

# DRAFT AIA® Document A101® - 2017

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

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

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

«Alamo Community College District (sometimes, Alamo Colleges, Alamo Colleges District, ACCD or District)« »  
«2222 N. Alamo Street, Room W-3439D »  
«San Antonio, Texas 78215 »  
« »

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

« »« »  
« »  
« »  
« »

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

« »  
« »  
« »

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

« »« »  
« »  
« »  
« »

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.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**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

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 See Basic Definitions at §§ 1.1 of the General Conditions of the Contract for Construction - A201-2017, as amended (sometimes, A201). Unless otherwise noted, terms in this Agreement shall have the same meaning as those in A201-2017, as amended. All references to AIA Documents of any kind refer to and mean the AIA Document, as amended by the District, due to the District's status as a governmental entity.

§ 1.2 **General Conditions of the Contract for Construction.** The general conditions of the contract shall be as set forth herein or in A201-2017, as amended which document is incorporated herein by reference. The term "Contractor" as used herein or in A201-2017, as amended shall mean the Construction Manager; and the term "Construction Manager, as used herein or in A201-2017, as amended shall mean the "Contractor".

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

§ 1.4 **Owner's Designated Representative.** The Owner designates the **Designated Representative(s)** identified at Article 8 of this Agreement to act on its behalf, in the day-to-day administration of the Project, to issue stop work orders, and to authorize or reject expenditures within the contingencies. In addition, the Owner's Designated Representative(s), is authorized to: approve in writing the utilization of specific forms to substitute for any form specified for or provided for in the Contract or the Contract documents; terminate the contract; suspend the contract; and take any other action not specifically delegated to the Owner's Authorized Representative. Designated Representative may, in its sole discretion, seek guidance or approval of a proposed action from Owner or Owner's Authorized Representative.

### 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:  
(Check one of the following boxes.)

[  ] The date of this Agreement.

[ « » ] A date set forth in a notice to proceed issued by the Owner.

[ «X» ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

«The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued 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 and approved as to form, all required payment and performance bonds and insurance. »

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work, as defined above.

§ 3.2.1 **Owner's Float.** The Contract Time shall include Owner's Float, which must be indicated on Project Schedule, described in the A201, as amended. The Owner's Float must be no less than ten (10%) percent of the total construction phase duration measured from the date of the Notice to Proceed to Substantial Completion). The Owner's Float may be used by the Contractor for the Project only with the written consent of the Owner, which may be granted in its sole discretion, if at all.

§ 3.2.2 **TIME IS OF THE ESSENCE.**

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

Final Completion must be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 3.3.2 If applicable, subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
Not Applicable	Not Applicable

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5 below.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum (less any deductions authorized under the Contract Documents and less any unused contingencies) 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. The Contract Sum represents all insurance, bonds, labor, materials, services, equipment and all costs necessary for completion of the Work.

§ 4.1.1 **Owner's Contingency, if any.** The Contract Sum contains an Owner's Contingency in the amount of \$\_\_\_\_\_. This contingency is for the sole use of the Owner, in its sole discretion, to be used for changes in the scope of the Work and/or for the betterment of the Project. Owner's Authorized Representative may approve any expenditure from Owner's Contingency without further Board of Trustees approval. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the

Owner in calculating final payment. Notwithstanding anything to the contrary, there is no contingency for the Contractor.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Intentionally Omitted.

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

*(Identify each allowance.)*

Item	Price

Contractor must also comply with the Allowance Requirements at §§ 3.8 of the A201, as amended.

§ 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)

§ 4.5 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

<< >>

**§ 4.5.1 Substantial Completion. TIME IS OF THE ESSENCE IN ALL PHASES OF THE WORK. IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY AND BETWEEN OWNER AND CONTRACTOR THAT TIME IS OF THE ESSENCE IN THE SUBSTANTIAL COMPLETION OF THE PROJECT AND OWNER SHALL SUSTAIN DAMAGES AS A RESULT OF CONTRACTOR'S FAILURE, NEGLIGENCE OR REFUSAL TO ACHIEVE SAID DEADLINES. SUCH DAMAGES ARE, AND WILL CONTINUE TO BE, IMPRACTICABLE AND EXTREMELY DIFFICULT TO DETERMINE. EXECUTION OF THIS AGREEMENT UNDER THESE SPECIFICATIONS SHALL CONSTITUTE AGREEMENT BY OWNER AND CONTRACTOR THAT THE AMOUNTS STATED BELOW ARE THE MINIMUM VALUE OF THE COSTS AND DAMAGES CAUSED BY FAILURE OF CONTRACTOR TO COMPLETE THE WORK WITHIN THE ALLOTTED OR AGREED EXTENDED TIMES OF SUBSTANTIAL COMPLETION, THAT SUCH SUMS ARE LIQUIDATED DAMAGES AND SHALL NOT BE CONSTRUED AS A PENALTY, AND THAT SUCH SUMS MAY BE DEDUCTED FROM PAYMENTS DUE 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 INCREASED COSTS, ALL OF WHICH ARE DIFFICULT TO EXACTLY ASCERTAIN. FAILURE TO COMPLETE THE WORK WITHIN THE DESIGNATED OR AGREED EXTENDED DATES OF SUBSTANTIAL COMPLETION SHALL BE CONSTRUED AS A BREACH OF THIS AGREEMENT. IT IS EXPRESSLY AGREED AS A PART OF THE CONSIDERATION INDUCING THE OWNER TO EXECUTE THIS AGREEMENT THAT THE OWNER MAY DEDUCT FROM ANY PAYMENT MADE TO THE CONTRACTOR A SUM EQUAL TO \$\_\_\_\_\_ PER DAY FOR EACH AND EVERY ADDITIONAL CALENDAR DAY BEYOND THE AGREED DATE OF SUBSTANTIAL COMPLETION.**

Owner's Initials

Contractor's Initials

**§ 4.5.2 Final Completion.** IN ADDITION, TIMELY FINAL COMPLETION IS AN ESSENTIAL CONDITION OF THIS AGREEMENT. CONTRACTOR AGREES TO ACHIEVE FINAL COMPLETION OF THE AGREEMENT WITHIN 30 CALENDAR DAYS OF THE DESIGNATED OR AGREED EXTENDED DATE OF SUBSTANTIAL COMPLETION. IT IS SPECIFICALLY UNDERSTOOD AND AGREED BY AND BETWEEN OWNER AND CONTRACTOR THAT TIME IS OF THE ESSENCE IN THE FINAL COMPLETION OF THE PROJECT AND OWNER SHALL SUSTAIN ADDITIONAL DAMAGES AS A RESULT OF CONTRACTOR'S FAILURE, NEGLIGENCE OR REFUSAL TO ACHIEVE SAID DEADLINE. SUCH DAMAGES ARE, AND WILL CONTINUE TO BE, IMPRACTICABLE AND EXTREMELY DIFFICULT TO DETERMINE. EXECUTION OF THIS AGREEMENT UNDER THESE SPECIFICATIONS SHALL CONSTITUTE AGREEMENT BY OWNER AND CONTRACTOR THAT THE AMOUNTS STATED BELOW ARE THE MINIMUM VALUE OF THE COSTS AND DAMAGES CAUSED BY FAILURE OF CONTRACTOR TO COMPLETE THE WORK WITHIN THE ALLOTTED OR AGREED EXTENDED TIMES FOR FINAL COMPLETION, THAT SUCH SUMS ARE LIQUIDATED DAMAGES AND SHALL NOT BE CONSTRUED AS A PENALTY. IT IS EXPRESSLY UNDERSTOOD THAT THE SAID SUM PER DAY IS AGREED UPON AS A FAIR ESTIMATE OF THE PECUNIARY DAMAGES WHICH WILL BE SUSTAINED BY THE OWNER IN THE EVENT THAT THE WORK IS NOT FINALLY COMPLETED WITHIN THE AGREED TIME, OR WITHIN THE AGREED EXTENDED TIME, IF ANY, OTHERWISE PROVIDED FOR HEREIN. SAID SUM SHALL BE CONSIDERED AS LIQUIDATED DAMAGES ONLY AND IN NO SENSE SHALL BE CONSIDERED A PENALTY, SAID DAMAGES BEING CAUSED BY, BUT NOT LIMITED TO, ADDITIONAL COMPENSATION FOR THE FOLLOWING CATEGORIES OF DAMAGES TO THE OWNER: POTENTIAL HAZARDS TO STUDENTS, STAFF AND VISITORS, ADDITIONAL ARCHITECTURAL, ENGINEERING, PROGRAM MANAGEMENT FEES (AND FEES OF ANY OTHER CONSULTANTS); INCREASED ADMINISTRATIVE OR OPERATIONAL EXPENSES; ADDITIONAL ATTORNEY'S FEES; INCREASED MAINTENANCE AND CUSTODIAL COSTS AND ADDITIONAL, UTILITIES, SECURITY AND CLEAN-UP COSTS, AND OTHER INCREASED COSTS INCLUDING BUT NOT LIMITED TO THOSE COSTS SET FORTH IN THE PRECEDING PARAGRAPH. FAILURE TO COMPLETE THE WORK WITHIN THE DESIGNATED OR AGREED EXTENDED DATES OF FINAL COMPLETION SHALL BE CONSTRUED AS A BREACH OF THIS AGREEMENT. OWNER AND 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 \$ \_\_\_\_ PER DAY. OWNER MAY DEDUCT SUCH LIQUIDATED DAMAGES FROM ANY PAYMENT MADE TO CONTRACTOR BEFORE OR AT FINAL PAYMENT; 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.

Owner's Initials

Contractor's Initials

**§ 4.5.3** Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and 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.

**§ 4.6 Other:**

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Architect or Owner, 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:

«N/A »

§ 5.1.3 The Contractor shall submit monthly Applications for Payment and Project Schedule to both the Architect and Owner on AIA Form G702 or other Owner approved form, for approval. Continuation sheets shall be submitted on AIA Form G703 or other Owner approved form. The monthly Project Schedule shall be submitted on or in a form approved by Owner. If the Architect approves the application, then they shall submit a Certificate for Payment to the Owner. The Architect or Owner 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 Owner shall pay the undisputed amounts to the Contractor within forty-five (45) days of receipt of the Certificate for Payment from the Architect unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

§ 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, less any unused Owner's contingency, if any, 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 or Owner may require. This schedule of values 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 the schedule of values actually completed of each portion of the Work as of the end of the period covered by the Application for Payment.

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

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

- .1 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;
- .2 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; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Article 7.3.9 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect or Owner has previously withheld a Certificate for Payment as provided in Article 9 of the A201–2017, as amended;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect or Owner may withhold payment, or nullify a Certificate of Payment in whole or in part,

as provided in Article 9 of the A201–2017, as amended, or amounts certified by the Architect and disputed by the Owner;

- .5 The shortfall, if any, indicated by the Contractor in the documentation required by this Article 5, to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors or other representatives in such documentation;
- .6 Retainage withheld pursuant to the Contract Documents;
- .7 Liquidated damages or any other damages or amounts provided in the Contract Documents, including clean-up fees, that Owner is entitled to deduct, withhold or assess; and
- .8 Such amounts as the Architect or Owner (or Owner’s Program Manager, if applicable), shall determine as the cost for completing incomplete Work and/or the value of unsettled claims.

§ 5.1.6.3 Owner will not pay Contractor for any costs or expenses incurred within the Contract Sum or any amendment thereto prior to the Owner’s issuance of a Notice to Proceed with the Construction and a fully executed Agreement.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Final Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five Percent (5%)

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

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

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

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

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Final Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7, and Section 9.3.1.3 of the A201-2017, as modified for this Project.

§ 5.1.8 Intentionally Omitted.

§ 5.1.9 Except with the Owner’s prior written approval or as otherwise provided in Section 9.3.2 of the AIA Document A201-2017, as amended, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 5.1.10 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.

§ 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 after

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct nonconforming Work and to satisfy other requirements, if any, which Owner agrees in writing necessarily extends beyond final payment;
- .2 the Contractor has provided all documents required by §§3.5 and §§9.10 of AIA A201-2017, as amended, and the Contract Documents;
- .3 a final Certificate for Payment has been issued by the Architect and Owner; and
- .4 Owner accepts the Work and approves the Final Payment.

In no event shall the final payment exceed the Contract Sum approved by the Owner.

§ 5.2.2 The Owner’s final payment of undisputed sums to the Contractor shall be made no later than 30 days after Owner accepts the Work and approves the Final Payment.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest pursuant to Texas Government Code Section 2251.025.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 All disputes relating to this Agreement shall be resolved pursuant to the Terms of Section 6.2 below, Article 15 of the AIA Document A201-2017, as amended for this Project, and the Contract Documents.

« »  
« »  
« »  
« »

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

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated or suspended by the Owner or the Contractor as provided in Article 14 of AIA A201–2017, as amended and the Contract Documents.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s Designated representative(s):

*(Name, address, email address, and other information)*

« Thomas Cleary Ph.D.  
Vice Chancellor for Finance and Administration



Alamo Colleges District  
2222 N. Alamo St., Room 303D  
San Antonio, TX 78215

Greg McClure  
Associate Vice Chancellor Facilities and Construction Mgmt.  
2222 N. Alamo St.,  
San Antonio, TX 78215 »

<< »  
<< »  
<< »  
<< »  
<< »

**§ 8.3 The Contractor's Designated Representative:**  
*(Name, address, email address, and other information)*

<< »  
<< »  
<< »  
<< »  
<< »  
<< »

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

**§ 8.5 Insurance and Bonds**

§ 8.5.1 The Owner and the Contractor must purchase and maintain insurance as set forth in AIA A101-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as amended, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor must provide bonds as set forth in AIA A101-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as amended, Exhibit A, Insurance and Bonds, AIA A201-2017, as amended, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, as amended, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, as amended and if completed, and as otherwise set forth by Owner, in writing.

**§ 8.7 Other provisions:**

§ 8.7.1 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 Bexar County, Texas.

§ 8.7.2 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.

§ 8.7.3 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.

§ 8.7.4 Section 1.5 of AIA Document A201-2017, as amended, shall govern Contractor's use of the Construction Documents.

§ 8.7.5 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.

§ 8.7.6 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.

§ 8.7.7 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. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 8.7.8 The Contractor and its Subcontractors must comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. 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.

§ 8.7.9 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.

§ 8.7.10 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 and sub-subcontractors.

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

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

§ 8.7.13 This Agreement is subject to all applicable federal and state laws, rules, and regulations. Invalidation 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.

§ 8.7.14 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.

§ 8.7.15 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in the AIA A201-2017, General Conditions of the Contract for Construction, as amended for the Project.

§ 8.7.16 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.

§ 8.7.17 No delay or omission by Owner in exercising any right or power accruing upon the noncompliance or failure of performance by Contractor 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 Owner of any of the covenants, conditions or agreements hereof to be performed by Contractor shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained. For a waiver to be effective, it must be signed by Owner's Authorized Representative.

§ 8.7.18 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.

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

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

§ 8.7.21 The Contractor verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

#### §8.7.22 Open Records

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

.2 The Contractor must:

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

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

.3 On completion of the Contract, either:

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

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

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

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

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

.6 If Contractor is not a sole proprietorship, has ten (10) or more employees, and the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the Owner, unless excepted from that law.

7. As required by Texas Government Code Ann. Chapter 2274, if Contractor has ten (10) or more employees, is not a sole proprietorship, and if the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner, unless excepted by that law.

« »

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101–2017, Standard Form of Agreement Between Owner and Contractor, as amended
- .2 AIA Document A101–2017, Exhibit A, Insurance and Bonds, as amended
- .3 AIA Document A201–2017, General Conditions of the Contract for Construction, as amended
- .4 AIA Document E203–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

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

.5 Drawings

Number	Title	Date

.6 Specifications

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages

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

- .8 Other Exhibits:  
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[  ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

Not Applicable unless completed and executed by the Parties

[  ] The Sustainability Plan:

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

[  ] Supplementary and other Conditions of the Contract:

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

- .9 Other documents, if any, listed below:

- .1 **EXHIBIT A – DAVIS BACON WAGE RATES;**
- .2 **EXHIBIT B – ALAMO COLLEGE DESIGN AND CONSTRUCTION STANDARDS (Available Online);**
- .3 **EXHIBIT C – PAYMENT AND PERFORMANCE BONDS;**
- .4 **EXHIBIT D – REQUIRED DBRA JOB SITE NOTICE;**
- .5 **EXHIBIT E - GUIDELINES ON UTILIZATION OF SMALL MINORITY WOMEN AND/OR VETERAN BUSINESS ENTERPRISE;**
- .6 **EXHIBIT F – CRIMINAL BACKGROUND CHECK CERTIFICATION FORM;**
- .7 **EXHIBIT G –INTERNSHIP PROGRAM PARAMETERS; and**
- .8 **EXHIBIT H – PROJECT MANAGEMENT SOFTWARE.**

**If any of the aforementioned Attachments to Exhibit A or Exhibits in Section 9.1 above, which are all incorporated by reference to this Agreement, are not attached hereto, Contractor shall comply with the latest version of said Attachment or Exhibit in effect as of the date of this Agreement.**

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

**RFP AND CONTRACTOR’S PROPOSAL FOR THE PROJECT  
ARE INCORPORATED BY REFERENCE HEREIN »**

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

THE  
AIA  
BR  
D

<p><b>OWNER:</b> Alamo Community Colleges District</p> <p>_____</p> <p><b>By:</b> _____</p> <p><b>Title:</b> _____</p>	<p><b>CONTRACTOR:</b></p> <p>_____</p> <p><b>By:</b> _____</p> <p><b>Title:</b> _____</p>
--	---

Approved as to form by District's Counsel

\_\_\_\_\_



**EXHIBIT A**

**Davis Bacon Wage Rates (Building and Heavy Machinery)**

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

This is for information only.

The most current applicable Davis Bacon Wage rates on the Date of the Contract execution by the District shall apply.



