documents. Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code Section 61.1036(c)(3)(F).

§ 3.5.3 In the event of failure of materials, products, or workmanship, either during construction or the warranty period, the Contractor shall take appropriate measures to ensure correction of defective Work or replacement of the defective items, without cost to the Owner. Such warranty shall be maintained notwithstanding that certain systems may be activated prior to 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.

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

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

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

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

§ 3.5.5 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.

§ 3.5.6 The warranties of Contractor provided in Subparagraphs 3.5.1, 3.5.2, and 3.5.3 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.

§ 3.5.7 Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranty under Section 12.2.2.1 herein 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 under Section 12.2.2.1 herein, 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 under Section 12.2.2.1 herein. Contractor shall prosecute such warranty work under Section 12.2.2.1 herein without interruption until accepted by Owner and Architect, even though such work should extend beyond the warranty period under Section 12.2.2.1 herein. 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.

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

- .1 Obtain duplicate original warranties, executed by all subcontractors, making the dates of beginning of the warranties the Date of 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.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled

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

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

~~§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be responsible for making and submitting application for the building permit. The Owner shall pay the municipality directly for the building permit and all other development "impact" fees, if any. The Contractor shall continue to be responsible for payment of other permits, governmental fees, licenses, and inspections necessary for proper execution of the Contract and which are legally required when bids or proposals are received. Such fees and expenses shall only be reimbursable to Contractor if expressly agreed to herein.~~

~~§ 3.7.1.1 The Owner shall pay directly to the governing authority the cost of all permanent property utility assessments and similar connection charges.~~

~~§ 3.7.1.2 The Contractor shall pay directly all temporary utility charges, tap charges, and water meter charges, without reimbursement from Owner. After consultation with the Owner, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Also after consultation with the Owner, the Contractor shall obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor's obligations under this Section may or may not require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. Any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, Contractor's subcontractors, the Project, or the Owner.~~

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

~~§ 3.7.3 If the Contractor performs Work when Contractor knows or reasonably should have known knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful~~

orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~24~~three (3) business days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. The Architect will promptly investigate such conditions and report findings and a recommended resolution in writing to Owner and Contractor. If Owner's Board of Trustees and Contractor cannot agree on an equitable adjustment to the Contract Sum or Contract time, then either party may pursue alternative dispute resolution as provided for in Article 15 within ninety (90) days of the Architect's recommendation. ~~if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.~~

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

§ 3.7.6 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.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals and shall provide the Work as directed by the Architect, upon Owner's written approval, on the basis of the best value to the District.

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. Contractor's superintendent shall be present full-time on the site as soon as possible after commencement of the Work, and shall remain assigned to this Work, and present on the site, throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Paragraph 9.8, have been completed or corrected. From Substantial Completion until Final Completion, the superintendent shall be on the site as necessary to ensure that Final Completion occurs within 30 days of Substantial Completion.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Contractor's project manager, while not required to be present full-time at the site, shall remain assigned to this Work, and be available on an as-needed basis throughout the course of the Work until items requiring completion or correction, identified at Substantial Completion pursuant to Section 9.8, have been completed or corrected in accordance with the Construction Documents.

§ 3.9.4 Owner shall be notified not less than 24 hours before any time that superintendent will not be present at the site for any reason except periodic illness. If the reason is due to illness, then Owner shall be notified at the beginning of that day. Owner shall be notified of the identity of the acting superintendent. In the event the superintendent is absent from the site and notice has not been provided nor has an acting superintendent been assigned to the Work, then an amount equal to the superintendent's daily rate shall be deducted from the amount owed to the Contractor under general conditions for such day.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be

coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, field test records, inspection certificates or records, manufacturers' certificates, Product Data, Samples and similar required submittals. These shall be available to the Architect and the Owner at all times and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and ~~verified that coordinated~~ the information contained within such submittals complies with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. 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. ~~provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy.~~ Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. 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 comprehensive general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the 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.

§ 3.12.11 The Contractor shall submit complete drawings, data and samples to the Architect at least fifteen (15) days prior to the date the Contractor needs the reviewed submittals and samples returned. The Contractor shall be prepared to submit color samples on any key items (such as quarry tile, vinyl wall covering, etc.) within fifteen (15) days of the award of Subcontract(s). All color samples required for the Work shall be received within sixty (60)

days of the date of the approval of the Contract Sum if the Project is an A101 project, or Guaranteed Maximum Price if the Project is an A133 project. Once samples of all key items are received, the Architect will finalize color selections.