"General Decision Number: TX20240231 08/30/2024

Superseded General Decision Number: TX20230231

State: Texas

Construction Type: Building

County: Bexar County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	01/12/2024

2	04/05/2024
3	06/14/2024
4	07/05/2024
5	08/30/2024

\* ASBE0087-014 06/03/2024

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)....	\$ 29.50	8.79

-----  
 BOIL0074-003 07/01/2023

	Rates	Fringes
BOILERMAKER.....	\$ 37.00	24.64

-----  
 ELEC0060-003 01/01/2024

	Rates	Fringes
ELECTRICIAN (Communication Technician Only).....	\$ 33.50	18%+5.45

-----  
 ELEC0060-004 01/01/2024

	Rates	Fringes
ELECTRICIAN (Excludes Low Voltage Wiring).....	\$ 33.50	18%+5.45

-----  
 ELEV0081-001 01/01/2024

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 48.92	37.885+a+b

FOOTNOTES:

a. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

b. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

-----  
 ENGI0450-002 04/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR Cranes.....	\$ 34.85	9.85

-----  
 IRON0066-013 06/01/2023

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 26.00	7.53

-----  
 IRON0084-011 06/01/2023

	Rates	Fringes
--	-------	---------

IRONWORKER, ORNAMENTAL.....\$ 27.51 8.13  
-----

PLUM0142-009 07/01/2024

Rates Fringes

HVAC MECHANIC (Electrical  
Temperature Control  
Installation & Unit  
Installation Only).....\$ 36.87 11.48  
PIPEFITTER (Including HVAC  
Pipe Installation).....\$ 36.87 11.48  
Including HVAC Pipe Installation  
PLUMBER.....\$ 36.87 11.48  
Excludes HVAC Pipe Installation

SFTX0669-002 04/01/2024

Rates Fringes

SPRINKLER FITTER (Fire  
Sprinklers).....\$ 36.15 23.88  
-----

\* SHEE0067-004 07/03/2024

Rates Fringes

Sheet metal worker  
Excludes HVAC Duct  
Installation.....\$ 32.24 15.89  
HVAC Duct Installation Only.\$ 32.24 15.89  
-----

\* SUTX2014-006 07/21/2014

Rates Fringes

BRICKLAYER.....\$ 22.15 0.00  
  
CARPENTER (Acoustical Ceiling  
Installation Only).....\$ 17.83 0.00  
  
CARPENTER (Form Work Only).....\$ 13.63 \*\* 0.00  
  
CARPENTER, Excludes  
Acoustical Ceiling  
Installation, Drywall  
Hanging, Form Work, and Metal  
Stud Installation.....\$ 16.86 \*\* 4.17  
  
CAULKER.....\$ 15.00 \*\* 0.00  
  
CEMENT MASON/CONCRETE FINISHER...\$ 22.27 5.30  
  
DRYWALL FINISHER/TAPER.....\$ 13.81 \*\* 0.00  
  
DRYWALL HANGER AND METAL STUD  
INSTALLER.....\$ 15.18 \*\* 0.00  
  
ELECTRICIAN (Low Voltage  
Wiring Only).....\$ 20.39 3.04  
  
IRONWORKER, REINFORCING.....\$ 12.27 \*\* 0.00  
  
LABORER: Common or General.....\$ 10.75 \*\* 0.00

LABORER: Mason Tender - Brick...	\$ 11.88 **	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 12.00 **	0.00
LABORER: Pipelayer.....	\$ 11.00 **	0.00
LABORER: Roof Tearoff.....	\$ 11.28 **	0.00
LABORER: Landscape and Irrigation.....	\$ 8.00 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 15.98 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 14.00 **	0.00
OPERATOR: Bulldozer.....	\$ 14.00 **	0.00
OPERATOR: Drill.....	\$ 14.50 **	0.00
OPERATOR: Forklift.....	\$ 12.50 **	0.00
OPERATOR: Grader/Blade.....	\$ 23.00	5.07
OPERATOR: Loader.....	\$ 12.79 **	0.00
OPERATOR: Mechanic.....	\$ 18.75	5.12
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.03 **	0.00
OPERATOR: Roller.....	\$ 12.00 **	0.00
PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping.....	\$ 13.07 **	0.00
ROOFER.....	\$ 12.00 **	0.00
TILE FINISHER.....	\$ 11.32 **	0.00
TILE SETTER.....	\$ 14.94 **	0.00
TRUCK DRIVER: Dump Truck.....	\$ 12.39 **	1.18
TRUCK DRIVER: Flatbed Truck.....	\$ 19.65	8.57
TRUCK DRIVER: Semi-Trailer Truck.....	\$ 12.50 **	0.00
TRUCK DRIVER: Water Truck.....	\$ 12.00 **	4.11

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the

minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that

no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

#### State Adopted Rate Identifiers

Classifications listed under the "SA" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R. 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

---

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this

initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

**EXHIBIT B**

**ALAMO COLLEGES DESIGN AND CONSTRUCTION STANDARDS**

Access this information on-line at the following link:

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



# **Exhibit C**

## **Payment and Performance Bonds Issued Prior to Commencement**

**EXHIBIT D**  
**REQUIRED DBRA JOB SITE NOTICE**

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

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

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

**ANNUNCIO PARA EMPLEADOS DE CONTRATISTAS**

"Toda queja de injusticias cometidas por el contratista por no pagar el sueldo establecido segun el tipo de trabajo que Ud. haga, se debe reportar a Ethics Hotline, phone 1-866-294-3696, <http://www.ethiRFPoint.com>. Ningun empleado que registre quejas referentes a irregularidades en su sueldo sera discriminado o despedido por el contratista/jefe por registrar la queja.

**EXHIBIT E**

**CRIMINAL BACKGROUND CHECK CERTIFICATION**

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

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

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

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

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT F INTERNSHIP PROGRAM PARAMETERS

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

### A. **Role of the Employer**

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

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

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

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

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

**EXHIBIT G**  
**PROJECT MANAGEMENT SOFTWARE**

## EXHIBIT H

### PROJECT MANAGEMENT SOFTWARE

#### PART 1 - GENERAL

##### 1.1 DESCRIPTION

A. Owner requires the use of Project Management Software (Software) to track the progress of planning, design, and/or construction contracts. Software is an internet-accessed project tracking application featuring a centralized database of project information, assisting the Owner and Owner's Representative in managing project documents and communications. The joint use of Software is to facilitate electronic exchange of information, key processes, and overall management of the contract.

B. Software shall be the primary means of project information submission and management. All project documentation and correspondence, including, but not limited to, Invoices, Submittals, Architect's Supplemental Instruction, Requests for Information (RFI), Requests for Proposal (RFP), Change Orders, etc. are to be transmitted electronically using Software.

C. Documents requiring original signature will be input into Software, and signed originals are to be received by Owner's Representative on the same day the document is logged in electronically in Software.

D. When required by the Owner or Owner's Representative, paper documents shall also be provided (e.g., the signature of Contract Modifications and submission of Contract Claims). In the event of discrepancy between the electronic version and paper documents, paper documents shall govern.

E. Documents received that are not input into Software may not be accepted by the Owner and Owner's Representative.

##### 1.2 USER ACCESS LIMITATIONS

A. The Owner's Representative will control access to Software by allowing access and assigning user profiles to authorized users. User profiles will define levels of access into the system, determine assigned function-based authorizations (what can be seen), and determine assigned user privileges (what can be done).

B. The Owner will provide access to the Software upon notice that Contractor has activated a license with the Software company, thereby creating an authorized user. Sub-consultants, sub-contractors, and/or suppliers will not have direct access to Software unless those entities activate a license with the Software company. The Sub-consultants, sub-contractors, and/or suppliers may purchase seat licenses from the Software company. Entry of information exchanged and/or transferred between authorized users and sub-consultants, sub-contractors, and/or suppliers on Software shall be the responsibility of the authorized users.

C. Owner will not reimburse for the cost of Software. Accounts can be purchased at no additional cost to the Owner by payment to the Software company. Each account will allow one (1) user to access the system per login. Other costs associated with the use of this system shall be evenly distributed in project overhead and spread across the duration of the contract (a separate cost line item shall not be allowed).

D. A minimum of one (1) half day training session on Software will be provided by the Owner to all authorized users as required. Training time shall be at a mutually agreed upon date and site.

E. Data entered in a collaborative mode (i.e., entered with the intent to share as determined by

permissions and workflows within the Software system) by any and all authorized users shall be jointly owned.

### 1.3 AUTOMATED SYSTEM NOTIFICATION AND AUDIT LOG TRACKING

A. Review comments made (or lack thereof) by the Owner, Owner's Representative, Architect, and/or Engineer on submitted documentation shall not relieve parties from compliance with requirements of the Contract Documents.

B. All parties are responsible for managing, tracking, and documenting work to comply with the requirements of the Contract Documents. Owner or Owner Representative acceptance via automated system notifications or audit logs extends only to the face value of submitted documentation and does not constitute validation of submitted information.

### 1.4 COMPUTER REQUIREMENTS

A. Authorized users shall use computer hardware and software that meets the minimum requirements of the Software system as recommended by the manufacturer to access and utilize Software. As recommendations are modified authorized users shall upgrade their system(s) as required to meet the minimum recommendations. In the event that cloud-based systems are used, users shall ensure proper browser compatibility. Upgrading of a user's computer system(s) shall not be justification for a cost or time modification to the Contract.

B. Authorized users shall ensure that connectivity to the Software system (whether at the home office or jobsite) is accomplished through high-speed access, as the time required to download information and input data becomes excessive and may cause the system to "time out".

### 1.5 USER RESPONSIBILITY

A. Authorized users shall be responsible for the validity of their information placed in Software and for the abilities of their personnel. Authorized users shall be knowledgeable in the use of computers, including Internet Explorer, e-mail programs such as Outlook, word processing programs such as Word, spreadsheet programs such as Excel, and Adobe Portable Document Format (PDF) document distribution programs.

B. Authorized users shall utilize existing Owner approved forms in Software to the maximum extent possible. If a form does not exist in Software and subject to Owner's approval, users may include as an attachment or by uploading the data file, PDF documents will be created through electronic conversion rather than optically scanned.

### 1.6 USER ACCESS ADMINISTRATION

A. All parties shall provide the Owner's Representative with a list of key personnel for acceptance. List shall include authorized users of Software.

B. Notify the Owner's Representative immediately of any users that are to have access removed. Resubmit the personnel list whenever modified. User changes will take effect within one (1) working day of accepting the requested change.

C. The Owner reserves the right to perform a security check on all potential users.

### 1.7 CONNECTIVITY PROBLEMS

A. Software is a web-based environment and therefore subject to inherent speed and connectivity problems of the Internet. Authorized users provided access shall be responsible for their own connectivity to the Internet.

B. Software response time is dependent on the user's equipment, including processor speed, modem speed, Internet access speed, etc. and current traffic on the Internet. The Owner will not be liable for any delays associated from the usage of Software including, but not limited to slow response time, down time periods, connectivity problems, or loss of information.

## **PART 2 - P R O D U C T S**

### **2.1 SOFTWARE COMPANY**

A. Refer to the attached "External User License Purchase Order" at the end of this document.

B. Pricing: Subject to change

1. Cost for each (1) user license is \$695 annually.

2. \$100 setup for first year

3. Web-based training is required for new users. Cost for training is \$600.

4. Example 1: If order is for 1 user, invoice will be \$695 annual subscription (1 user license) plus \$100 setup, plus \$600 for 1 web-based training session for a total of \$1,395.

5. Example 2: If order is for 8 users, invoice will be for \$5,560 annual subscription (8 users licenses @ \$695 each) plus \$100 setup, plus \$600 for 1 web-based training session for a total of \$6,260.

C. Once payment is made, user account(s) will be added with expiration date after one year unless renewed.

D. Credit cards are accepted with a 4% convenience fee.

E. Texas Sales Tax 8.25%

## **PART 3 - E X E C U T I O N**

### **3.1 SOFTWARE UTILIZATION**

A. Software shall be utilized in connection with submittal preparation and information management. Requirements of this section are in addition to requirements of all other contract requirements. Users will be provided a playbook for full application use instructions.

1. Design Document Submittals: Provide all concept drawings, review phase submissions, contract documents and specifications in PDF format and native file format.

2. Shop Drawings: Shop drawing and design data documents shall be submitted as PDF attachments to the Software submittal workflow process and form. All PDF shop drawing submittal documents shall have the Contractor's review and submittal stamp (including signatures) as specified in Specification Section "Submittal Procedures", the same as if submitted as hard copy. Examples of shop drawings include, but are not limited to:



- a Standard manufacturer installation drawings.
  - b Drawings prepared to illustrate portions of work designed or developed by the Contractor.
  - c Steel fabrication, piece, and erection drawings.
  - d Paving and grading plans
  - e Traffic safety and control plan
3. Product Data: Product catalog data and manufacturer's instructions shall be submitted as PDF attachments to the Software submittal workflow process and form, except that color charts and similar color-oriented pages shall be submitted as hard copy separate from and in addition to the PDF copy. Submittal forms shall indicate when hard copy color documents are submitted. All PDF product data submittal documents shall have the Contractors review and submittal stamp (including signatures) as specified in Specification Section "Submittal Procedures", the same as if submitted as hard copy. Examples of product data include, but are not limited to:
- a Manufacturer's printed literature.
  - b Preprinted product specification data and installation instructions.
4. Samples: Sample submittals shall be physically submitted as specified in Specification Section "Submittal Procedures". Contractor shall enter submittal data information into Software with a copy of the transmittal form(s) attached to the submittal. Examples of samples include, but are not limited to:
- a Product finishes and color selection samples.
  - b Product finishes and color verification samples.
  - c Finish/color boards.
  - d Physical samples of materials.
5. Administrative Submittals: All administrative submittals shall be recorded within the Software. Examples of administrative submittals include, but are not limited to:
- a Master Schedule
  - b List of contact personnel.
  - c Plans for safety, demolition, environmental protection, and similar activities.
6. Administrative Processes: All administrative tasks shall be performed within the Software. Examples of administrative processes include, but are not limited to:
- a Requests for Information (RFI).
  - b Revision documents (ASI, Clarification, Minor Change).
  - c Submittal Register.

- d Field activity and observation reports (including daily reports)
  - e Rework Items List, etc.
  - f Meeting minutes for quality control meetings, progress meetings, pre-installation meetings, etc.
  - g Punchlist
  - h Warranty requests and tracking log.
7. Cost and Contract Submittals:
- a Contracts
  - b Invoices
  - c Applications for Payment
  - d Proposal Requests (PR, CPR, or RFP)
  - e Change Orders (CO)
  - f Allowance Expenditure Authorization (AEA)
8. Compliance Submittals: Test report, certificate, and manufacture field report submittals shall be submitted on Software as PDF attachments. Examples of compliance submittals include, but are not limited to:
- a Field test reports.
  - b Quality Control certifications.
  - c Manufacturers' documentation and certifications for quality of products and materials provided.
9. Record and Closeout Submittals: In addition to actual delivery of hard copies of Closeout Submittals, Closeout Submittals shall be submitted on Software as PDF documents. Examples of record submittals include, but are not limited to:
- a Consent of Surety
  - b Certificate of Completion (substantial, final, compliance)
  - c Certificate of Occupancy (temporary, final)
  - d Operation and Maintenance Manuals: Final documents shall be submitted as specified.
  - e As-built Drawings: Final documents shall be submitted as specified.
  - f Release of Lien
  - g Warranties

h Extra Materials, Spare Stock, etc.: Submittal forms shall indicate when actual materials are submitted.

10. Exceptions: Documents with legal consequences, contract modifications, contract claims, security implications, and those required by other agencies may require an additional submittal as original hard copy with original signatures and seals. Hard copies of these documents shall be submitted as specified or as directed by the Owner's Representative. Requirement of both hard and electronic submittals shall not be justification for a cost or time modification to the Contract.

END OF SECTION

# External User License Purchase Order

Please fulfill all required information fields and return to your Alamo Colleges Projectmates Site Admin.

**Pricing Overview:**

- Cost for each (1) user license is \$695 annually. There is a \$100 setup cost per user for first year.
- Web-based training is required for new users. Cost for training is \$600. **1 training is required per company.** Multiple users from same company can attend the same training.
- Once payment is made, user account(s) will be added with expiry after one year unless renewed.
- Texas Sales Tax 8.25% for clients with Texas address. Provide sales tax exemption form with the order to avoid the sales tax.

External Client Accounting Information	
New License (\$100/User)	Company Name: Designers R Us
License Purchase Quantity: 1 (\$695/Annual/User)	Company Address: 400 Great Dr, San Antonio, TX 78215
Company Training Required: <input checked="" type="checkbox"/> Yes (+\$600) <input type="checkbox"/> No	Accounting Contact Name: Jane Doe
Preferred Payment Method: Credit Card	Accounting Contact Email: jdoe@designersRus.com
Today's Date: 2/20/2023	Accounting Contact Phone: 210-555-5555

Please fulfill the License User Information table, this information is required to create the users in Projectmates.

UserName	FirstName	LastName	Address	City	State	ZipCode	Country	Phone	Email	Role
Jane Doe	Jane	Doe	400 Great Dr	San Antonio	Texas	78215	USA	210-555-5555	<a href="mailto:jdoe@designersRus.com">jdoe@designersRus.com</a>	Architect
										[Choose a role.]
										[Choose a role.]
										[Choose a role.]
										[Choose a role.]
										[Choose a role.]
										[Choose a role.]

Once complete this should be returned to Greg McClure [gmcclure6@alamo.edu](mailto:gmcclure6@alamo.edu), Brian Schonefeld [bschonefeld@alamo.edu](mailto:bschonefeld@alamo.edu), Deborah Whitis [dwhitis@alamo.edu](mailto:dwhitis@alamo.edu), Kyle LeBlanc [kjleblanc@lan-inc.com](mailto:kjleblanc@lan-inc.com), or Chelsea Randle [clrandle@lan-inc.com](mailto:clrandle@lan-inc.com). You will be contacted for invoicing by Systemates.

After the payment is processed, users will be created, Systemates will confirm with you these are created and Alamo Colleges will add users to appropriate projects. If training is required once the users are created, a Projectmates Representative will reach out via email to coordinate training date.

# DRAFT AIA® Document A101® - 2017

## Exhibit A

### Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the «\_\_\_\_» day of «>» in the year «202»  
(In words, indicate day, month and year.)

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

«>  
«>

THE OWNER:  
(Name, legal status and address)

« Alamo Community College District »  
« 2222 N. Alamo Street, Room W-3439D »  
« San Antonio, Texas 78215 »

THE CONTRACTOR:  
(Name, legal status and address)

«>  
«>  
«>

#### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

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

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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

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

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

L & B  
06384/0061/L2209464.DOCX/3  
ELECTRONIC COPYING of  
any portion of this AIA®  
Document to another  
electronic file is prohibited  
and constitutes a violation

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ A.2.3 Required Property Insurance

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

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

§ A.2.3.1.2 Intentionally Omitted.

§ A.2.3.1.3 Intentionally Omitted

§ A.2.3.1.4 Intentionally Omitted.

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

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner may purchase and maintain, until the expiration of the period for correction of Work as set forth in the General Conditions, property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.3.3.2, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Intentionally Omitted.

§ A.2.5 Other Optional Insurance.

The Owner may purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

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

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

**ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS****§ A.3.1 General**

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

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. If the insurance required by this Section A.3.1 is subject to deductibles or self-insured retentions, the Contractor shall be responsible for all loss not covered because of such deductibles or retentions. For any claim made against the Contractor's policies of insurance, the deductible shall not exceed \$25,000.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage and any other insurance required by the Agreement, with the exception of Workers' Compensation insurance and professionally liability insurance, to be endorsed to include (1) the Owner, governing body, officials, employees, agents, 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 for which loss occurs during completed operations. All the additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, or its equivalents and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04 or its equivalents.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor and the Contractor's subcontractors must 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, in the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. (See also the additional insurance requirements included in Article 11 of the 2017 AIA A201 General Conditions as amended for this Project and elsewhere in the Contract Documents.) The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in the Contract Documents and for an additional four (4) years. The insurance required by this Section shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever

coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the 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 and for an additional four (4) year. The limits of liability for such insurance shall be in at least the following amounts as specified below.

« »

### § A.3.2.2 Commercial General Liability

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

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

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

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

§ A.3.2.3 Automobile Liability covering, hired, or any other vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than those stated below per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. (Note: Owner's minimum is \$100,000 per person, \$300,000 per



occurrence, and \$100,000 property damage.) Such minimum limits shall be stated as follows, or in a combined single limit policy in the amount of at least \$ 2,000,000.

- .1 Bodily Injury (per person) 2,000,000
- .2 Bodily Injury (per accident) \$4,000,000
- .3 Property Damage \$2,000,000

§ A.3.2.4 The Contractor may not achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

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

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

§ A.3.2.5 Workers' Compensation.

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

§ A.3.2.5.1 Texas Workers' Compensation Insurance.

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

§ A.3.2.5.1.1 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.

§ A.3.2.5.1.2 Persons providing services on the Project ("subcontractor" in Texas Labor Code Section 406.096) include all persons or entities performing all or part of the services the 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.

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

§ A.3.2.5.1.4 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), as amended for all employees of the Contractor providing services on the Project for the duration of the Project.

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

§ A.3.2.5.1.6 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 and policy with the Owner showing that coverage has been extended.

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

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

§ A.3.2.5.1.8 The Contractor shall retain all required certificates of coverage and policies for the duration of the Project and for four years thereafter.

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

§ A.3.2.5.1.10 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.

§ A.3.2.5.1.11 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 and policy showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
- .3 Provide to the Contractor, prior to the end of the coverage period, a new certificate of coverage and policy showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .4 Obtain from each other person with whom it contracts, and provide to the Contractor:
  - .1 A certificate of coverage and policy, prior to the other person beginning work on the Project; and
  - .2 A new certificate of coverage and policy showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .5 Retain all required certificates of coverage and policies on file for the duration of the Project and for four years 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 and policies to be provided to the person for whom they are providing services.

§ A.3.2.5.1.12 By signing this Contract or providing or causing to be provided a certificate of coverage and policy, 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.

§ A.3.2.5.1.13 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor.

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

§ A.3.2.6 Employers' Liability with policy limits not less than «two million » (\$ «2,000,000 » ) each accident, «two million » (\$ «2,000,000 » ) each employee, and «four million » (\$ «4,000,000 » ) policy limit.

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

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

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than «two million » (\$ «2,000,000 » ) per claim and «four million » (\$ «4,000,000 » ) in the aggregate.

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

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

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

### § A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in the Contract Documents, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ A.3.3.2 The Contractor must purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

[  ] § A.3.3.2.1 **Builder's Risk Property Insurance Policy.** Contractor must purchase a Builder's risk insurance policy. The Contractor shall disclose to the Owner the amount of any deductible, and the Contractor shall be responsible for losses within the deductible. The Contractor shall provide the Owner with a copy of the Builder's Risk property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with the General Conditions unless otherwise set forth below:

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

.2 Intentionally Omitted.

.3 Intentionally Omitted.

.4 Intentionally Omitted.

.5 Intentionally Omitted.

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

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

.8 **Employee Theft or Dishonesty.** If this Builder's Risk 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.

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

.10 Intentionally Omitted..

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

[  ] § A.3.3.2.2 **Railroad Protective Liability Insurance**, with policy limits of not less than  (\$  ) per claim and  (\$  ) in the aggregate, for Work within fifty (50) feet of railroad property, if any.

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

[  ] § A.3.3.2.4 Intentionally Omitted.

[  ] § A.3.3.2.5 Intentionally Omitted

[  ] § A.3.3.2.6 Other Insurance

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits

**§ A.3.4 Performance Bond and Payment Bond**

At least, prior to the performance of any Work, the Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located subject to the requirements of Contract Documents, as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	<input type="text" value="Contract Sum"/>
Performance Bond	<input type="text" value="Contract Sum"/>

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

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

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

See Contract Documents for additional insurance and bond requirements.

In addition, the Owner reserves the right to review the insurance requirements for this Project and to adjust the lines of insurance coverage and their limits when considered necessary and prudent by the Owner. Contractor agrees to make any reasonable request for addition, deletion, revision or modification of insurance policy limits, coverages, terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation(s) binding upon either party to this Agreement or it is not reasonably available). Upon written request by the Owner, Contractor shall exercise reasonable efforts to accomplish such changes requested by Owner. Owner shall pay the actual and verifiable costs incurred in effecting the Owner requested changes to the insurance requirements. »

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

\_\_\_\_\_  
**OWNER (Signature)**

\_\_\_\_\_  
**CONTRACTOR (Signature)**

# DRAFT AIA® Document A201® - 2017

## General Conditions of the Contract for Construction under the A101-2017, as amended

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

« »  
« »  
« »

THE OWNER:  
(Name, legal status and address)

«Alamo Community College District (sometimes Alamo Colleges, Alamo Colleges District, ACCD or District »« »  
«2222 N. Alamo Street, Room W-3439D, San Antonio, Texas 78215 »

THE ARCHITECT:  
(Name, legal status and address)

« »  
«»  
«Email: »  
«Phone: 210- xxx-xxxx »  
«Fax: 210- xxx-xxxx »

THE CONTRACTOR:  
(Name, legal status and address)

«« »  
«»  
« Email; Phone: 210. xxx-xxxx;»

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION

**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.

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



**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

- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES





## INDEX

(Topics and numbers in bold are Section headings. Due to the number of amendments, this index is for convenience only and it does not include a reference to all section headings, topics or numbers.)

### **Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### **Access to Work**

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### **Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.4**

### **Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### **Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### **Allowances**

**3.8**

### **Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### **Arbitration**

8.3.1, 15.3.2, **15.4**

## **ARCHITECT**

**4**

**Architect**, Definition of

#### **4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### **Award of Subcontracts and Other Contracts for Portions of the Work**

**5.2**

### **Basic Definitions**

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### **Bonds, Performance, and Payment**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

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

**1.8**

Building Permit

3.7.1

### **Capitalization**

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

## Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval  
13.4.4

Certificates of Insurance  
9.10.2

## Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of  
**7.2.1**

## CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of  
**15.1.1**

Claims, Notice of  
1.6.2, 15.1.3

## CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1

## Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

## Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

## Concealed or Unknown Conditions, Claims for **3.7.4**

Claims for Damages  
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration  
15.4.1

## Cleaning Up

**3.15**, 6.3

Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of  
**8.1.2**

## Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

## COMPLETION, PAYMENTS AND **9**

Completion, Substantial  
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws  
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3

## Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

## Consolidation or Joinder **15.4.4**

## CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of  
**7.3.1**

## Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts  
**5.4**, 14.2.2.2

## Continuing Contract Performance **15.1.4**

Contract, Definition of  
**1.1.2**

## CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to  
3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of  
**1.1.1**

## Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of  
**9.1**

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of  
8.1.1

## CONTRACTOR **3**

Contractor, Definition of  
**3.1**, **6.1.2**

## Contractor's Construction and Submittal Schedules

**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees

2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

## **Contractor's Liability Insurance**

### **11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, **3.17**

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**

**1.2**

**Cost**, Definition of

**7.3.4**

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**

**3.14**, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work**, Definition of **8.1.2**

**Date of Substantial Completion**, Definition of **8.1.3**

**Day**, Definition of

**8.1.4**

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**

9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance,

Rejection and Correction of

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

**Delays and Extensions of Time**

**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

**Digital Data Use and Transmission**

**1.7**

Disputes

6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**

**3.11**

**Drawings**, Definition of

**1.1.5**

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

**Emergencies**

**10.4**, 14.1.1.2, **15.1.5**

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)  
**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3  
Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4  
**GENERAL PROVISIONS**  
**1**  
**Governing Law**  
**13.1**  
Guarantees (See Warranty)  
**Hazardous Materials and Substances**  
10.2.4, **10.3**  
Identification of Subcontractors and Suppliers  
5.2.1  
**Indemnification**  
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3  
**Information and Services Required of the Owner**  
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
14.1.1.4, 14.1.4, 15.1.4  
**Initial Decision**  
**15.2**  
**Initial Decision Maker, Definition of**  
1.1.8  
Initial Decision Maker, Decisions  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
Initial Decision Maker, Extent of Authority  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5  
**Injury or Damage to Person or Property**  
**10.2.8**, 10.4  
Inspections  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.4  
Instructions to Bidders  
1.1.1  
Instructions to the Contractor  
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2  
**Instruments of Service, Definition of**  
**1.1.7**  
Insurance  
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,  
**11**  
Insurance, Notice of Cancellation or Expiration  
11.1.4, 11.2.3  
**Insurance, Contractor's Liability**  
**11.1**  
Insurance, Effective Date of  
8.2.2, 14.4.2  
**Insurance, Owner's Liability**  
**11.2**  
**Insurance, Property**  
**10.2.5**, 11.2, 11.4, 11.5  
Insurance, Stored Materials  
9.3.2  
**INSURANCE AND BONDS**  
**11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1  
Insured loss, Adjustment and Settlement of  
11.5  
Intent of the Contract Documents  
1.2.1, 4.2.7, 4.2.12, 4.2.13  
**Interest**  
**13.5**  
**Interpretation**  
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1  
Interpretations, Written  
4.2.11, 4.2.12  
Judgment on Final Award  
15.4.2  
**Labor and Materials, Equipment**  
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,  
10.2.4, 14.2.1.1, 14.2.1.2  
Labor Disputes  
8.3.1  
Laws and Regulations  
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,  
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4  
Liens  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, **9.10.4**, 15.2.8  
Limitations, Statutes of  
12.2.5, 15.1.2, 15.4.1.1  
Limitations of Liability  
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,  
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,  
11.3, 12.2.5, 13.3.1  
Limitations of Time  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,  
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,  
15.1.2, 15.1.3, 15.1.5  
**Materials, Hazardous**  
**10.2.4**, **10.3**  
Materials, Labor, Equipment and  
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,  
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2  
Means, Methods, Techniques, Sequences and  
Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2  
Mechanic's Lien  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, **9.10.4**, 15.2.8  
**Mediation**  
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,  
15.4.1.1  
**Minor Changes in the Work**  
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**  
**MISCELLANEOUS PROVISIONS**  
**13**  
**Modifications, Definition of**  
**1.1.1**

Modifications to the Contract  
1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,  
10.3.2

## **Mutual Responsibility**

### **6.2**

#### **Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2

#### **Notice**

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,  
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,  
8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,  
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,  
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

#### **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5,  
15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections  
13.4.1, 13.4.2

Observations, Contractor's  
3.2, 3.7.4

#### **Occupancy**

2.3.1, 9.6.6, 9.8

#### **Orders, Written**

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,  
14.3.1

## **OWNER**

### **2**

**Owner**, Definition of

#### **2.1.1**

**Owner**, Evidence of Financial Arrangements

**2.2**, 13.2.2, 14.1.1.4

**Owner**, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1,  
13.4.2, 14.1.1.4, 14.1.4, 15.1.4

**Owner's Authority**

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,  
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,  
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,  
15.2.7

**Owner's Insurance**

### **11.2**

**Owner's Relationship with Subcontractors**

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

**2.5**, 14.2.2

**Owner's Right to Clean Up**

### **6.3**

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

### **6.1**

**Owner's Right to Stop the Work**

### **2.4**

**Owner's Right to Suspend the Work**

14.3

**Owner's Right to Terminate the Contract**

14.2, 14.4

**Ownership and Use of Drawings, Specifications  
and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,  
5.3

**Partial Occupancy or Use**

9.6.6, **9.9**

**Patching, Cutting and**

**3.14**, 6.2.5

**Patents**

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

**Payment, Final**

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## **PAYMENTS AND COMPLETION**

### **9**

**Payments to Subcontractors**

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

**PCB**

10.3.1

**Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Permits, Fees, Notices and Compliance with Laws**

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

## **PERSONS AND PROPERTY, PROTECTION OF**

### **10**

**Polychlorinated Biphenyl**

10.3.1

**Product Data**, Definition of

**3.12.2**

**Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

**Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**Project**, Definition of

**1.1.4**

**Project Representatives**

4.2.10

**Property Insurance**

10.2.5, **11.2**

**Proposal Requirements**

1.1.1

**PROTECTION OF PERSONS AND PROPERTY**

**10**

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field**

**Conditions by Contractor**

**3.2**, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and

Samples by Contractor

3.12

**Rights and Remedies**

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

**Royalties, Patents and Copyrights**

**3.17**

Rules and Notices for Arbitration

15.4.1

**Safety of Persons and Property**

**10.2**, 10.4

**Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

**Samples**, Definition of

**3.12.3**

**Samples, Shop Drawings, Product Data and**

3.11, **3.12**, 4.2.7

**Samples at the Site, Documents and**

**3.11**

**Schedule of Values**

**9.2**, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

**Separate Contractors**, Definition of

**6.1.1**

**Shop Drawings**, Definition of

**3.12.1**

**Shop Drawings, Product Data and Samples**

3.11, **3.12**, 4.2.7

**Site**, Use of

**3.13**, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

**Specifications**, Definition of

**1.1.6**

**Specifications**

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

**Subcontractor**, Definition of

**5.1.1**

**SUBCONTRACTORS**

**5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations**

**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**

6.1.1, **11.3**

**Substances, Hazardous**

**10.3**

**Substantial Completion**

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

**Substantial Completion**, Definition of

**9.8.1**

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

**Sub-subcontractor**, Definition of

**5.1.2**

Subsurface Conditions

3.7.4

**Successors and Assigns**

**13.2**

## **Superintendent**

**3.9**, 10.2.6

## **Supervision and Construction Procedures**

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

## **Suppliers**

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

## **Surety**

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of  
9.8.5, 9.10.2, 9.10.3

## **Surveys**

1.1.7, 2.3.4

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

**14.3**

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

## **Taxes**

3.6, 3.8.2.1, 7.3.4.4

## **Termination by the Contractor**

**14.1**, 15.1.7

## **Termination by the Owner for Cause**

5.4.1.1, **14.2**, 15.1.7

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

**14.4**

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

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

**14**

## **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

## **TIME**

**8**

## **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

## **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

## **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

## **Title to Work**

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

**12**

## **Uncovering of Work**

**12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

## **Unit Prices**

7.3.3.2, 9.1.2

## **Use of Documents**

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

## **Use of Site**

**3.13**, 6.1.1, 6.2.1

## **Values, Schedule of**

**9.2**, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

## **Waivers of Subrogation**

6.1.1, **11.3**

## **Warranty**

**3.5**, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

## **Weather Delays**

8.3, 15.1.6.2

## **Work, Definition of**

**1.1.3**

## **Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

## **Written Interpretations**

4.2.11, 4.2.12

## **Written Orders**

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The **Contract Documents** are enumerated in the Agreement between the Owner and Contractor (A101-2017, as amended) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), all sections of the Project Manual and Construction Documents (as defined in §1.1.3 below) including Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Agreement, Contractor's proof of payment, payment and performance bonds and insurance (proof, policies and declarations) all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. A Modification is (1) a written amendment to the Contract, (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. Any reference to Contract Documents herein shall include the Construction Documents, and any other documents included in the Contract Documents, as amended and/or supplemented for this Project.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract 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 the 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.

**§ 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 Contractor's signature has not been signed, then the missing signature shall be provided within a reasonable period of time. Failure of Contractor to sign an approved Contract Document after notice and a reasonable opportunity to sign shall be considered a material breach of the Contract by Contractor.

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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



### § 1.1.7 Construction Documents

“**Construction Documents**” means: all Drawings, Specifications, Addenda, approved submittals, transmittals, deliverables, instructions to Contractors, the Project Manual and other documents, including those in electronic form, prepared by the Architect and the Architect’s consultants and which set forth in detail the additional requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner’s budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner’s educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1040 and the standards set forth in the Architect’s contract with the Owner. Construction Documents include representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect’s consultants under their respective professional services agreements. Construction Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The **Project Manual** is a volume assembled for the Work which includes but not limited to the bidding or proposal requirements, sample forms, Conditions of the Contract and Specifications.

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

§ 1.1.8 The Construction Documents must be construed as imposing additional requirements upon the Contractor . The Contractor must seek written clarification from both the Owner and Architect prior to incurring any costs or performing any work when any requirement or provision of the Construction Documents (i) conflicts with any other requirement or provision; (ii) conflicts with any other requirement or provision of the Contract Documents; (iii) is ambiguous or confusing; or (iv) is unnecessarily duplicative.

§ 1.1.9 **Addenda** 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 and Construction Documents when the Agreement is executed. The Contractor and subcontractors shall include all addenda items on their copies of the Drawings and Specifications.

§ 1.1.10 All references to “**Construction Manager**” or “**Construction Manager at Risk**” shall mean and include “**Contractor**” as appropriate.