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

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

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

§ 3.13 USE OF SITE

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

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

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

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

§ 3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrance and parking areas other than those designated by the Owner. The Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building.

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably

withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 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.

§ 3.15 CLEANING UP

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

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

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS, AND SHALL WAIVE AND RELEASE CLAIMS AGAINST THE OWNER AND ARCHITECT, AND SHALL INDEMNIFY AND HOLD THE HARMLESS THE OWNER AND ARCHITECT harmless FROM LOSS ON ACCOUNT THEREOF, PROVIDED, HOWEVER, CONTRACTOR but 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 Owner or ARCHITECT, AND SHALL NOT BE RESPONSIBLE

TO OWNER IF OWNER REQUIRES A PARTICULAR DESIGN, PROCESS OR PRODUCT THAT CONSTITUTES A COPYRIGHT VIOLATION. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect in writing.

§ 3.18 INDEMNIFICATION

~~§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.~~ 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 Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.~~ 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 PERFORMANCE OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE

CONSTRUCTION CONTRACT; AND (3) ARISING FROM : (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 ET SEQ.

§ 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.

§ 3.19 ANTITRUST VIOLATION. To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a ~~successor~~new architect ~~as to whom the Contractor has no reasonable objection and~~ 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.

§ 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

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, ~~until the date the Architect issues the final Certificate For Payment~~ 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.~~

~~§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.~~
Architect or his authorized representative shall visit the site at least twice per week (or more per week when deemed

necessary by the Owner's Superintendent or when necessary to protect Owner's interests) and at other intervals appropriate to the stage of construction, to inspect the progress, quantity and quality of the work completed, to reject any observed nonconforming Work, and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Construction Documents and the Contract Documents and on time. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect and attended by the Contractor. Attendees will include the Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. The Architect, Owner and their representatives shall at all times have access to the Work. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect and Owner. On the basis of the on-site observations by Architect, Architect shall keep Owner and Contractor informed of the progress and quality of the Work, through Architect's field reports, and shall guard Owner against defects and deficiencies in the Work. Architect shall promptly notify Owner and Contractor orally regarding any defect or nonconforming Work, which shall be followed by notice in writing of defects or nonconforming Work noted and corrective actions taken or recommended. The Architect, however, shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs, but this does not relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed at no additional cost to Owner.

§ 4.2.3 ~~On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.~~ The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. 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.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

§ 4.2.5 As further provided in the Contract Documents, ~~Based~~ on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect ~~has authority to~~ shall reject Work that does not conform to the Construction Documents and the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will ~~have authority to require~~ recommend to Owner additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, 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 required by this subparagraph shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, ~~but only~~ for the ~~limited~~ purpose of checking for conformance with ~~information given and the design concept expressed in the~~ Construction Documents and the Contract Documents and all applicable laws, statutes, codes and requirements applicable to Architect's design services. The Architect's action will be taken ~~in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with such~~ reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is ~~not~~ conducted for the purpose of determining the general accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation ~~or performance~~ of equipment or systems. The specific accuracy and completeness of dimensions, quantities, installation and performance of equipment and 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.

§ 4.2.8 ~~The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. 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 Guaranteed Maximum Price, 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 Guaranteed Maximum Price, 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 Guaranteed Maximum Price, or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner, or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.~~

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and ~~decide matters~~make recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's

response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The ~~Architect~~ Owner's decisions on matters relating to aesthetic effect ~~will shall~~ be final ~~if consistent with the intent expressed in the Contract Documents.~~

§ 4.2.14 The Architect will review and respond to requests for information about the Construction Documents and the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information, at no additional cost to the Owner.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect ~~may 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 Architect requires 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 Education Code Chapter 44, Subchapter B, and 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.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 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 or Guaranteed Maximum Price shall be allowed for failure to so inspect or investigate.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, ~~written where legally required for validity~~, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. 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. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

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

§ 5.3.3 The Contractor shall require any potential subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential subcontractor prior to entering into a subcontract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated subcontractor.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for ~~any unperformed~~ portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by ~~either in accordance with Article 14 the Owner for cause pursuant to Section 14.2 or abandonment of the Project by the Contractor~~ and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; ~~and~~
- .2 assignment is subject to the prior rights ~~and obligations~~ of the surety, if any, obligated under bonds relating to the Contract; ~~and~~
- .3 The Subcontractor provides bonds as required by law of prime contractors and by Owner.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

§ 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.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. ~~If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.~~

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

~~**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. 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.