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

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

### § 1.1.13 Abbreviations

AIA:	American Institute of Architects. (All references to AIA documents refer to AIA’s trademarked documents. Each reference to a specific document shall refer to the document as amended for this Project.)
AIEE:	American Institute of Electrical Engineers
ACI:	American Concrete Institute
AHERA:	Asbestos Hazardous Emergency Response Act
AISI:	American Iron and Steel Institute
AISC:	American Institute of Steel Construction
ANSI:	American National Standards Institute

ASA:	American Standards Association
ASTM:	American Society of Testing Materials
AWSC:	American Welding Society Code
CERCLA:	Comprehensive Environmental Response, Compensation, and Liability Act
EPA:	Environmental Protection Agency
FS:	Federal Specification
NEC:	National Electrical Code
OSHA:	Occupational Safety and Health Administration
SPR:	Simplified Practice Recommendation
TAS:	Texas Accessibility Standards
UL:	Underwriters Laboratories, Inc.

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

#### § 1.1.15 Miscellaneous Other Words

##### § 1.1.15.1 Business Day

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

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

##### § 1.1.15.2 Calendar Day

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

##### § 1.1.15.3 Holidays

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

##### § 1.1.15.4 Workday

Workdays are all calendar days except Holidays.

##### § 1.1.15.5 Anticipated Weather Days

An allowance of regular Workdays, established as anticipated 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 15.1.6.3 of this A201-2017, as amended, lists the required Anticipated Weather Days.

##### § 1.1.15.6 Day

The term “Day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

##### § 1.1.16 Contract Sum

“Contract Sum” shall have the same meaning as in Article 4 of the A101-2017, as amended and if used for the Project.

##### § 1.1.17 Monthly Reports and Daily Logs

Contractor must record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. Additionally, the Contractor shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, Work accomplished, trades on site, number of workers on site, identification of equipment on site, problems that might

affect progress of the work, accidents, injuries, and other information required by the Owner. The Daily Logs must be completed using Owner's Project Management software, or absent software, other Owner approved form or medium. The Daily Logs and Monthly Reports shall be available to the Owner and Architect at any time during work hours, and shall be presented and discussed at regular progress meetings

## § 1.2 Correlation and Intent of the Contract Documents

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

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

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have estimated the Work on the basis of the greater quantity or better quality, or the most stringent requirement, unless it shall have obtained an interpretation in writing from the Architect as to what shall govern before the submission of the Contractor's Proposal for the Project. The Architect, in case of such conflict, may interpret or construe the documents so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interest of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

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

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

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

## § 1.2.4 Relation of Specifications and Drawings

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

## § 1.2.5 Materials, Equipment and Processes

Exact location and arrangement of the various pieces of equipment specified shall be determined with the approval of the Architect after equipment has been selected and/or as the Work progresses. All equipment shall, insofar as possible, be installed in such a manner as 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 Contract Documents which results in equipment requiring more area than shown on the Contract Documents, the Contractor shall be fully responsible for completing any required modifications or eliminating any interferences. Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are specified, it is done for the

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

### **§ 1.2.6 Standards and Requirements**

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Construction Documents**

**§ 1.5.1** All ownership rights, whether common law, statutory, or other reserved rights, including copyright ownership of the Construction Documents, are controlled by the Agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Construction Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are granted a limited license to use and reproduce the Construction Documents provided to them, subject to any protocols established by the parties, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Construction Documents. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Construction Documents on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants. All copies of the Construction Documents, except the Contractor's copy of the record set, shall be returned or suitably accounted for to the copyright holder upon completion of the Work.

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

## § 1.6 Notice

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

## § 1.6.2 Intentionally Omitted.

## § 1.7 Digital Data Use and Transmission

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

## § 1.8 Building Information Models Use and Reliance

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

## ARTICLE 2 OWNER

### § 2.1 General

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

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

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

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

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

### § 2.2 Owner's Financial Arrangements

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

### § 2.2.2 Intentionally Omitted.

§ 2.2.3 Intentionally Omitted.

§ 2.2.4 Intentionally Omitted.

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

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

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

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

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

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services. Absent such timely notification and reasonable opportunity to cure, any Claim based upon lack of such information or services shall be waived.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor at least one copy of the Construction Documents, as provided for in the Project Manual, for purposes of making reproductions pursuant to Section 1.5 of the A201.

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

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

If the Contractor fails to commence work, correct defective Work, fails to correct Work that is not in accordance with the requirements of the Contract Documents or Construction Documents, or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3 in the A201. Owner may also stop work (temporarily or permanently) for its convenience.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Architect shall withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting

such deficiencies, including Owner's expenses and compensation for the Architect's and other consultants additional services, if any, made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, then the Contractor shall pay the difference to the Owner.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

§ 3.1.4 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 Contractor's Proposal that it has carefully examined the Contract Documents, including: the soil test reports, drainage studies, geotechnical or other reports provided by the Owner or Architect; and the site of the Work. Based on Contractor's own examination and investigations, it 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, generally prevailing climatic conditions, anticipated labor supply and costs, and all other materials which may in any way affect the Work or its performance. Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once 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 and examine the site of the Work or to carefully study and compare the Contract Documents prior to execution of the Work. The Owner assumes no responsibility for providing a safe place for the performance of the Work or for the reports provided herein for the site or Project.

§ 3.2.1.1 Contractor must also carefully study and compare Contract Documents with existing conditions at Project site and shall at once report in writing to Owner any error, inconsistency or omission it may discover or any materials, systems, procedures, or methods of construction, either shown on Contract Drawings or specified, which it feels are incorrect, inadequate, obsolete, or unsuitable for purpose intended, or which it would not be satisfied to warranty as specified. Contractor shall not proceed with any work in such areas until written instructions are received from Owner or Architect.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor must, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work, and must observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions or any variance from applicable laws, statutes, ordinances, building laws, rules, regulations or any lawful orders of any governmental body, or public or quasi-public authority discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work involving an error, inconsistency, 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 and Owner any nonconformity discovered by or made known to the Contractor as a written request for information in such form as the Architect or Owner may require.

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

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner in writing, providing substantiation for its position. Any necessary changes, including substitution of materials, shall be accomplished by appropriate Modification. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2, 3.2.1.1 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2, 3.2.1.1 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 must take field measurements, verify field conditions, and must carefully compare them to the Construction Documents. Contractor shall not be entitled to additional compensation for additional Work caused by Contractor's failure to carefully study and compare the Construction Documents or verifying field conditions prior to the execution of the Work.

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

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

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

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

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

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

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

### § 3.2.9 Structural and Environmental Tests, Surveys and Reports.

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

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects in writing to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.3.4 The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed under the Contract or by all sub-contractors and sub-sub-contractors. Contractor acknowledges that the Work may be performed in connection with an educational or other facility which may be currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner or facility on which the Work is to be performed and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the best skill and judgment to ensure that continuing construction activity will not interfere with the use,

occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury. The Contractor shall maintain good order among its employees and those of its Subcontractors, and shall confine its employees to such work areas, roads and gates as directed by the Owner.

### § 3.3.5 Intentionally Omitted.

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

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

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

## § 3.4 Labor and Materials

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

§ 3.4.2 **Substitutions.** Except in the case of minor changes in the Work approved by the Architect in accordance with the Contract Documents, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. All materials and equipment shall be as specified in the Contract Documents, and if not specified, shall be of good

quality and new. If required by the Architect or Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment.

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

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

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. **THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS.** Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance."

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

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

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

§ 3.4.7 Contractor shall procure and furnish to the Owner all guarantees, warranties, spare parts, and maintenance manuals that are called for by the specifications or that are normally provided by a manufacturer. As part of any

commissioning process of the equipment called to be furnished by the Contract Documents, the Contractor shall arrange to have adequate training of the Owner's personnel in the operation and maintenance of the equipment. The maintenance manual shall include a catalog and price list for any equipment, materials, supplies, or parts used in the inspection, calibration, maintenance, or repair of the equipment. Items in the catalog shall be readily available for purchase.

### § 3.4.6 CRIMINAL HISTORY CHECKS

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

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

§ 3.4.6.3 For the purposes of this Section, "covered employees" means employees, agents or applicants of Contractor who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060 and 19 Texas Administrative Code § 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5 Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure chapter 62; or an equivalent offense under federal law or the laws of another state.

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

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

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

### § 3.4.8 PREVAILING WAGE RATES

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

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

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

#### **EXHIBIT 1.1** ACCD WAGE RATE DETERMINATION AND NOTICE

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

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

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

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

Accordingly, the prevailing wage determination for Building Construction Trades shall be paid to all workers for work located INSIDE a boundary line placed five feet beyond the drip line of building structures, and the prevailing wage determination for Heavy Highway Trades shall be paid to all workers for work located OUTSIDE a boundary line placed five feet beyond the drip line of building structures. In the event a conflict exists for the same classification between two different wage determinations, the Contractor and each subcontractor must pay compensation at

the higher rate. A copy of the applicable wage rate schedule for this project (one or both) is attached to this Exhibit.

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

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

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

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

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

#### ANNUNCIO PARA EMPLEADOS DE CONTRATISTAS

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

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

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

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

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

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

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

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with generally accepted standards of construction practice for construction of projects similar to the Project, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance (unless such maintenance is Contractor's responsibility), improper operation, or normal wear and tear and normal usage but such exclusions shall only apply after Owner has taken occupancy of the damaged or defective portion of the Project. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding anything in the Contract Documents to the contrary, Owner and Contractor expressly agree that the warranties stated herein shall mean the individual warranties associated with each particular Work within the Project, and each such individual warranty shall run from the Work's Substantial Completion date (unless otherwise expressly provided in the applicable Contract Documents for that particular Work). Contractor's express warranty is in addition to, and not in lieu of, Owner's other available remedies. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner. This warranty shall be interpreted to require Contractor to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after Substantial Completion of the entire Work or if a latent defect, within one (1) year after discovery thereof by Owner, except when a longer warranty time is specifically called by in the Contract Documents or provided by law. The warranties set out in this Subparagraph are not exclusive of any other warranties or guarantees set out in other places in the Contract Documents or expressed or implied under applicable law. All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer's or supplier's approved forms for delivery to the Owner.

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

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



performed by the Contractor or its subcontractor(s). The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to the Owner.

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

- .1 an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; or
- .2 an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or
- .3 such further reasonable proof as is required by the Architect and Owner.

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

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

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

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

- .1 Obtain duplicate original warranties, executed by all subcontractors, making the dates of beginning of the warranties the Date of Substantial Completion; and the warranties of suppliers and manufacturers, making the dates of beginning of the warranties the Date of Substantial Completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Bind all warranties in commercial quality 8½ by 11 inch three-ring binder, with hardback, cleanable, plastic covers;
- .5 Label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the title of the Project; name, address and telephone number of Contractor; and name of its responsible principal;

- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified;
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing;
- .8 Deliver warranties and bonds in the form described above, to the Architect who will review same prior to submission to the Owner; and
- .9 issue in writing to the Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of paragraphs 3.5.1, 3.5.2, 3.5.3 and 3.5.12 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

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

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

**§ 3.5.11** Neither the final payment nor any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents nor relieve Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship. Contractor guarantees that the Work will conform to the Contract Documents.

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

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

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

### § 3.6 Taxes

Owner is an exempt entity under the tax laws of the State of Texas. Texas Tax Code § 151.309; 34 TAC § 3.322. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Texas Tax Code § 151.309, § 151.310, § 151.311 and 34 TAC § 3.291; 3.287. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded. Contractor will accept a Certificate of Exemption from the Owner, pursuant to Texas Tax Code § 151.054(e); § 151.155; and 34 TAC § 3.287. Contractor shall obtain Certificates of Resale from Contractor's suppliers. Texas Tax Code § 151.154, 34 TAC § 3.285. Failure of Contractor or any Sub-Contractor to obtain Certificates of Resale from their suppliers shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax,

compensation tax, social security and withholding payments as required by law. **CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.**

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 After Architect has filed the plans and specifications with the Texas Department of Licensing and Regulation and other governmental entities with jurisdiction over the Project, Architect and Contractor shall coordinate to make and submit the applications for the building permit. The Owner may 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. Such fees and expenses shall only be reimbursable to the Contractor without markup to Contractor other than trade contractor permits and inspections assessed and included as part of the Contract Sum.

§ 3.7.1.1 The Owner may pay directly to the governing authority the cost of all permanent property utility assessments and similar connection charges; however, if Contractor pays those charges and approved in writing by the Owner, the Contractor may be reimbursed those costs without markup by Owner.

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

§ 3.7.1.3 Notwithstanding anything to the contrary in other paragraphs of the Contract Documents related to the payment of reasonable and necessary governmental fees for customary construction and related activities, Contractor, without markup will directly pay the initial building permit and inspection fees, impact fees, all utility fees and charges, as well as all reasonable and necessary fees and charges assessed by governmental entities for customary construction and related activities, none of which may be paid or incurred by Owner other than as may be approved in writing by the Owner’s Designated Representative, (which approval may include email), and any such approved payments shall not be marked up with any overhead or profit when submitted for reimbursement. The foregoing provision does not apply to: fees related to Contractor’s failure to comply with the Contract Documents, federal law, state law, local law or manufacturer’s instructions; re-inspection fees and charges for failed or missed inspections; fines, assessments, penalties or charges related to some form of violation; correction of Contractor’s work; damage caused by Contractor to utilities or other property owned or controlled by a governmental entity; temporary storm and drain connections; hazardous materials; or other fees not mentioned in this paragraph. In the event other governmental fees are incurred or proposed by Contractor, which are not covered in this paragraph, Owner may reimburse Contractor without any markup, if approved in writing in the sole discretion of the Owner’s Designated Representative; otherwise, Contractor shall bear the costs.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. In addition, Contractor shall authorize posting of any notices required of Owner pursuant to Texas Business and Commerce Code, Section 16.0001, or concerning the Workers Compensation insurance carried by other parties involved in the Project, including without limitation, Architect, at the same location where Contractor posts notices regarding Workers Compensation. If applicable, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings. The Contractor shall also

obtain and pay all charges for all approvals for street closings, traffic control, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

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

#### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents (collectively, "Extraordinary Subsurface Conditions"), the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than two (2) work days after first observance of the conditions. Contractor agrees that this is a reasonable notice requirement. Contractor's claims under this Section 3.7.4 are limited to Claims for Additional Time, provided they are made in compliance with this Section and Article 15 of these General Conditions. As part of such claim, the Architect will promptly investigate such Extraordinary Subsurface Conditions and report findings and a recommended resolution in writing to Owner and Contractor, which is limited to an extension of the Contract Time.

§ 3.7.4.1 Contractor acknowledges that there may exist at the project site certain soil and geological conditions and/or subsurface physical, structures, equipment, utilities, and/or other conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and subsurface structures, equipment, utilities, or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor are for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum bid by Contractor shall be deemed to include all costs of and time to complete all work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Contractor's claims under this Section 3.7.5 are limited to Claims for Additional Time, provided they are made in compliance with this Section and Article 15 of these General Conditions. As part of such claim, the Architect will promptly investigate such conditions and report findings and a recommended resolution in writing to Owner and Contractor, which is limited to an extension of the Contract Time.

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

### § 3.8 Allowances, if Applicable.

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, (i) any savings shall accrue to Owner's Contingency and (ii) any shortfall must be funded by Contractor.

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

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

### § 3.9 Superintendent

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

§ 3.9.2 Intentionally Omitted.

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

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

inspector, whose primary function may include daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

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

§ 3.10.1 The Contractor, if not provided with the Contractor's Proposal, within 10 days after the effective date of the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, in compliance with this Section 3.10. Unless otherwise indicated in the Contract Documents, the Work Project Schedule shall be prepared by Contractor in-house, using a critical path schedule, as approved by Owner. This schedule shall indicate the dates for starting and completing the various aspects required to complete the Work, including mobilization, procurement, installation, testing, inspection, substantial completion, final completion, and acceptance of all the Work ("Milestone Dates") and shall include a schedule of values (the "Schedule of Values") allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Once the Milestone Dates are approved, they may not be amended or modified without Owner's prior written consent. The schedule shall not exceed the time limits set forth in the Contract Documents, as amended. Contractor shall organize the Work Project Schedule and provide adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. When acceptable to the Owner, the accepted Work Project Schedule and Schedule of Values shall be the baseline schedule for comparison to actual conditions throughout the duration of the Agreement. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval. The schedule shall be updated at least monthly.

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

§ 3.10.3 For any contract in excess of \$1,500,000 and upon the written request of the Owner, the Contractor must maintain a cost loaded schedule from NTP throughout the duration of the Project, which shall be included in the Contract Sum. If a cost loaded schedule is required, it must show earned value; forecast for cost outlay, forecast of cash flow income from Owner; and other information requested by Owner. The Contractor must maintain a critical path schedule for the Project, which must include Owner's Float, show the Milestone dates and show relationships between tasks.

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

§ 3.10.5 The Project Schedule is for Contractor's use in managing the Work and submittal of the Project Schedule, and successive updates or revisions, is for the information of the Owner and to demonstrate that Contractor has

complied with requirements for planning the Work. The Owner's written acceptance of a schedule, schedule update or revision constitutes the Owner's agreement to coordinate its own activities with Contractor's activities as shown on the schedule. Moreover:

- .1 Acceptance of the Project Schedule, or update and/or revision thereto does not indicate any approval of Contractor's proposed sequences and duration.
- .2 Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute the Owner's consent, alter the terms of the Agreement, or waive either Contractor's responsibility for timely completion or the Owner's right to damages for Contractor's failure to do so.
- .3 Contractor's scheduled dates for completion of any activity or the entire Work do not constitute a change in terms of the Agreement. Change Orders are the only method of modifying the final or substantial completion date(s) and Contract Time.

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

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

- .1 If, in the judgment of the Owner, the Work is behind schedule and the rate of placement of Work is inadequate to regain scheduled progress to ensure timely completion of the entire Work or a separable portion thereof, Contractor, when so informed by the Owner, shall immediately take action to increase the rate of Work placement by: increasing working forces; increasing equipment or tools; increasing hours of work or number of shifts; expediting delivery of materials; or taking other action proposed if acceptable to Owner.
- .2 Within ten (10) calendar days after such notice from the Owner, Contractor shall notify the Owner in writing of the specific measures taken and/or planned to increase the rate of progress and include an estimate as to the date of scheduled progress recovery and an updated Project Schedule illustrating Contractor's plan for achieving timely completion of the Project.
- .3 Should the Owner provide Contractor written notice with particularity the reasons why Owner considers the plan of action inadequate and providing with such notice copies of any relevant documents that support the Owner's determination, the Owner shall have the right, to be exercised in good faith, to order Contractor to take feasible corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents and shall be performed at Contractor's sole cost.
- .4 The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring Contractor's compliance with the construction schedule and/or Contract Time. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner.

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

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

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

### § 3.11 Documents and Samples at the Site

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

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

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

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



## § 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. Each Shop Drawing must show the project name and number and identify each element of drawings by reference to sheet number and detail, schedule, or room number in Contract Documents. In addition, each Shop Drawing shall identify field dimensions and show its relationship to adjacent or critical features of work or products.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. In connection with Product Data, Contractor shall: (a) mark each copy of standard printed data to identify the pertinent products, referenced to Specification Section and Article number and show reference standards, performance characteristics and capacities, wiring and piping diagrams and controls, component parts, finishes, dimensions, and required clearances; and (b) modify manufacturers' standard schematic drawings and diagrams to supplement standard information and to provide information specifically applicable to the work and delete information not applicable.

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

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

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

§ 3.12.5.1 In connection with Contractor reviews, Contractor shall:

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

§ 3.12.5.2 In connection with Submittals, Contractor shall:

- .1 Transmit Submittals in accordance with approved Progress Schedule and in such sequence as to avoid delay in the Work, allowing time for checking, correcting, resubmitting and rechecking.
- .2 Apply Contractor's stamp, sign or initial, each page of each Submittal, to review, verification of products, field dimensions and
- .3 Coordinate each Submittal with the requirement of work and Contract Documents.
- .4 Coordinate Submittals into logical groupings to facilitate interrelation of the several items, such as:
  - .1 Finishes which involve Architect's selection of colors, textures, or patterns.
  - .2 Associated items which require correlation for efficient function or for installation.
  - .3 No colors shall be selected for the project until all Shop Drawings and Submittal data pertaining to colors have been submitted in order to properly coordinate all colors.

- .5 Submit the number of opaque reproductions of Shop Drawings required by Contractor plus two copies to be retained by Architect.
- .6 Submit number of copies of Product Data and manufacturers' instructions required by Contractor, plus two copies to be retained by Architect
- .7 Submit number of Samples specified in individual specifications sections.
- .8 Submit transmittal letters which identify the project by title and number and identify the work and product by specification section and article.
- .9 Number Submittals consecutively.

§ 3.12.5.3 In connection with resubmittals, Contractor shall

- .1 Make resubmittals under procedures specified for initial submittals and identify changes made since previous Submittal. Resubmittals shall have same number as original, plus a letter.
- .2 Distribute reproductions of Shop Drawings, copies of Product Data, and Samples, which bear the Architect's stamp of approval to job site files, Record Documents files, subcontractors, suppliers, and others who may require such information.
- .3 Forward an information copy of each transmittal letter simultaneously with submission to the Architect, but shall not submit Shop Drawings, etc. to Owner.

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

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

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

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

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

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

checking for conformance with information given and the design concept expressed in the Contract Documents. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

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

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

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

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

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

### § 3.13 Use of Site

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

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

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

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

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

### § 3.14 Cutting and Patching

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

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

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

### § 3.15 Cleaning Up

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

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

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

§ 3.15.4 After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5)

vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors repeating as necessary until no visible residue remains on floors; (7) clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) broom clean exterior concrete and paved surfaces and rake clean the grounds.

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

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

### § 3.18 Indemnification

§ 3.18.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL WAIVE AND RELEASE CLAIMS AGAINST AND SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S TRUSTEES, , OWNER'S CONSULTANTS AND OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THEM, FROM AND AGAINST CLAIMS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, COURT COSTS, EXPERT WITNESS FESS AND COSTS ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK OR NONPERFORMANCE OF THE WORK, ACTIVITIES, SERVICES, OR THE SUBJECT MATTER OF THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (INCLUDING THE WORK ITSELF) INCLUDING LOSS OF USE RESULTING THEREFROM, OR CLAIMS BROUGHT BY CONTRACTORS, CONTRACTOR'S SUBCONTRACTORS OF ANY TIER, BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY**

EMPLOYED BY THEM, ANYONE THEY CONTROL OR EXERCISE CONTROL OVER, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY ANY WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF OWNER OR OWNER'S CONSULTANTS OR OTHER INDEMNIFIED PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18. ALL COSTS AND EXPENSES SO INCURRED BY ANY OF THE INDEMNIFIED PARTIES IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO THE INDEMNIFIED PARTIES, AND ANY COST AND EXPENSES SO INCURRED BY INDEMNIFIED PARTIES SHALL BEAR INTEREST UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID BY THE JUDGMENT UNDER THE LAWS OF THE STATE OF TEXAS.

§ 3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.3 THE OBLIGATIONS OF THE CONTRACTOR UNDER THIS SECTION 3.18 SHALL NOT EXTEND TO THE LIABILITY OF THE ARCHITECT, THE ARCHITECT'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, CAUSED BY OR RESULTING FROM: (1) DEFECTS IN PLANS, DESIGNS, OR SPECIFICATIONS PREPARED, APPROVED, OR USED BY THE ARCHITECT OR ENGINEER; OR (2) NEGLIGENCE OF THE ARCHITECT OR ENGINEER IN THE RENDITION OR CONDUCT OF PROFESSIONAL DUTIES CALLED FOR OR ARISING OUT OF THE CONSTRUCTION CONTRACT AND THE PLANS, DESIGNS, OR SPECIFICATIONS THAT ARE A PART OF THE CONSTRUCTION CONTRACT; AND (3) ARISING FROM : (A) PERSONAL INJURY OR DEATH; (B) PROPERTY DAMAGE; OR (C) ANY OTHER EXPENSE THAT ARISES FROM PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, OR AS OTHERWISE LIMITED BY TEXAS CIVIL PRACTICE & REMEDIES CODE SECTION 130.001 *ET SEQ.*

§ 3.18.4 THE OWNER MAY CAUSE ANY OTHER CONTRACTOR WHO MAY HAVE A CONTRACT WITH THE OWNER TO PERFORM CONSTRUCTION OR INSTALLATION WORK IN THE AREAS WHERE WORK WILL BE PERFORMED UNDER THIS AGREEMENT, TO AGREE TO INDEMNIFY AND TO HOLD THE OWNER AND THE CONTRACTOR HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS IS PROVIDED IN SECTION 3.18.1 ABOVE. LIKEWISE, CONTRACTOR AGREES TO INDEMNIFY AND TO HOLD THE OWNER'S OTHER CONTRACTORS HARMLESS FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE TO THE SAME EXTENT AS PROVIDED IN SECTION 3.18.1 ABOVE.

§ 3.18.5 Other Provisions Regarding Indemnity.

- .1 THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.
- .2 THE INDEMNITIES CONTAINED HEREIN SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON WHATSOEVER.
- .3 CONTRACTOR SHALL PROMPTLY ADVISE OWNER IN WRITING OF ANY CLAIM OR DEMAND AGAINST OWNER OR CONTRACTOR, AS THE CASE MAY BE, KNOWN TO CONTRACTOR, RELATED TO OR ARISING OUT OF CONTRACTOR'S ACTIVITIES UNDER THE AGREEMENT, AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONTRACTOR'S COST. OWNER SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN

**SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS ARTICLE.**

- .4 OWNER SHALL HAVE THE RIGHT TO APPROVE DEFENSE COUNSEL, OF WHICH APPROVAL WILL NOT BE UNREASONABLY WITHHELD, TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY OWNER, ITS EMPLOYEES, OFFICERS, TRUSTEES, AGENTS, SUCCESSORS, ASSIGNS AND REPRESENTATIVES UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY OWNER IN WRITING. CONTRACTOR SHALL RETAIN AN OWNER APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) WORK DAYS OF OWNER'S WRITTEN NOTICE THAT OWNER IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, OWNER SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY OWNER. OWNER SHALL ALSO HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE, WITHOUT WAIVING THE FOREGOING.**
- .5 THE INDEMNIFICATION OBLIGATIONS UNDER THIS ARTICLE 3.18 SHALL NOT BE LIMITED IN ANY WAY BY THE LIMITS OF ANY INSURANCE COVERAGE OR ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY, FOR, OR TO CONTRACTOR OR ANY SUBCONTRACTOR, SUPPLIER, OR ANY OTHER INDIVIDUAL OR ENTITY UNDER ANY INSURANCE POLICY, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.**
- .6 INDEMNIFIABLE CLAIMS OF CONTRACTOR PURSUANT TO THIS SECTION 3.18 INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS FOR NON-PAYMENT OF MECHANICS' LIENS BY SUBCONTRACTORS, LABORERS, VENDORS AND MATERIAL PROVIDERS OF ANY TIER (SO LONG AS OWNER HAS MADE ALL UNDISPUTED PAYMENTS REQUIRED UNDER THIS AGREEMENT) AS WELL AS THE FAILURE OF ANY SUBCONTRACTOR OR SUPPLIER TO PERFORM ITS OBLIGATIONS HEREUNDER, INCREASED COSTS OF PERFORMANCE, COSTS OF CORRECTIVE OR WARRANTY WORK, LIABILITY TO THIRD PARTIES, PROCUREMENT COSTS, AND STORAGE AND RENTAL FEES FOR OFFICE AND WAREHOUSE SPACE.**

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

§ 3.18.7 It is understood and agreed that Subparagraph 3.18.1 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

**§ 3.18.8 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 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, TO THE SAME EXTENT AS PROVIDED IN SUBPARAGRAPH 3.18.1 ABOVE.**

**§ 3.19 ADDITIONAL REPRESENTATIONS AND WARRANTIES; COVENANTS.** Contractor represents and warrants (and covenants and agrees, as applicable, to) the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this

Agreement, all of which shall survive the execution and delivery of the Contract Documents and the Final Completion of the Work:

§ 3.19.1 That it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents.

§ 3.19.2 That it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

§ 3.19.3 That it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

§ 3.19.4 That the execution of the Agreement and its performance thereof is within its duly authorized powers;

§ 3.19.5 That its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents;

§ 3.19.6 All sums advanced or paid to Contractor pursuant to the Contract Documents shall be used solely for the purpose of the performance of the Work and the construction, furnishing and equipping of the improvements in accordance with the Contract Documents. All sums paid to Contractor pursuant to the Contract Documents shall constitute a trust fund for the purpose of performance of the Work and the construction, furnishing and equipping of the Project in accordance with the Contract Documents, including the subcontracts, purchase order and other lower tier agreements between Contractor and other parties; and

§ 3.19.7 Contractor shall maintain complete and accurate records of the receipt and application of all funds paid to it.

§ 3.19.8 That Contractor agrees to notify Owner promptly upon discovery of any instance where the Contractor fails to comply with the Contract Documents, or where Contractor has reason to believe that a previous representation regarding the Contract is no longer accurate and complete.

§ 3.19.9 The Contractor shall: establish and maintain benchmarks, and all other grade, lines, and levels necessary for the Work; confirm the placement of the building on the Site to the Architect after all lines are staked out; and be responsible for the accuracy of the layout and shall make all corrections necessary to achieve an accurate layout of all Work.

§ 3.19.10 Upon request by the Owner or Architect, the Contractor shall prepare quotations, for proposed changes in the Work, in a form approved by Owner or Architect. The Quotations shall generally be in a "break-down" form giving the number of units, unit cost of materials, hours of labor, hourly cost of labor, tool costs, overhead and profit; may be based on the approved Schedule of Values or unit costs; and shall reflect credits as well as extras.

§ 3.20 **BUSINESS STANDARDS.** Contractor, in performing its obligations under the Contract Documents, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or its affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, partners, members, managers, representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

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



## ARTICLE 4 ARCHITECT

### § 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner and identified as such in the Agreement. If the employment of the Architect is terminated, the Owner may employ a new architect whose status under the Contract Documents shall be that of the Architect. Owner shall notify Contractor if a new Architect has been employed by Owner.

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

§ 4.1.3 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and the Contract Documents by the duties, responsibilities, or activities of the Architect.

§ 4.1.4 Owner reserves the right to appoint a representative empowered to act for Owner during construction and to supersede the Architect's Construction phase responsibility. Similarly, from time to time, Owner may expand or reduce Owner's delegation of powers to the Architect, with Owner so notifying Contractor in writing of the any such changes. The Architects shall not be construed as a third-party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth herein. In no event, however, shall Owner have control over or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for the acts or omissions of Contractor Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until final payment is due, and, with the Owner's concurrence, from time to time during the period for correction of Work. The Architect will have authority to act on behalf of the Owner only to the extent specifically provided in the Contract Documents, or as they may be amended in the future.

§ 4.2.2 Architect shall visit the site at least once per week (or more per week when deemed necessary by the Owner's Representative(s) 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 its structural consultant 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 its structural consultant 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 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be

responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits or inspections made necessary by the fault, neglect, or request of the Contractor.

#### § 4.2.4 Communications

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

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

§ 4.2.6 The Owner or Architect shall reject Work that does not conform to the Construction Documents and the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend to Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect and/or Contractor shall promptly notify, orally and in writing, the other party and Owner of any fault or defect in the Project or nonconformance with Construction Documents or the Contract Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect. Testing or inspections required by this subparagraph shall be conducted subject to the requirements of Chapter 2269 of the Texas Government Code.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents and the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor, or Separate Contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation of equipment or systems, remain the responsibility of the Contractor as required by the Construction Documents and the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12 of the A201, as amended and elsewhere in the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Construction Documents or the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples.

§ 4.2.8 The Architect shall review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Construction Documents and the Contract Documents, accompanied by all supporting documentation requested by the Architect or Owner. Upon Owner approval, the Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified. The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work by the Contractor shall be

accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, and do not change the Contract Sum or Contract Time, then the Architect may issue an order for a minor change in the Work with prior written notice to the Owner or recommend to the Owner that the requested change be denied. The Architect is not authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning (“HVAC”); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner’s prior written consent.

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

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

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

§ 4.2.12 Interpretations or recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor.

§ 4.2.13 The Owner’s decisions on matters relating to aesthetic effect shall be final.

§ 4.2.14 The Architect will review and respond to requests for information about the Construction Documents and the Contract Documents. The Architect’s response to such requests will be made in writing 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 the subcontractors of a Separate Contractor.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect shall notify in writing the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

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

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

§ 5.2.4 The Contractor shall notify the Owner prior to changing any subcontractor, person, or entity previously selected to perform Work on the Project or to supply materials to the Project, and the provisions of Subparagraph 5.2.1 shall apply to the proposed replacement. The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 Contractor shall be fully responsible to Owner for all acts and omissions of its Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sums shall be allowed for failure to so inspect or investigate.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The Owner shall be a third-party beneficiary to the each such subcontract. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

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

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

### § 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause or convenience pursuant to Article 14 or abandonment of the Project by the Contractor; and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and
- .3 The Subcontractor provides bonds as required by law or 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 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4 of the A201, the Owner may further assign the subcontract to a successor contractor or other entity. Owner shall only be responsible for compensating 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 in writing of any material defaults by any Subcontractor or Sub-subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor, Sub-subcontractor or other materialman or worker employed by Contractor the right to obtain a personal judgment or to create a mechanic's or materialman's lien against Owner for the amount due from the Owner or the Contractor.

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

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces or with Separate Contractors. The Owner reserves the right to perform other non-Project-related construction work, maintenance and repair work, and school program operations at the site and near the site during the time period of the Work.

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

§ 6.1.3 The Contractor shall coordinate the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, to ensure that the Work remains on schedule. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement between the Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Any Separate Contractors may be requested to execute Contractor's Site Access Agreement.

#### § 6.2 Contractor's Responsibility

§ 6.2.1 It shall be the responsibility of the Contractor to assist, review, and coordinate the scheduling of work performed by any of the Owner's Separate Contractors. In addition, the Contractor shall be responsible for coordinating and providing all construction administration necessary for the Work and the work of any of Owner's Separate Contractors. The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for site access and introduction and storage or staging of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. Contractor shall be responsible for coordination between Contractor's subcontractors and Owner's Separate Contractors. Contractor shall review Owner's contract with Owner's Separate Contractors and become familiar with the requirements and scope of services contained therein.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify in writing the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work, and shall promptly report in writing to the Architect and Owner if Owner's Separate Contractors fail in any way to timely perform their services or negatively impact Contractor's schedule or ability to perform the Work. Failure of the Contractor to notify in writing the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper, and is performed in a timely manner to receive the Contractor's Work. The Contractor shall not be responsible for latent discrepancies or defects in the construction or operations by the Owner or Separate Contractor.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. Contractor shall be entitled to recover additional contract time as a result of delays, improperly timed activities or defective construction by Owner in the self-performance of work or caused by Owner's separate contractors.

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

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

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

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

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in this A201, as amended.

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents or Construction Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Contractor shall not make any claim for an adjustment to time or Contract Sum due to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services, or materials, beyond that actually required by the terms of the Construction Documents or the Contract Documents, unless made pursuant to a written order or directive from Owner authorizing Contractor to proceed with a change in the Work. No claim for an adjustment to Contract time or Contract Sum shall be valid unless so ordered or directed and approved in writing by the Owner's Authorized or Designated Representative, as applicable.

§ 7.1.4 Contractor, subcontractor or sub-subcontractor markup is not a recoverable element of direct damages under the Contract or for Changes in the Contract Sum; however, Owner or its Authorized or Designated Representative(s) may, in their sole discretion, permit mark-ups (for overhead, profit, or fees) not to exceed 10% of the change in the Contract Sum.

§ 7.1.4.1 When an Owner directed change order results in a reduction in the Contract Sum, the applicable overhead, profit and fee for supervision and/or work performed assessed by Contractor and all affected Subcontractors shall be included in the reduction balance on the change order form.

§ 7.1.5 Subject to Owner's discretion and writing approval, Owner Contingency may be used to fund changes in the Work.