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

§ 6.2 MUTUAL 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.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report in writing to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, and shall promptly report in writing to the Architect and Owner if Owner's separate contractors fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, and is performed in a timely manner, except as to defects not then reasonably discoverable.

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

§ 6.2.3.1 If the Architect is required to provide contingent additional services as provided in the Agreement between the Owner and the Architect, specifically relating to additional compensation for the Architect for evaluating an excessive number of claims submitted by the Contractor or others in connection with the Work in accordance with the Owner's Agreement with the Architect, then such services shall be paid for by the Contractor through the Owner, unless the contingent additional services result from negligence or an omission by the Architect.

§ 6.2.3.2 If the Architect provides services in connection with a legal proceeding, except when the Architect is a party thereto, and the Owner requests the Architect in writing to provide such services, then the cost of such services shall be paid for by the party whose act or omission was a proximate cause of the problem that led to the requirement to provide such services. Such services shall be paid for by such party through the Owner, who upon receipt of same shall reimburse the Architect.

§ 6.2.3.3 All construction costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor.

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

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14, as amended.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. A properly prepared written request for a change in the Work by Contractor shall be accompanied by sufficient supporting data and information to permit the Architect to make a recommendation to Owner.

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

§ 7.1.3 Changes in the Work 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. Contractor shall not make any claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a change in the Work. No claim for an adjustment to time, Contract Sum or Guaranteed Maximum Price shall be valid unless so ordered or directed.

§ 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.

§ 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.

§ 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.

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Methods used in determining adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.3 Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum or Guaranteed Maximum Price, 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.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any,

provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Guaranteed Maximum Price, or Contract Time.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum or Guaranteed Maximum Price, 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: the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus the Contractor's allocated percent of profit and overhead as confirmed by the Architect. ~~When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.~~

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

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

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 With prior written notice to the Owner's representative, ~~T~~the Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or Guaranteed Maximum Price, or extension of the Contract Time and not inconsistent with ~~the intent of~~ the Construction Documents and the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the ~~date established in the Agreement~~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, 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 its responsibility to comply with Article 11.

§ 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.

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

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

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15, as amended.

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. In the event

that the Project is a Construction Management at Risk Project, the Contract Sum shall not exceed the Guaranteed Maximum Price.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, or in the case of a Guaranteed Maximum Price, within 15 days after establishing the Guaranteed Maximum Price, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment and Continuation Sheet. If the Contractor is a Construction Manager at Risk, then the Contractor's fee and general conditions shall be specifically shown, and AIA Documents G702CMA and G703 shall be used.

§ 9.2.2 If the project is a Construction Manager at Risk project, in order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on AIA Documents G702 and G703, and shall include the following:

.1 Contractor's cost for Contractor's fee (if applicable) bonds and insurance, mobilization, general conditions, etc. shall be listed as individual line items.

.2 Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc.

.3 On major subcontracts, such as mechanical, electrical and plumbing, the schedule shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation fixtures, start-up, etc.).

.4 Costs for subcontract work shall be listed without any additional mark-up of Contractor's costs for overhead, profit or supervision.

.5 If payment for stored materials is requested prior to installation, then material and labor shall be listed as separate line items.

.6 Contractor shall provide a report of actual versus projected reimbursable expenses (general conditions), updated monthly.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage ~~if provided for in the Contract Documents.~~

§ 9.3.1.1 ~~As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Contractor agrees that, for purposes of Texas Government Code Sections 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 Sections 2251.021 and 2251.042.~~

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

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in Section 9.4.3 or 9.5, as amended. The retainage shall be paid with the Final Payment. (Note: if more than 5% is retained, under Texas law, then the retainage must be placed in an interest-bearing account, and the contractor must be paid the interest earned on the retainage upon completion of the Work. Texas Government Code Section 2252.032).

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

§ 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.

§ 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.

§ 9.3.5 By signing each Application for Payment, the Contractor stipulates and certifies to the following: that the information presented is true, correct, accurate and complete; that the Contractor has made the necessary detailed examinations, audits and arithmetic verifications; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for and received; that the subcontractors have been paid as identified in the Applications for Payment or that Contractor has been invoiced for same; that he has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmens' liens outstanding at the date of this requisition; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmens' liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including, but not limited to, Texas Penal Code Sections 32.46, 37.09, and 37.10, and may justify termination of Contractor's Contract with Owner.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either 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 Section 2251.042 et seq.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner; ~~based on the Architect's evaluation of the Work and the data comprising the Application for Payment; that the Architect has observed the progress of the Work; determined that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, in the Architect's professional opinion; and 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 or 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.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to

make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

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

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

~~§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. 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.~~

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment pursuant to Texas Government Code Section 2251.042 et seq. listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents or Construction Documents.

§ 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 Section 2251.022, the Contractor shall, within ten(10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide 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.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor; ~~except as may otherwise be required by law.~~ Action on the part of the Owner to require Contractor to pay a Subcontractor shall not impose any liability on Owner.

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

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

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. Payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor. Texas Property Code §162.001.~~

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

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 ~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing, within seven days after the date the payment is due under the Contract Documents, established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor, upon ten (10) -may, upon seven 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. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. 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.~~

§ 9.7.2 If the Architect does not issue a Certificate for Payment within seven days after receipt of the Contractor's Application for Payment, through no fault of the Contractor, then the Contractor shall provide written notice to the Owner, and the Owner shall have fourteen (14) business days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment, then the Contractor may, upon fourteen (14) additional business days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received.

§ 9.7.3 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything

contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

.1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or

.2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents 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. Except with the consent of the Owner, the Architect shall perform no more than five inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare, sign and issue Owner's a 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 SubstantialFinal Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.14.5 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 and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, for security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation, and property and liability insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.~~ When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. ~~Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld.~~ The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

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

§ 9.9.3 Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly prepare, sign, and issue Owner's Certificate of Final Completion and a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and 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 precedent to the Contractor's being entitled to final payment have been fulfilled. Final payments shall be made by the Owner in accordance with Owner's regular schedule for payments.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) using AIA Document G706, an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) ~~a certificate evidencing 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), if required by the Owner, 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, 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 Sections 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 www.tea.state.tx.us/school.finance/facilities/cert_2004.pdf;

.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 an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor within thirty (30) days after Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, ~~except that and~~ it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner, ~~except those arising from~~

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

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Sub-contractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons and property and their requirements to maintain a work environment free of recognized hazards.

§ 10.1.2 Contractor's employees, agents, Sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them 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.

§ 10.1.3 Contractor has adopted or will adopt its own policy to assure a drug-free and alcohol-free workplace while on Owner's premises or performing the Work. Contractor will remove any of its employees, agents, sub-contractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such person, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove any person from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, the person so removed may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal, that said person was in compliance with this Contract. Contractor will not use any person to perform the Work who fails or refuses to take, or tests positive on, any for-cause alcohol or drug test.

§ 10.1.4 Contractor will comply with all applicable federal, state, and local drug and alcohol-related laws and regulations (e.g., Department of Transportation regulations, Drug-Free Workplace Act). Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a concealed weapon, and Contractor agrees that Contractor's representatives, employees, agents, and sub-contractors will abide by same.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work, school personnel, students, and other persons on Owner's premises and other persons who may be affected thereby, including the installation of fencing between the Work site and any connecting or adjacent property of Owner;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as other buildings, and their contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities and tracks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of ~~explosives or other~~ hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed

~~by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. 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.~~

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

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

§ 10.2.8 The Contractor shall do all things necessary to protect the Owner's premises and all persons from damage and injury, when all or a portion of the Work is suspended for any reason.

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

§ 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.