§ 7.1.6 If the Contract Sum is \$1,000,000.00 or more, or if the Contract Sum is less than \$1,000,000.00, and any Change Order, Construction Change Directives, or other changes in the Work would increase the Contract Sum to \$1,000,000.00 or more, the total of all Change Orders, Construction Change Directives, or other Changes in the Work may not increase the Contract Sum by more than 25% of the original Contract Sum. Any Change Order, Construction Change Directive, or other Change in the Work that would exceed that limit is void and of no effect.

## § 7.2 Change Orders

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

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

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

§ 7.2.3 Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order.

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

§ 7.2.5 Work requiring approved Change Order must not be commenced until the Contractor has received written authorization to proceed from Owner. Work completed without such authorization may not be recognized or paid for by Owner and Work completed in emergencies may (at Owner's option) not be recognized or paid for by Owner.

## § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon (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 above; or
- .4 As provided in Section 7.3.4 below, subject to the limitations of subparagraph 7.1.4 above.

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

- .1 Actual costs of labor, including applicable payroll taxes, before workers' compensation, and workers' compensation insurance;
- .2 Actual costs of materials, supplies, and equipment, including cost of transportation, used in performing the Change in the Work;
- .3 Actual rental costs of machinery and equipment rented from third parties, exclusive of hand tools; and
- .4 Actual costs of premiums for all bonds and insurance, and permit fees, directly related to the change.

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

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with the applicable provisions of Article 15 of this A201, as amended.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time, provided that, pursuant to Texas Government Code Section 2251.0521, Contractor shall not be required to proceed with additional work nor be responsible for any damages resulting from not proceeding with such work absent a fully-executed Change Order when such Construction Change Directive, either individually or collectively with other Construction Change Directives for which no Change Order has been fully executed, exceeds ten percent (10%) of the Guaranteed Maximum Price or the Contract Sum. No subcontractor shall be required to proceed with additional work nor be responsible for any damages resulting from not proceeding with such work absent a fully-executed Change Order when such Construction Change Directive, either individually or collectively with other Construction Change Directives for which no Change Order has been fully executed, exceeds ten percent (10%) of the subcontractor's contract amount.

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

§ 7.3.8 Intentionally Omitted.

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

§ 7.3.10 When the Owner and Contractor agree 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

With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the Contract Documents or Construction Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

#### § 7.5 Intentionally Omitted.

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the first business day after Contractor's receipt of the written Notice to Proceed for preconstruction services or construction services, as applicable. The Notice to Proceed shall not be issued until the Agreement has been signed by the Contractor, signed by the Owner's Authorized Representative, and Owner and Architect have received, and approved as to form, all required payment and performance bonds and insurance. Issuance of the Notice to Proceed shall not relieve the Contractor of its responsibility to comply with the bond and insurance requirements.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in conjunction with the Owner in accordance with Section 9.8 of the A201, as amended. The date of Final Completion is the date certified by the Architect in conjunction with the Owner in accordance with Section 9.10 of the A201, as amended. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion.

#### § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract with respect to the Project Schedule and achievement of the Substantial and Final Completion of the Work pursuant to the terms of the Contract Documents. By executing this Agreement, the Contractor stipulates that the Contract Time is a reasonable period for performing the Work, as set forth in the Contract Documents upon which the Agreement is based.

§ 8.2.2 The Contractor must not commence the Work prior to the effective date of insurance and bonds required to be furnished by the Contractor under the Contract Documents.

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

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

#### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a Separate Contractor of the Owner; (2) by changes ordered in the Work, which are not attributable to the Contractor; (3) by fire, governmental actions, or adverse weather conditions documented in accordance with Section 15.1.6.2 of this A201, as amended; (4) by delay authorized in writing by the Owner; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, may justify delay, then the Contract Time may be extended for such reasonable time as the Architect and Owner may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 of this A201, as amended.

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the A101, as amended and, including authorized adjustments, is the not to exceed total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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

### § 9.2 Schedule of Values

§9.2.1 The Contractor shall submit a schedule of values, as approved in writing by Owner, to the Architect before the first Application for Payment, allocating the entire Contract Sum, to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect or Owner. This initial schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and Owner, (and titled as "Amended Schedule of Values") with changes explicitly identified and supported by such data to substantiate its accuracy as the Architect or Owner may require; and if approved in writing by the Owner, the Amended Schedule of Values shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work, whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702 and G703, Application and Certificate for Payment and Continuation Sheet or other Owner approved forms.

### § 9.2.2 Intentionally Omitted.

### § 9.3 Applications for Payment

§ 9.3.1 The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the approved schedule of values for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage.

§ 9.3.1.1 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 has not been invoiced by a Subcontractor or supplier unless Contractor has self-performed the Work.

§ 9.3.1.3 Until Final Completion of the Work, the Owner shall withhold retainage as provided in the Contract Documents, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein in the Contract Documents.

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

- .1 The location must be agreed to, in writing, by the Owner and Surety.

- .2 The location must be a 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 may be an Additional Service and shall compensate Architect directly for same upon request.
- .5 Payment shall not include any charges for overhead or profit on stored materials, costs of insurance, storage and transportation to the site of all materials and equipment stored offsite.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and proof of delivery to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site or the agreed-upon off-site storage. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Neither Contractor nor any of its materialmen, laborers or Subcontractors shall have any lien rights against the Owner's lands, building funds, materials or other property. No materialmen, laborers or Subcontractors of the Contractor shall have any enforceable rights against the Owner on this Contract. Materialmen, laborers and Subcontractors of the Contractor may have rights under any Payment Bond provided by the Contractor, but cannot look to the Owner for any help in enforcement of those rights. **CONTRACTOR SHALL WAIVE, RELEASE, INDEMNIFY, AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH, OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.3.1 **CONTRACTOR COVENANTS AND AGREES TO HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND OWNER, AND ITS TRUSTEES, EMPLOYEES, OFFICERS, AGENTS, SUCCESSORS, AFFILIATES, ASSIGNS AND REPRESENTATIVES, INDIVIDUALLY OR COLLECTIVELY, AND OWNER'S REAL PROPERTY FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, LAWSUITS, PROCEEDINGS, LIABILITIES, LIENS, LOSSES, DAMAGES, COSTS, AND EXPENSES, OF EVERY KIND AND CHARACTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE AMOUNT OF ANY JUDGMENT, PENALTY, INTEREST, COURT COSTS AND REASONABLE LEGAL FEES INCURRED IN CONNECTION WITH THE SAME, OR THE DEFENSE THEREOF, FOR OR IN CONNECTION WITH, OR RESULTING FROM, THE PROJECT AND THE WORK TO BE PERFORMED, SERVICES TO BE RENDERED, OR MATERIALS TO BE FURNISHED BY CONTRACTOR OR ANY CONTRACTOR'S SUBCONTRACTORS OF ANY TIER UNDER THIS AGREEMENT; PROVIDED THAT OWNER HAS MADE ALL UNDISPUTED PAYMENTS REQUIRED UNDER THIS AGREEMENT.**

§ 9.3.4 Contractor shall submit Applications for Payment electronically or, if requested by owner, in writing and in quadruplicate using AIA Documents G702 and G703 Application and Certificate of Payment and Continuation Sheet or any other form requested by the Owner. All blanks in the form must be completed and signatures of

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 Contractor has made the necessary on-site inspections to confirm the accuracy of the Applications for Payment; that there are no known mechanics' or materialmen's liens outstanding at the date of the Application for Payment; that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Payment Application; that, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work; that the Payment Application includes only Work self-performed by Contractor or for which Contractor has been invoiced; and that releases from all Subcontractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work performed and for which payment has been made by the Owner to the Contractor. Contractor understands that documents submitted to Owner become government documents under the laws of the State of Texas. Contractor further understands that falsification of Contractor's Application for Payment may constitute a violation of the penal laws of the State of Texas, including, but not limited to, Texas Penal Code Sections 32.46, 37.09, and 37.10, and may justify termination of Contractor's Contract with Owner. Contractor further understands and agrees that falsification of documents may entitle Owner to restitution as permitted by Texas law and these Contract Documents.

§ 9.3.6 In addition, each Application for Payment must be accompanied by an updated Project Schedule (and Schedule of Values) containing any and all events and/or occurrences (regardless of fault) of delay or other hindrance to the critical path of the Project and must also contain an analysis of the impact of any such event or occurrence on the completion date for the Project. Failure to submit an updated Project Schedule with Contractor's Application for Payment may result in a justified denial of the Application for Payment by the Owner and Contractor shall be required to resubmit the Application for Payment with an updated schedule.

§ 9.3.7 Prior to approval of the Application for Payment, the Architect or Owner shall be provided an opportunity to review the on-site record construction drawings for completeness.

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will promptly and carefully evaluate and review the Application for Payment and, when appropriate, return the Application for Payment to the Contractor. If the Application for Payment is complete, then the Architect shall sign and either (1) certify and issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) certify and issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner with a detailed statement in writing of the Architect's reasons for withholding certification in part as provided in Section 9.5.1 below; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner with a detailed statement in writing of the Architect's reason for withholding certification in whole in accordance with Texas Government Code Section 2251.042(a) and Architect's written reasons for withholding certification shall be submitted in accordance with and construed as the notice required by Texas Government Code Section 2251.042 *et seq.* Owner may not withhold from payments more than 110% of the disputed amount. Owner shall provide certifications of payment for any of the Owner's separate consultants or contractors on Architect's prior written request.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion, and the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents. Further, the issuance of the Certificate for Payment will constitute a representation by the Architect to the Owner that the Architect has, carefully evaluated and certified that the amounts required in the Application for Payment are valid and correct. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific

qualifications expressed by the Architect in writing to the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents 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 above and elsewhere cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including:

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

§ 9.5.2 When the Contractor disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15. Owner shall not be deemed to be in default by reason of withholding payment as provided in the Contract Documents.

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

§ 9.5.4 Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under the Contract Documents, then Architect or Owner may withhold any further Certificate for Payment from Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Sections 9.3.4, 9.4.3, 9.5.1, or the Contract Documents.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment for undisputed amounts in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Owner shall notify Contractor within 21 days if Owner disputes the Architect's Certificate for Payment pursuant to Texas Government Code Section 2251.042 *et seq.*, listing the specific reasons for nonpayment and amount in dispute. The Owner may withhold from payments required no more than 110 percent of the disputed amount. Payments to the Contractor shall not be construed as releasing the Contractor or its Surety from any obligations under the Contract Documents. Notwithstanding the foregoing, in no event shall Owner be required to make

payment for items of cost disallowed by the Owner, Owner's franchisor or Owner's lender's inspecting architect because of nonconforming or defective work or discrepancy in percentage of completed based upon the Contract Documents or, if Owner, in its reasonable, good faith judgment, determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due Contractor unless and until Contractor, at no cost to Owner, performs a sufficient portion of the Work so that the portion of the Contract Sum then remaining unpaid (as reasonably determined by Owner) is sufficient to complete the Work. Furthermore, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contractor Documents and Owner shall not be deemed to be in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide to the Owner copies of such Subcontractor payments. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, then the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner. This Section is subject to the provisions of Texas Business and Commerce Code Chapter 56.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within three (3) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier. Any action taken by the Owner to require the Contractor to pay a Subcontractor shall not impose any liability on Owner to the Subcontractor or supplier.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4 of this A201, as amended.

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

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

**§ 9.6.8 THE CONTRACTOR SHALL DEFEND AND INDEMNIFY THE OWNER FROM ALL LOSS, LIABILITY, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES AND**

**LITIGATION EXPENSES, ARISING OUT OF ANY LIEN CLAIM OR OTHER CLAIM FOR PAYMENT BY ANY SUBCONTRACTOR OR SUPPLIER OF ANY TIER. UPON RECEIPT OF NOTICE OF A LIEN CLAIM OR OTHER CLAIM FOR PAYMENT, THE OWNER SHALL NOTIFY THE CONTRACTOR. IF APPROVED BY THE APPLICABLE COURT, WHEN REQUIRED, THE CONTRACTOR MAY SUBSTITUTE A SURETY BOND FOR THE PROPERTY AGAINST WHICH THE LIEN OR OTHER CLAIM FOR PAYMENT HAS BEEN ASSERTED.**

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

**§ 9.7 Failure of Payment**

§ 9.7.1 Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due, and owing, after the date the payment is due under the Contract Documents then the Contractor, upon ten (10) additional days' written notice to the Owner and Architect that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided 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 so that the Owner can occupy or utilize the Work for its intended use; all Project systems included in the Work or designated portion thereof have been successfully tested and are fully operational; all items on any commission reports have been satisfied; all required governmental inspections and certifications required of the Work have been made, approved and posted; designated initial instruction of Owner's personnel in the operation of Project systems has been completed; and all the required finishes set out in the Construction Documents are in place. The only remaining Work shall be minor in nature so that the Owner can occupy the Work or the applicable portion of the Work for all of its intended purposes on that date; and the completion of the Work by the Contractor will not materially interfere with or hamper Owner's normal school operations or other intended use. As a further condition of a determination of Substantial Completion, the Contractor must certify that all remaining Work (i.e., punch list) shall be completed within 30 days. Contractor shall prepare Owner's Substantial Completion Certificate for review and approval by Architect and Owner and it must include the date of Substantial Completion, the punch list provided by the Contractor to address all remaining areas of the Project, and all known Owner-accepted non-conforming work.. Notwithstanding the foregoing, the Owner

may refuse to make payment of any Certificate of Substantial Completion or any Certificate of Payment (including, without limitation, the final Certificate of Payment) for any default of the Contractor. Owner shall not be deemed in default by reason of withholding payment while any of such defaults remain uncured.

§ 9.8.1.1 As an additional condition of Substantial Completion, Contractor must provide an itemized asset list on an Excel spreadsheet (“**Substantial Completion Asset List**”) and as defined in this section. The Substantial Completion Asset List must contain an itemized list of all materials, equipment and assets incorporated in the Project; and for each item on the list of materials, equipment and /or assets Contractor must provide the following information:

- a. College/Site;
- b. Project or Building Name
- c. Physical Location
- d. Symbol / Asset Type
- e. Service / Manufacturer
- f. Description
- g. Manufacturer Part / Model Number
- h. Manufacturer Serial Number"
- i. Install Date
- j. Warranty Expire Date
- k. Attribute / Filter 1 / Voltage
- l. Attribute / Filter 2 / Wattage
- m. Attribute / Filter 3
- n. Attribute 4 and
- o. Reference to Sec. 3.5.8 Warranty Binder or Sec. 9.10.4 Manuals Binder

The Substantial Completion Asset List must be complete, accurate and in a substantially similar Excel Spreadsheet form as shown below (an example may also be provided upon Contractor’s request to the Owner’s representative):

Location College/Site	Project or Building Name	Physical Location	Symbol / Asset Type	Service	Manufacturer	Description	Manufacturer Part / Model Number	Manufacturer Serial Number	Install Date	Warranty Expire Date	Attribute / Filter 1 / Voltage	Attribute / Filter 2 / Wattage	Attribute / Filter 3	Attribute 4
SAC	STEM Building	Roof	RTU-1	Science Lab Wing	Trane	20 ton RTU	8P546-10012345	JED37590	01/01/10	01/01/15	MERV 13 - 20x20	MERV 13 - 12x15		
SAC	STEM Building	Class Room 200	AC-1	SAN100	Elenco	Electric Heat Coil	885FE	5544689	01/01/10	02/01/20				
SAC	STEM Building	Lab 121	FOO	Chemistry Research Lab 121	Phoenix Controls	Fume Hood Exhaust	123456789-2358	HPG5435	04/01/10	04/01/15	ACCELL II			
SAC	STEM Building	Lab 121	L-1	Recessed	Forum Lighting	Forum Lighting	3RT-44PECKVHGHN4785479-SAT-424W-WHRE10V	LL3-10	01/01/10	01/01/25	120-277V	38 W		
SAC	STEM Building	MR 25	WH-1	Restrooms 1 and 2	A.O Smith	Water Heater	JLH88775	584125854	01/01/10	01/01/20	450 V		120 gallon	

The Substantial Completion Asset List must be updated as a condition precedent to Final Completion and Payment.

§ 9.8.1.2 As an additional condition of Substantial Completion, the following “**District Substantial Completion Inspection List**” must be, inspected, reviewed and approved by Owner’s Authorized or Designated Representative:

1. **Above Ceiling Inspection** (inspection conducted, deficiencies cleared, completed)
2. **Building Number Assigned by A/E** (Do not use an old building number, must generate a new number)
3. **Operations & Maintenance (O&M) Manuals** (as specified for electric, mechanical, controls, fire detection, sprinkler system, doors, etc., must be submitted, approved, turned-over to College Superintendent and DSO Facilities in the form of two (2) Hard Copies and one (1) Electronic copy on a USB thumb Drive in .pdf format)
4. **O&M Training** (must be schedule with specific dates/times/location and coordinated with applicable College. Contractor must identify durations of specialized training, identify participants and the time of start, finish, breaks, lunch and times of training. Contractor shall provide copies of manuals, if any, required; sign-in sheets of training; videotaped training and special tools, if any)
5. **Preliminary Operational and Functional Testing of Systems must occur and pass** (College Superintendent and Maintenance invited prior to training for familiarization with systems)
6. **Fire Alarm, Detection System, Sprinkler System** (must be tested, accepted, and coordinated with Fire Department (AHJ) and shall include Safety Inspection, fire extinguishers inspection as specified with Contract)
7. **CQC/QA Mechanical & Electrical Systems Testing** (conducted, verified) (Additional Mechanical-verification that all systems have been cleaned, flushed, and pacified, if applicable. New Addition Chemicals have been added to the primary loops, as required, and coordination with Owner is required before adding any chemicals.)