§ 10.2.811 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. In the event the Contractor encounters polychlorinated biphenyl (PCB), and the specifications require the PCB's removal, the Contractor shall remove the PCB and store it in marked containers at the jobsite provided by the Owner. If PCBs are found which are leaking, then Contractor shall stop work on the affected fixture and shall contact Owner for removal and disposal of the leaking PCBs.

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

~~extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut down, delay and start up. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion.~~

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

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

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

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.~~

§ 10.4 EMERGENCIES

~~§ 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.~~

~~§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.~~

§ 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

~~§ 10.5.1 Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.~~

~~§ 10.5.2 Final Payment shall not be made until this written certification has been received.~~

§ 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

~~§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".~~

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.7 HAZARDOUS MATERIALS CERTIFICATION

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

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 all required insurance policies, declarations and endorsements themselves. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations and additional endorsements, as they are provided to Contractor.

§ 11.0.3 All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation.

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

§ 11.0.5 All insurance required herein shall, by endorsement, be primary 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 shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable: 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; and~~
- ~~.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, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the 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 limits of liability for such insurance shall be in at least the following amounts:~~

~~§ 11.1.2.1 Workers' Compensation:~~

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

~~§ 11.1.2.2 Commercial General Liability:~~

.1	Each occurrence:	\$1,000,000	each occurrence
		\$2,000,000	aggregate
.2	Medical Expense (per person)	\$1,000,000	each occurrence
.3	Products & Completed Operations:	\$2,000,000	aggregate (to be maintained for a period of two years after Final Payment; Contractor shall continue to provide evidence of such

coverage to Owner on an annual basis during this period and Owner shall be named by endorsement as an Additional Insured for such coverage)

- .4 Personal & Advertising Injury \$2,000,000 aggregate
- .5 Must include explosion, collapse, and underground (X, C, and U) coverage.
- .6 Must include Completed Operations coverage for Contractor, its sub-contractors and Owner.
- .7 Must Include Contractual Liability Coverage.
- .8 Must Include General Aggregate Per Project Endorsement

§ 11.1.2.3 Contractual Liability:

- .1 Property Damage shall be included in Comprehensive General Liability Coverage.
- .2 Insurance sufficient to cover Contractor's contractual indemnities.

§ 11.1.2.4 Personal Injury:

- .1 With Employment Exclusion deleted; shall be included in Comprehensive General Liability Coverage.

§ 11.1.2.5 Business Automobile Liability (including owned, non-owned, hired, or any other vehicles): (Note: Texas statutory minimum for school district is \$100,000 per person, \$300,000 per occurrence, \$100,000 property damage)

- .1 Bodily Injury (per person) \$1,000,000
- .2 Bodily Injury (per accident) \$1,000,000
- .3 Property Damage \$1,000,000

§ 11.1.2.6 Umbrella Excess Liability coverages shall be:

- .1 \$10,000,000 each occurrence
- .2 \$10,000,000 aggregate
- .3 Aggregate Per Project Endorsement

§ 11.1.2.7 All Risk Builder's Risk Insurance. If Contractor is a Construction Manager at Risk, then, as specified in each Amendment, in a total amount equal to the Guaranteed Maximum Price; otherwise, in the total amount of the Contract Sum. See Section 11.3.

§ 11.1.3 Certificates of insurance, with all required endorsements attached, and copies of policies and endorsements acceptable to the Owner shall be filed with the Owner and Architect 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 ~~with reasonable promptness~~ to the Owner and Architect in writing within five (5) days of Contractor's first notice of 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 Section 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

§ 11.1.6.3 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 11.3.5. 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.

§ 11.2.3 Architect shall be responsible for purchasing and maintaining the Architect's liability and worker's compensation insurance as provided in the AIA Document B102-2007, as revised.

§ 11.3 PROPERTY INSURANCE BUILDER'S RISK INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. 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 the Project is a Construction Manager at Risk project, 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, 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.