8. **Commissioning** (Preliminary, functional & final testing of systems completed, pre-commissioning plan submitted, approved, team identified, coordinated with commission representatives, test records, reports submitted and approved by Owner's Authorized or Designated Representative.)
9. **Valve Tags, Charts, Diagrams** (approved tags, posted properly)
10. **Communications** (installation and successful operation of phone, cable, fiber optics including testing and coordinate punch-out with DSO IT & Facilities or other contractor/vendors)
11. **Excess Materials/Attic Stock** (if any such material, Contactor shall provide an inventory of spare parts, tools, with quantities as specified on an itemized list showing where such materials is located/stored with copy provided and accepted by Superintendent)
12. **Landscaping/Turfing** (coordinate with Superintendents reference items for landscaper, utilities, irrigation system and provide written maintenance requirements for same)
13. **Exterior** (All of the following items must be complete - parking lots, pavement, striping, handicap signs, wheel stops, light standards, vehicle plug-in, sidewalks, fencing, bollards-safety markings, dumpster enclosures, transformer enclosure, locks, as applicable.)
14. **Signage** (All of the following items must be complete - interior, exterior, directory, facility name and number, billboard, Fire Evacuation, as applicable.)
15. **"Keys/Tags/Box/Construction Cores** (All of the following items must be complete - numbers required as specified, POC for turnover, key control, location, construction cores, documented coordination with College/District locksmith, Superintendent, sign shops)
16. **Substantial Completion Cleaning** (All of the following items must be complete - waxing of floors, operational access control, and ability to secure building.)
17. **Installed Property Equipment List** (See Section 9.8.1.1 above - generally need mechanical and electrical, Asset/Equipment list provided by Contractor and submitted in MS Excel Format Only to Owner showing actual equipment installed, which shall match the approved equipment schedules)
18. **"Submittals/RFIs Closeout** (All of the following items must be complete - outstanding, delinquent, transfer to PM/DSO Facilities)"
19. **Warranty Conference** (Meeting must be scheduled with contractor for additional input, but Contractor shall provide at substantial completion booklets with all inclusive warranties, procedures, response order of priority, meeting minutes with POCs phone #s, attendees to include building manager, service desk, reserved room large enough for attendees)
20. **"Warranty follow-up Inspections** (Schedule 4 month, 9 month and 1-year inspections, set up warranty call log/procedures, contractor response times, etc.)"
21. **"Equipment Warranty Tags** (Confirm Tags are typed, submitted & approved with correct warranty tags dated and posted on appropriate equipment or materials)"
22. **CQC completion inspection and Punch List** (submitted w/ scheduled dates for completion of item, coordinate w/ QAR. No pre-final inspection scheduled w/o this.)
23. **Initial Certificate of Occupancy** must be Issued and posted
24. **"Master Issue and Deficiency Log** (This item must be cleared or with correction suspense dates of the Contractor)"
25. **Pre-final Inspection** (All of the following items must be complete - a quality control punch list received, phased by facilities, floors, mechanical rooms, etc., and scheduled for inspection at any time other than on early Mondays or late Fridays)
26. **Receipt of General Contractor Affidavit** release of claims, and release and waivers of liens or claims from Subcontractors as part of payment application.
27. **All applicable certifications** required have been issued and validated (for example Elevator Certification)
28. **As-builts** (All of the following items must be complete and in Owner's possession - red line preliminary, final, CADD files submitted, approved with required number of copies and in the format as specified including a CDs, etc.)
29. **Final Inspection** (Substantial Completion Memo prepared for signature after inspection completed)
30. **Substantially Complete** - Construction Complete Sign Substantial Complete Memorandum (As-Builts Required, Punch List items must not impact the function of the facility)
31. **Final Certificate of Occupancy** must be issued for Substantial Completion
32. **Ribbon Cutting** coordination with Owner to establish tentative or actual date (if applicable)
33. **Final Completion** must occur within 30 days of substantial completion (All of the following items must be complete - Record Drawings - 1 Hard Copy, 2 USB PDF format, and 1 USB in CAD format).

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall, using the Owner's Project Management Software or other

approved forms or software, prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The punch list shall contain an area or room description, and a photograph of each deficiency listed in the punch list and a space for contractor and architect to individually indicate the date of the correction and observation of the correction, respectively. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Architect and/or Owner shall have the right to add additional items to be completed or corrected to the comprehensive list submitted by the Contractor.

**§ 9.8.2.1** The Contractor's Project Manager or superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and Owner for supplementation. Upon receipt, the Architect shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. Should the Architect or Owner determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done within 30 days of Substantial Completion.

**§ 9.8.2.2** Upon receipt of an acceptable Contractor's punch list, the Contractor's Superintendent or Project Manager shall accompany the Architect, its Consultants and the Owner (at its discretion) during their inspections and the preparation of verbal or written additions to the Contractor's punch list. The Contractor's Project Manager or Superintendent shall record or otherwise take notes of all supplementary items and incorporate them into the Final Punch List. A typed addition to the supplements to the punch list will be made by the Contractor. This procedure will produce a Final Punch List that has the Contractor's, Architect's, Consultant's and Owner's comments incorporated in only one list using the Owner's Project Management Software or other approved form or software. Delay in the preparation of the Final Punch List shall not be cause for a claim for additional cost or extension of time as the Contractor's superintendent shall have been in attendance during the inspections of the Architect and its consultants and will have been expected to have taken appropriate own notes.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents, then the Architect or Owner shall so notify the Contractor in writing, and the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection to determine Substantial Completion. Except with the consent of the Owner, the Architect shall perform no more than three (3) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect in consultation with the Owner will prepare, sign and issue Owner's Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the Final Punch List accompanying the Certificate.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

## **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when agreed to by the Owner and the Contractor in writing, provided such occupancy or use is consented to by the insurers (contractor's builder risk and owner's liability among others) and authorized by public authorities having jurisdiction over the Project. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided that the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation, and property and liability insurance. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by

recommendation of the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

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

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

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

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect in consultation with the Owner, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly prepare, sign, and issue Owner's Certificate of Final Completion and a final Certificate for Payment certifying to the Owner that, on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance, including all retainages found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 below as precedent to the Contractor's being entitled to final payment have been fulfilled. Final payments shall be made by the Owner in accordance with Owner's regular schedule for payments. Except as provided in any warranty or maintenance stipulations, bond, or by law, the Project will have reached "Final Completion" when all the Work has been finally completed, the final inspection is made by the Architect and final acceptance by the Owner.

§ 9.10.1 As an additional condition of Final Completion and Final Payment, Contractor must completely and accurately update the previously provided itemized Substantial Completion Asset List on an Excel spreadsheet to create the "**Final Completion Asset List**". The Final Completion Asset List must contain any new or omitted materials, equipment or assets incorporated in the Project along with the previously provided items on the Substantial Completion Asset List. The Final Completion Asset List must (i) comply with the requirements in Section 9.8 above (ii) be accurate and in a substantially similar Excel Spreadsheet form as shown in Section 9.8 above and (iii) be provided to Owner in a digital (excel) and paper format. Likewise, as an additional condition of Final Completion and Final Payment all incomplete items, if any, on the **District Substantial Completion Inspection List** must be completed to the satisfaction of Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) using AIA Document G706 or other Owner approved form, an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) evidence satisfactory to Owner that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) using AIA Document G707 or other Owner approved form, consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as AIA Document G706A or other Owner approved form, notarized subcontractor's lien releases, receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in

discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees. In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7 of this A201, as amended;
- .2 Final list of subcontractors (AIA Document G705);
- .3 Contractor's certification in Texas Education Agency's Certification of Project Compliance;
- .4 Contractor's warranties, organized as required elsewhere in the Contract Documents;
- .5 Maintenance and Instruction Manuals;
- .6 Owner's Final Completion Certificate; and
- .7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment shall be paid by the Owner to the Contractor promptly after acceptance of the Work and approval of the Final Payment. If applicable to the District

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

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner. As a condition to Owner's obligation to make final payment, Contractor shall have satisfied the following: (1) all conditions in all Contract Documents have been fulfilled by Contractor; (2) Contractor has delivered to Owner all warranties and guaranties which are applicable to any part of the Work; (3) Contractor has furnished Owner with two sets of as-built drawings showing the actual location of all improvements constructed; (4) Contractor has delivered to Owner lien releases as required by the Contract Documents in the form prescribed by applicable law, and no lien claims have been filed and remain against the Project for labor performed or material installed in the Project by or on behalf of Contractor; (5) Contractor has delivered to the Owner an indexed binder containing complete installation, operation and maintenance manuals, including all manufacturer's literature, of equipment and materials used in the Work; (6) Contractor has delivered to the Owner an indexed binder containing all inspection reports, permits, and final certificates of occupancy and licenses necessary for Owner's occupancy of the Project; (7) Contractor has delivered to Owner a permanent Certificate of Occupancy issued by the applicable governmental authority; (8) The consent of surety to final payment; and (9) Contractor has delivered to Owner and Owner's lender, if applicable all such other documents as Owner and/or Owner's lender may require.

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

**§ 9.11** In addition to any damages payable to the Owner by Contractor, if: (1) the Architect are required to make more than three (3) inspection for Substantial Completion as a result of Contractor's or any subcontractor's actions; (2) the Architect are required to make more than one (1) inspection for Final Completion as a result of Contractor's or any subcontractor's actions; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents, then the Owner shall be entitled to deduct from the Contract Sum (including from the final payment) amounts paid to the Architect for any additional inspections or services.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

**§ 10.1.2** Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not perform any service for Owner while under the influence of any amount of alcohol or any legal or illegal controlled substance; or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall: use, possess, distribute, or sell illegal or nonprescribed controlled drugs or drug paraphernalia; misuse legitimate prescription or over-the-counter drugs; or act in contravention of warnings on medications while performing the Work or while on Owner's premises. Contractor's employees, agents, Subcontractors, or anyone directly or indirectly employed by any of them, shall not distribute or sell alcohol or drugs of any kind to Owner's students or staff, regardless of the location of the distribution or sale.

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

**§ 10.1.4** Owner has also banned the presence of all weapons on the Project site, whether or not the owner thereof has a permit for a weapon, and Contractor agrees that Contractor's representatives, employees, agents, and subcontractors will abide by same. Weapons may only be permitted in Owner's parking lots if weapons are locked in personal vehicles in Owner's parking lot.

**§ 10.1.5** Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to Contractor's insurers or the State of Texas in connection with such injuries or fatalities.

**§ 10.1.6** Both Owner and Contractor agree these safety and health terms to be of the highest importance, and a breach or violation of any of the terms of this Section or other safety provisions of this Agreement by Contractor will be considered to be material and substantial breach of this Agreement. In the event that Owner shall determine that Contractor has breached or violated such safety provisions, then Work shall terminate immediately upon written notice to Contractor. Work shall not recommence until Owner shall be satisfied that the safety provisions hereof

shall not be breached or violated thereafter. If Owner shall terminate the Agreement, the Owner and Contractor shall complete their obligations hereunder to one another in accordance with Section 14.

§ 10.1.7 Nothing contained in this Section shall be interpreted as creating or altering the legal duty of Owner to Contractor or to Contractor's agents, employees, contractors, subcontractors, or third parties, or altering the status of Contractor as an independent contractor.

§ 10.1.8 Notwithstanding either of the above provisions or whether Owner exercises its rights set forth herein, Owner does not warrant nor represent to Contractor, Contractor's employees, contractors or subcontractors or agents, any subcontractors, or any other third party that Contractor's policy meets the requirements of any applicable law, code, rule, or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy will insure that no accidents or injuries will occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the Contract Documents.

## § 10.2 Safety of Persons and Property

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

- .1 employees on the Work, school personnel, students, and other persons on Owner's premises including the installation of fencing between the Work site and any connecting or adjacent property of Owner, when required by Texas Education Code Section 22.08341 and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as other buildings, and other contents, fencing, trees, shrubs, lawns, walks, athletic fields, facilities, 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 implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any personal or real property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 above caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3 above. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18 above and elsewhere in the Contract Documents.

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

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

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

§ 10.2.9 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's Authorized or Designate Representative and the Architect.

§ 10.2.10 Contractor's obligations under this Section 10.2 as to each portion of the Project shall continue until Owner issue a Substantial Completion Certificate for that portion of the Project, if any.

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

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The written notice shall provide sufficient detail to enable the other party to investigate the matter. Contractor understands and acknowledges that, under Texas law, Owner has sovereign and/or governmental immunity as to all torts except as to the Owner's permitted use or operation of Owner's motor vehicles, subject to any defenses under law.

#### § 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner may obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, may cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contractor may be entitled to an equitable adjustment regarding the Date of Substantial Completion and/or Final Completion.

**§ 10.3.3 IF CONTRACTOR IMPORTS HAZARDOUS MATERIALS ONTO THE PROJECT SITE, THEN CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS THE OWNER, ITS CONSULTANTS, TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY CLAIMS ARISING OUT OF OR RELATED TO SUCH IMPORTATION, INCLUDING BUT NOT LIMITED TO COSTS AND EXPENSES THE OWNER INCURS FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR BRINGS TO THE SITE, AS PROVIDED FOR IN SECTION 3.18.**

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site.

#### §10.4 Emergencies

§ 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss and promptly inform Owner and Architect.

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

#### § 10.5 ASBESTOS OR ASBESTOS-CONTAINING MATERIALS

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

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

#### § 10.6 LEAD-FREE MATERIAL IN POTABLE WATER SYSTEM

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

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

#### § 10.7 HAZARDOUS MATERIALS CERTIFICATION

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

#### § 10.8 PUBLIC CONVENIENCE AND SAFETY.

§ 10.8.1 Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner and entity having jurisdiction over the streets and sidewalks. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

§ 10.8.2 **In case of an emergency**, the Owner reserves the right to remedy any neglect on the part of Contractor in regard to public convenience and safety which may come to the Owner’s attention, after twenty-four (24) hours’ notice in writing to Contractor and Contractor’s failure to cure such item within said twenty-four hour period unless Contractor has initiated the remedy and diligently pursues the remedy to completion which shall be complete within five (5) days of Owner’s notice to Contractor. In case of an emergency, the Owner shall also have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy Contractor’s neglect may be deducted from the Contract Sum.

§ 10.9 **BARRICADES, LIGHTS AND WATCHMEN.** If the Work is carried on or adjacent to any street, alley or public place, Contractor shall, at Contractor’s own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon Contractor’s name and shall be illuminated by lights from sunset to sunrise. The term “lights,” as used in this section, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional



devices shall also be erected to keep vehicles from being driven on or into any Work under construction. Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect may order the damaged portion immediately removed and replaced by Contractor at Contractor's cost and expense; provided, however, the Architect shall not take any action that would preclude a Builders Risk insurance claim for such damage. Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

**§ 10.9 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.** In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work.

**§ 10.11 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS.** When existing storm sewers or drains have to be blocked, taken up or removed, Contractor shall, at its own expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers.

**§ 10.12 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT.**

**§ 10.12.1** When Contractor desires to use water in connection with the Work, Contractor shall make complete and satisfactory arrangements with any water providers in consultation with the Owner.

**§ 10.12.2** Contractor, in consultation with the Owner, shall make complete and satisfactory arrangements for electricity and metered electrical connections with any retail electric provider in the event that separately metered electrical connections are required for the Project.

**ARTICLE 11 INSURANCE AND BONDS**

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

**§ 11.0.2** Satisfactory evidence of insurance required by the Contract Documents must be provided to Owner and Architect not later than five (5) calendar days after execution of the Contract by Owner or prior to commencement of the Work. Satisfactory evidence shall include copies of all required insurance policies, declarations, endorsements themselves and any other insurance related documents requested by Owner. In addition, Contractor shall also provide a duly-executed ACORD Form 25 Certificate of Liability Insurance naming Owner as a certificate holder and additional insured (except as noted below) and attaching all endorsements required herein. The Contractor shall furnish Owner all insurance amendments, renewals, notices, cancellations, and additional endorsements, as they are provided to Contractor.

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

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

include the Contractor on all liability insurance policies to the same extent as the Owners are required to be named as an Additional Insured.

§ 11.0.5 All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, trustees, employees, representatives, or agents. All insurance shall be written on an occurrence basis, if available, and shall contain a waiver of subrogation in favor of Owner as provided for in Section 11.3 below.

§ 11.0.6 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, trustees, employees, representatives, or agents.

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

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

§ 11.0.9 Each insurance policy to be furnished by Contractor shall include the following required provisions within the certificate of insurance, and within the body of the insurance contract or by endorsement to the policy:

- .1 Each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to Owner by certified mail. The Contractor shall also notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage.
- .2 The policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an Additional Insured on the policy. The insurance coverage furnished by Contractor as required is considered to be primary insurance and non-contributions for purposes of the Project and the Additional Insureds named in the required policies.
- .3 All provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.
- .4 None of the liability policies shall contain a provision excluding coverage for claim(s) brought by one insured against another insured.
- .5 Without limiting, in any way, the indemnity obligations set forth in the Contract Documents, all insurance shall also provide coverage for indemnity obligations.

§ 11.0.10 Contractor agrees to the following special provisions:

- .1 Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner. It being the intention that the insurance policies shall protect all parties to the Agreement and be primary coverage for all losses covered by the policies. This Waiver of Subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under the Contract Documents.
- .2 Insurance companies issuing the insurance policies and Contractor shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Contractor.
- .3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by Contractor (or any Subcontractors) shall not relieve Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability

of or by Contractor's insurance company shall likewise not exonerate or relieve Contractor from liability.

- .4 The Owner reserves the right to review the insurance requirements in the Contract Documents during the effective period of this Agreement and to adjust the lines of insurance coverage and their limits when deemed necessary and prudent by the Owner, based upon changes in statutory law, court decisions, the claims history, or Owner's discretion. Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Agreement or upon the underwriter of any such policy provisions). Upon written request by the Owner, Contractor shall exercise reasonable efforts to accomplish such changes in policy lines of coverage; and Owner shall pay Contractor for all extra costs incurred in effecting the changes to the policies.
- .5 No special payments shall be made for any insurance policies that Contractor and Subcontractors are required to carry because all are included in the Contract Sum.

### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor and the Contractor's Subcontractors shall purchase and maintain such insurance as will protect them and the Owner from claims that may arise out of, or result from, the Contractor's operations under the Contract, whether such operations be by Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, at a minimum, of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 11.1 in the Agreement, or elsewhere in the Contract Documents. Such insurance shall include the following:

- .1 Claims under workers' compensation, disability benefit, and other similar employee benefit acts that are applicable to the Work to be performed, including private entities performing work at the site, and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project (**See Exhibit A**);
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance, or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under the Contract Documents, including under Section 3.18 of this A201; and
- .9 Claims for damages to the Work itself, through builder's risk insurance.