§ 11.3.1.1 ~~Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

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

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

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

§ 11.3.1.5 ~~Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

§ 11.3.2 BOILER AND MACHINERY INSURANCE

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds. For any claim made against the builder's risk insurance, the deductible shall not exceed \$2,500 for a Contract Sum (or Guaranteed Maximum Price, if the Project is a Construction Manager at Risk project), of less than \$4 million. For a Contract Sum (or Guaranteed Maximum Price, if the Project is a Construction Manager at Risk project), of \$4 million or more, the deductible shall not exceed \$5,000.~~

§ 11.3.3 LOSS OF USE INSURANCE

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 11.3.3, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The foregoing waiver afforded the Architect, his agents, and employees, shall not extend to the liability imposed by Section 3.18.3. The Owner or the Contractor, as appropriate, shall require of the Architect, separate Contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers, each in favor of all other parties enumerated in this Section 11.3.3. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, any separate contractors, subcontractors, sub-subcontractors, agents, and employees of any of them by appropriate written agreements, similar waivers each in favor of other parties enumerated herein.~~

~~§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order. 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 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. 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.~~

~~§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

§ 11.3.7 WAIVERS OF SUBROGATION

~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate~~

contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to ~~shall~~ furnish separate payment and performance bonds covering faithful performance of the Contract and payment of obligations arising thereunder, as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract each bond to be in a total amount equal to 100% of the Contract Sum. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five business days after execution of the Contract by Owner. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance, and shall fully comply with Texas Insurance Code Section 3503.001 et seq. and Texas Government Code Chapter 2253, or their successors. The surety company shall have a rating of not less than "A-X" according to the latest posted ratings on the A.M. Best website, www.ambest.com. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of 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 a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 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.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or 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.

§ 12.2.1.2 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or 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.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof ~~or after the date for commencement of warranties established under Section 9.9.1~~, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Construction Documents or the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner~~

~~waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct the Work as provided in 12.2.2.1.1. it in accordance with Section 2.4~~Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.~~

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within 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.

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

§ 12.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to that corrected Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

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

§ 12.2.6 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.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision for this Section 12.2.7 shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 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 Tarrant County, Texas. ~~place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

§ 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 ~~The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment. The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.~~

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; ~~or~~ if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice, or if sent by electronic facsimile transmission, to the last business number known to the party giving notice, with electronic confirmation of receipt; or, if sent by electronic mail, to the email address of the Owner's or Contractor's designated representative, with electronic confirmation of receipt.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals which shall be included in the Cost of the Work. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing and inspection services, and the verification testing services necessary for acceptance of the facility by the Owner. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. ~~The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, then the Owner shall provide or contract the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be

~~present for such procedures.~~ Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.
Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including, but not limited to, those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

Undisputed Ppayments 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 Section 2251.025, ~~the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ 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.

§ 13.7 TIME LIMITS ON LITIGATION CLAIMS

The Owner and Contractor shall commence all ~~litigation claims and causes of action,~~ whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the ~~final~~ dispute resolution method selected in the Agreement and within the time period specified by applicable law, but in any case not more than ~~10~~ 12 years after the date of ~~Final Substantial~~ Completion of the Work. The Owner and Contractor waive all ~~claims and~~ causes of action not commenced in accordance with this Section 13.7.

§ 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.

§ 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 twelve (12) years after the date of Final Completion of the Project. Within 10 days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office.

§ 13.9.2 If Contractor is a Construction Manager at Risk, then Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful

bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries 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.

§ 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 of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.10.3 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.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~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 the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; ~~or~~
- .4** ~~The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, then, after the applicable time period, the Contractor may, upon seventen (10) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, ~~including reasonable overhead and profit, costs incurred by~~

reason of such termination, and damages, and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination.

§ 14.1.4 If the Work is stopped for a period of ~~ninety (90)~~60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has 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)~~seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~
- .4 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, evidencing 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
- ~~6-~~ .7 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents.

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

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

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

§ 14.2.4 ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. 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 or Guaranteed Maximum Price, if the Project is a Construction Manager at Risk project, then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.~~

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the

benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the 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.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum, Guaranteed Maximum Price, and Contract Time ~~may~~shall be adjusted, by mutual written agreement, for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ No adjustment shall be made to the extent:

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, ~~and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed,~~ and for proven unrecoverable loss with respect to materials, equipment, tools, and construction equipment and machinery incurred to the date of termination. Such payment shall not cause the Contract Sum, or Guaranteed Maximum Price, if the Project is a Construction Manager at Risk Project, to be exceeded. Such payment shall not include overhead and profit for Work not executed.