### § 11.1.2 Intentionally deleted.

**§ 11.1.2.1 Performance Bond and Payment Bond.** The Contractor shall furnish separate payment and performance bonds covering faithful performance of the Contract and payment of obligations arising thereunder, each bond to be in a total amount equal to 100% of the Contract Sum. Provided, however, no limitation herein shall limit Contractor's liability under the Contract Documents. The Performance Bond shall also provide for the repair of all

defects due to faulty materials and workmanship that appear within a period of one (1) year from Final Completion. Except as provided below, such bond shall be furnished to Owner before any work begins and not later than five (5) calendar 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](http://www.ambest.com). The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

§ 11.1.2.2 The Contractor shall deliver copies of the required bonds to the Owner and Architect not later than five (5) calendar days after execution of the Contract by Owner and prior to the commencement of the Work. All bonds will be reviewed for compliance with the Contract Documents. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's Representative with Architect's recommendation.

§ 11.1.2.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 11.1.2.4 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bonds shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) work days of the date the Contractor knows or should know of an impending or actual cancellation of any insurance required by the Contract Documents, the Contractor shall provide written notice to the Owner of such impending or actual cancellation. Upon receipt of written notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of written notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. At least 30 calendar days prior to the date of expiration of any policy required by the Contract Documents, Contractor shall provide Owner written notice of the impending expiration.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining property and casualty insurance no later than the date of Substantial Completion. If Owner occupies or uses any completed or partially-completed portion of the Work at any stage, then such occupancy or use must be consented to by the insurer and authorized by public authorities having jurisdiction over the Work. To the extent of overlap between Owner's property insurance and Contractor's builder's risk insurance, if any, Contractor's builder's risk shall be primary and non-contributory.

§ 11.2.2 Partial occupancy or use shall not commence until the insurance company providing this insurance has consented in writing, by endorsement or otherwise. Owner and Contractor shall take reasonable steps to obtain such consent and shall take no action without written mutual consent that would cause cancellation, lapse, or reduction of this insurance.

### § 11.2.3 Intentionally Omitted.

## § 11.3 Waivers of Subrogation

§ 11.3.1 All insurance required under the Contract Documents shall contain a waiver of subrogation in favor of Owner on all claims arising out of the Project. The policies shall provide such waivers of subrogation by endorsement or otherwise. The Contractor shall require similar written waivers in favor of the Owner, from the subcontractors and sub-subcontractors. The policies of insurance purchased and maintained by Contractor shall not prohibit this waiver of subrogation.

§ 11.3.2 The Owner, as fiduciary, shall have power to adjust and settle any loss arising out of the Work with insurers, regardless of the purchaser of the insurance policy. The Contractor upon receipt of proceeds shall, as a fiduciary, pay all subcontractors their just shares of insurance proceeds received by the Contractor, 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 with the insurance proceeds upon issuance of a Notice to Proceed from the Owner.

## § 11.4 Loss of Use and Business Interruption

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

## § 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Contract Documents shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of Section 11.5.2 below. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor and Architect of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor or Architect shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor and/or the Architect do not object, the Owner shall settle the loss and the Contractor and Architect shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor and/or Architect timely object to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15 of this A201, as amended. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the

Contractor. If such Work is in accordance with the Contract Documents, the Contractor may be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## § 12.2 Correction of Work

### § 12.2.1 Before Substantial Completion

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

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or nonconforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand. Notwithstanding the foregoing or any provision of the Agreement to the contrary, Owner shall have no obligation to notify Contractor of any defect creating an emergency that is presently damaging, or imminently threatening damage to, persons or property and in such event, Owner may make any repairs it deems necessary or appropriate to repair such matters and may recover such costs of repair from Contractor.

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 of this A201, as amended, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such written notice promptly after discovery of the condition. If the Contractor fails to commence to continue through completion the correct nonconforming Work within 10 days after receipt of written notice from the Owner or Architect, the Owner may correct the Work as provided in 12.2.2.1.1 below. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.1.1 If the Contractor fails to perform the corrective Work, then Owner may perform corrective Work, at Contractor's cost. If Owner performs corrective Work, then Owner may also remove nonconforming Work and store the salvageable materials or equipment at Contractor's expense. If the Contractor does not pay all costs incurred by Owner within seven (7) days after written notice, then Owner may, upon ten (10) additional days' written notice, sell the removed materials and equipment in accordance with Owner's policies, and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, then the Contractor shall pay the difference to the Owner.

§ 12.2.2.2 To the extent any warranty begins herein at Substantial Completion, the one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 To the extent any warranty begins herein at Substantial Completion, the one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, but only as to the corrected Work. The Owner shall give notice to Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one (1) year period stated in Subparagraphs 12.2.2.1 and 12.2.2.2 above does not limit the ability of the Owner to require Contractor to correct latent defects or nonconformities in the Work discovered after said one (1) year period, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect at the time the Work was performed or at the time of inspection for certification of Substantial Completion or Final Completion.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 of the A201, as amended, shall be construed to establish a period of limitation(s) with respect to 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 of this A201, as amended, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. Moreover, the corrective remedies set forth in this Article 12 are not exclusive and shall not deprive the Owner of any action, right, or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Bexar County, Texas.

### § 13.2 Successors and Assigns

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

§ 13.2.2 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contract Documents.

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals which shall be included in the Contract Sum. Provided, however, per Texas Government Code Chapter 2269, Owner shall bear all costs of construction materials engineering, testing and inspection services, and the verification testing services necessary for acceptance of the facility by the Owner. The Contractor shall give the Architect and Owner timely written notice of when and where tests and inspections are to be made so that the Architect or Owner may be present for such procedures. The Owner may directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1 above, the Owner may provide or contract for such additional testing, inspection, or approval. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 above reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including, but not limited to, those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

### § 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest from the date payment is over due at the rate as provided by Texas Government Code Section 2251.0025. 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. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

### § 13.6 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for



employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.”

### § 13.7 RECORDS

§ 13.7.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, insurance records, scheduling records, accounting records, written policies and procedures, invoices, receipts, all records related to the Contract Documents and Construction Documents, tax records, communications (texts, email, etc.), invoices, Construction Documents, scheduling documents and data, insurance records, payment records, payroll records, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, insurance records, correspondence, change order files (including documentation covering negotiated settlements) other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor and subcontractor for at least ten (10) years after the date of Final Completion of the Project. Within three (3) days of Owner’s request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner’s central office.

### § 13.7.2 Intentionally Omitted.

§ 13.7.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1 above.

§ 13.7.4 Contractor shall keep all Contract Documents related to the Project, subject to the provisions of Section 13.7 above, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.5 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor. In addition, if an audit inspection or examination discloses overpayments (of any nature) by the Owner to the Contractor in excess of one percent (1%) of the Contract Sum, the actual cost of the Owner’s audit shall be paid by the Contractor.

§ 13.7.6 Contractor shall require all subcontractors, sub-subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section 13.7 by insertion of the requirements hereof in a written contract agreement between the Contractor and payee. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related payees’ costs from amounts payable to the Contractor pursuant to this contract.

### § 13.8 PROPRIETARY INTERESTS AND CONFIDENTIAL INFORMATION

§ 13.8.1 Neither Architect nor Contractor shall use the image or likeness of Owner’s Project or Owner’s official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner’s prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor’s services, without Owner’s prior written consent.

§ 13.8.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.8.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq.*, and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq.* See also, Section 8.7.22 of the A101-2017, as amended.

### § 13.9 TIME LIMITS ON LITIGATION

The Owner and Contractor shall commence all litigation, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the dispute resolution method selected in the Agreement and within the time period specified by applicable law.

**§ 13.10 ADDITIONAL DOCUMENTS AND FURTHER ASSURANCES.** Contractor acknowledges that Owner may require from time-to-time certain statements, certificates and documents from Contractor. Contractor agrees to furnish such statements, certificates and documents as the Owner may reasonably require, which may include, without limitation, names of subcontractors and suppliers and their respective addresses; amounts due or to become due or previously paid to such Subcontractors and suppliers; information concerning any mechanic's lien claims; mechanic's lien releases and lien waivers; receipted bills evidencing payment, estimates of the cost of the Work performed by Contractor and any subcontractor or supplier and estimates of the cost of completing the Work. Contractor further agrees to cooperate with and assist Owner in complying with all of the requirements of the bonds or notes used to finance the Project, in part or in whole, if any, which relate to the performance of the Work. Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

**§ 13.11 SUBCONTRACTOR OBLIGATIONS.** Any specific requirement in the Contract Documents that imposes responsibilities or obligations on the Contractor shall also apply to a Subcontractor and a subcontractor of any tier. The omission of a reference to a subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a subcontractor of any tier under the Contract Documents or the applicable subcontract.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, then after applicable time period the Contractor may, upon ten (10) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and other damages permitted under the law that were incurred to the date of termination.

§ 14.1.4 If the Work is stopped for a period of one hundred and twenty (120) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon twenty (20) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding any term of the Agreement to the contrary, Contractor may not terminate the Agreement solely as a result of Owner initiating litigation against the Contractor prior to completion of the Work.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers, equipment or proper materials;

- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial or material breach of a provision of the Contract Documents;
- .5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in serious or repeated worker misconduct in violation of the Contract Documents;;
- .7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .8 fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Contract Documents;
- .9 Contractor fails or refuses start the Work within seven (7) days after the date of written notice by the Owner to commence the Work;
- .10 Owner has a reasonable belief that Contractor has abandoned the Work;
- .11 Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work;
- .12 Progress of the Work being made by Contractor is insufficient to complete the Work within the Contract Time or in accordance with the most recent approved Project Schedule;
- .13 Contractor repeatedly fails or refuses to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect or the Owner as permitted in the Contract Documents;
- .14 Contractor repeatedly fails or refuses to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect or Owner; and
- .15 Collusion exists or has occurred for the purpose of illegally procuring the Work or a Subcontractor, or a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 above exist, subject to any prior rights of the surety, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4 of this A201, as amended; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such

request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6 in this A201, as amended. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

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

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

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

§ 14.3.2 The Contract Sum and Contract Time may be adjusted, by mutual written agreement, for adjustments in the cost and time caused by suspension, delay, or interruption under Section 14.3.1 above. No adjustment shall be made to the extent

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

If there is no mutual agreement, the Contract Sum and Contract Time shall be adjusted based on the reasonable and verifiable change in the cost and time caused by such suspension, delay, or interruption of the Work, as permitted by the law.

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

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and other damages permitted under the law that were incurred to the date of termination. Such payment shall not cause the Contract Sum to be exceeded. Such payment shall not include overhead and profit or fee for Work not executed or preformed.

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

## ARTICLE 15 CLAIMS AND DISPUTES OF CONTRACTOR

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by the Contractor seeking, as a matter of right, payment of additional compensation under the Contract Documents, interpretation of the Contract Document terms, a change in the Contract Time, or other relief with respect to the terms of the Contract. The responsibility to substantiate Claims shall rest with the Contractor. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Intentionally Omitted.

#### § 15.1.3 Notice of Claims

Claims by the Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work, shall be initiated by written notice to the Owner and to the Architect. Claims by Contractor under this Section 15.1.3 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first knew or should have known the condition giving rise to the Claim, whichever is earlier. Claims must be initiated by written notice titled "Notice of Claim" ("Notice") and sent to the Architect and Owner's designated representatives. The Notice shall clearly set out the specific matter of complaint, and the impact which may occur or have occurred as a result thereof, to the extent that the impact can be assessed at the time of the Notice. If the impact cannot be assessed as of the date of the Notice then the Notice shall be amended at the earliest date that is reasonably possible. It is imperative that Owner receive timely specific Notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly. Any claim or portion of a claim by Contractor that has not been made the specific subject of a Notice within ninety (90) days after the occurrence of the event giving rise to such claim or within ninety (90) days after the Contractor first knew or should have known of the condition giving rise to the Claim, whichever is earlier, shall be waived. Pursuant to Texas Civil Practices and Remedies Code Section 16.071, Contractor agrees that this is a reasonable notice requirement. Claims by Contractor not filed as required by this Section shall be waived.

#### § 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 Litigation is not a basis for Contractor to terminate this contract or suspend the Work.

**§ 15.1.5 Claims for Additional Cost or An Increase in the Contract Sum or Guaranteed Maximum Price IF THE CONTRACTOR WISHES TO MAKE A CLAIM FOR ADDITIONAL COST OR AN INCREASE IN THE CONTRACT SUM, WRITTEN NOTICE AS PROVIDED IN SECTION 15.1.3 MUST BE GIVEN TO OWNER AND ARCHITECT. PRIOR NOTICE IS NOT REQUIRED FOR CLAIMS RELATING TO AN EMERGENCY ENDANGERING LIFE OR PROPERTY ARISING UNDER SECTION 10.4 ABOVE. THE ARCHITECT WILL PROMPTLY INVESTIGATE SUCH CLAIM AND REPORT FINDINGS AND A RECOMMENDED RESOLUTION IN WRITING TO THE OWNER AND CONTRACTOR. IF THE CLAIM IS APPROVED BY OWNER'S BOARD OF TRUSTEES, OR OWNER'S REPRESENTATIVE, IF PROVIDED FOR HEREIN, THEN CONTRACTOR SHALL PROCEED WITH THE EXECUTION OF THE WORK THAT IS THE SUBJECT MATTER OF THE CLAIM. IF THE CLAIM IS REJECTED BY THE OWNER, THEN CONTRACTOR MAY PURSUE ALTERNATIVE DISPUTE RESOLUTION AS PROVIDED FOR IN THE CONTRACT DOCUMENTS. TO THE FULLEST EXTENT PERMITTED BY THE LAW AND NOTWITHSTANDING ANY OTHER PROVISION, THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE OWNER, FOR ANY CLAIMS FOR DAMAGES, ADDITIONAL COST, OR INCREASE IN THE CONTRACT SUM, SHALL NOT EXCEED TWENTY PERCENT OF THE CONTRACT SUM PROVIDED FOR IN THE CONTRACT DOCUMENTS.**

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.6.3 The Contractor shall anticipate and include in the construction schedule 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:

January	[_2_] calendar days	July	[_1_] calendar days
February	[_1_] calendar days	August	[_1_] calendar days
March	[_1_] calendar days	September	[_3_] calendar days
April	[_2_] calendar days	October	[_2_] calendar days
May	[_4_] calendar days	November	[_1_] calendar days
June	[_2_] calendar days	December	[_1_] calendar days

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

§ 15.1.6.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of Contractor or Contractor's Subcontractors or persons or entities under Contractor's control. Claims for extension of time may only be considered because of rain delays, or because of hindrances or delays which are the fault of Owner and/or under Owner's control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. No damages shall be paid for delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

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

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

The Contractor waives all Claims against Owner for consequential damages arising out of or relating to this Contract, including, but not limited to, any amount owed as compensation for the increased cost to perform the Work as a direct result of Owner-caused delays or acceleration. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.8 PASS THROUGH CLAIMS: In the event that any Subcontractor of Contractor asserts a claim to Contractor and that Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to:

- .1 the requirements of Section 15.1.2 of this agreement; and
- .2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such claim against the Owner:

(i) Contractor shall either:

(A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting; or

(B) Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement Contractor has agreed to be legally responsible to the Subcontractor for the assertion of such claim against the Owner under the Contract Documents and for paying to the Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by Contractor in the claim submittal materials.

(ii) Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid or Contractor will notify Owner if Contractor is not willing to recommend the claim for approval and certify the claim.

(iii) The Subcontractor making the claim to Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Contractor in the claim submittal materials.

- .3 Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.
- .4 Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or law.

## **§ 15.2 Initial Recommendation**

**§ 15.2.1** Timely claims by the Contractor against the Owner, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for written recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

**§ 15.2.2** The Architect shall review Contractor's Claims and within ten (10) days of the receipt of the Claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor.

**§ 15.2.3** In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in making a written recommendation.

**§ 15.2.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of the request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished, or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

**§ 15.2.5** Following receipt of the Architect's written recommendation regarding a Contractor's Claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached, then either party may request mediation of the dispute pursuant to Section 15.3.

§ 15.2.6 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.6.1 Intentionally Omitted.

§ 15.2.7 Intentionally Omitted.

§ 15.2.8 Intentionally Omitted.

### § 15.3 Alternative Dispute Resolution

§ 15.3.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived under the terms of the Contract Documents, shall, be subject to mediation at the request of either party. Owner and Contractor expressly agree that mediation shall be a condition precedent to the initiation of any litigation arising out of such Claims. Claims for injunctive relief shall not be subject to mediation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. Requests for mediation shall be filed in writing with the other party to the Contract. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator. In the event that the parties are unable to agree on a mediator, then one of the parties may request the appointment of a neutral mediator by a Bexar County District Court Judge.

§ 15.3.3 The parties shall share the mediator's fee equally and, if any filing fee is required, shall share said fee equally. Mediation shall be held in Bexar County, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be reduced to writing, signed by the Contractor, considered for approval by the Owner, if required, and signed by the Owner's Designated Representative, and, if fully executed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 15.3.4 Any claim not resolved in mediation shall be subject to litigation pursuant to Section 13.1. **HOWEVER, BOTH PARTIES EXPRESSLY WAIVE THEIR RIGHTS TO DEMAND A TRIAL BY JURY.**

### § 15.4 No Arbitration

§ 15.4.1 Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 15.4.1.1 Intentionally Omitted.

§ 15.4.2 Intentionally Omitted.

§ 15.4.3 Intentionally Omitted.

§ 15.4.4 Intentionally Omitted.

§ 15.4.4.1 Intentionally Omitted.

§ 15.4.4.2 Intentionally Omitted.

§ 15.4.4.3 Intentionally Omitted.

§ 15.5 Contractor stipulates that: (a) Owner is a political subdivision of the State of Texas, and, as such, enjoys immunities from suit and liability provided by the Constitution and laws of the State of Texas; and (b) Owner's act regarding the Project and this Agreement are taken in its capacity as a governmental function. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided by state law.

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



[Signature Page to Follow]



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

<b>OWNER:</b> Alamo Community Colleges District  _____ <b>By:</b> _____ <b>Title:</b> _____	<b>CONTRACTOR:</b>  _____ <b>By:</b> _____ <b>Title:</b> _____
--	--

District's Counsel, as to form only:

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