§ 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

ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by ~~the Contractor~~~~one of the parties~~ 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 term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.~~ The responsibility to substantiate Claims shall rest with the Contractor party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by ~~either the Owner or the~~ Contractor must be initiated by written notice to the ~~Owner~~~~other party~~ and to the ~~Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Claims by ~~Contractor~~~~either party~~ must be initiated within 21 calendar days after occurrence of the event giving rise to such Claim or within 21 calendar days after the ~~claimant~~~~Contractor~~ first knew or should have known ~~of~~~~recognizes~~ the condition giving rise to the Claim, whichever is ~~earlier~~~~later~~. 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 (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement.

§ 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, as amended and Article 14, as amended, 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. ~~The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.~~

§ 15.1.4 CLAIMS FOR ADDITIONAL COST OR AN INCREASE IN THE CONTRACT SUM OR GUARANTEED MAXIMUM PRICE

If the Contractor wishes to make a Claim for additional cost or an increase in the Contract Sum or Guaranteed Maximum Price, 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.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of ~~cost and of~~ probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and prevented the execution of major items of work on normal working days~~had an adverse effect on the scheduled construction.~~ "Adverse weather conditions" means unusually severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year.

§ 15.1.5.3 The Contractor shall anticipate and include in the construction schedule rain days due to adverse weather conditions in accordance with the rainfall table below. A rain day is defined as a day when rainfall exceeds one-half (.5) inch during a 24-hour period. The number of rain days expected for each month is as follows:

Note: Prior to the execution of the Contract, Owner shall fill in the blanks below:

<u>MONTH</u>	<u>AVERAGE DAYS RAIN (1)</u>	<u>INCHES RAINFALL (2)</u>	<u>SNOW/ICE PELLETS (3)</u>
January	6.7	1.90	0.5
February	6.3	2.37	0.4
March	7.3	3.06	0.1
April	7.6	3.20	0.0
May	8.7	5.15	0.0
June	6.4	2.23	0.0
July	4.7	2.12	0.0
August	4.6	2.03	0.0
September	7.1	2.42	0.0
October	6.2	4.11	0.0
November	6.0	2.57	*
December	6.5	2.57	0.1
ANNUALLY	78.1	34.73	1.1

(1) Mean number of days rainfall, 0.01" or more

(2) Average normal precipitation, in inches

(3) Mean number of days 1.0" or more

* Less than 0.05"

§ 15.1.5.4 Time extensions may be granted for rain days in any month when the cumulative number of rain days during that month exceeds the number scheduled, provided that the rainfall prevented the execution of major items of work on normal working days. No day will be counted as a rain day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The number of rain days shown in the above schedule for the first and last months of the Contract will be prorated in determining the total number of rain days expected during the period of the Contract

§ 15.1.5.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or under Contractor's control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. Only claims for extension of time shall be considered because of hindrances or delays not the fault of either Contractor or Owner, but only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. Board approval shall be required for any extension of time. No damages shall be paid for delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.5.6 Requests for time extension shall be submitted on a monthly basis and shall specify the time delay, the cause of the delay, and the responsible party for the delay, whether Contractor, Owner, rain day, or other. No claims for damages for delay shall be made by Contractor. Any claim not submitted under the terms of this Section shall be waived.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor ~~and Owner~~ waives all Claims against ~~Ownereach other~~ 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. This mutual waiver includes

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

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES/INITIAL DECISION

~~§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. 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 Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. 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 Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. 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 Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. 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 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. 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 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a~~

Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

§ 15.3 MEDIATION ALTERNATIVE DISPUTE RESOLUTION

~~§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution. 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 which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. 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. Or (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 parties shall jointly request the appointment of a neutral mediator by a District Judge of Tarrant County, Texas.)~~

~~§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. 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.~~

§ 15.4 NO ARBITRATION

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The~~

~~party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.~~

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

§ 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.

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

EXECUTED this _____ day of _____, 2015.

OWNER:

CONTRACTOR:

Dick Elkins

By:

Title: President, Board of Trustees

Title:

Eagle Mountain-Saginaw Independent School District

ATTEST:

By: Donna Webb

Title: Secretary, Board of Trustees

Eagle Mountain-Saginaw Independent School District