AUSTIN Independent School District | Contract and Procurement Services

Request for Proposals for Construction Manager at Risk 20CMR038
Modernization at Norman Elementary School

Date	Event
September 10, 2019 **September 17, 2019**	Advertise/Issue Dates
September 12, 2019	Pre-Proposal Conference at **10AM** at Norman Elementary School, 4001 Tannehill Ln, Austin, Texas 78721
September 17, 2019	Questions and Answers Due by **5:00 PM**
September 18, 2019	Questions and Answers posted on our website
September 24, 2019	**RFP opening / due date at 2:00 pm CST**
September 30, 2019	Interviews
October 28, 2019	AISD Board Meeting for review/approval

Deliver Sealed Proposals to:	**Contact Person:**
Austin ISD **Contract & Procurement Services** **1111 West 6th Street** **Building B, Suite 300** **Austin, TX 78703** **PLEASE PLAN TIME TO PARK**	Jennifer Nix Contract & Procurement Services jennifer.nix@austinisd.org **HUB Coordinator Contact** Felipe "Flip" Romero Felipe.romero@austinisd.org

- Questions must be submitted via e-mail to the contact person listed above.
  In the e-mail subject line, type: *Questions 20CMR038 Modernization at Norman Elementary School*
- Q & A and Addenda will be posted on our website: www.austinisd.org/cp/bids
- Proposals are due no later than 2:00 pm on the date indicated. Your proposals must be delivered by mail or hand delivery in a sealed envelope or carton. Proposals received after the specified time shall not be considered.
- **Please submit the following:**
  - One (1) hard copy marked "original" – include signed "required" forms
  - One (1) digital copy on a flash drive – include signed "required" forms
- FAX, e-mail or other electronic proposals **will not be accepted.**
- Proposals must be plainly marked with **name and address of the Offeror and the CMR number and Title above**.

This solicitation is a request for competitive sealed proposals for construction under Texas Government Code 2260.

Section 1 General Information

The solicitation consists of the following documents and all addenda that may be issued.

Request for Proposals
Required Forms

- Project Proposal Form
- Construction Manager-at-Risk Selection Questionnaire
- Authorization Form
- Disclosure Form
- Felony Conviction Notice Form
- Suspension and Debarment Certification
- Proposal Bond Form
- HUB Compliance Documents

Exhibit "A" – Prospectus

- Norman Elementary School Modernization

Exhibit "B" – Contract Documents (collectively referred to in this Request for Proposals as the "Contract")

- AISD's Agreement for Construction Between Owner and Construction Manager- at-Risk ("Agreement for Construction")
- AISD's General Conditions of the Contract for Construction ("General Conditions")
- AISD's Notice of Prevailing Wage Rates ("Notice of Prevailing Wage Rates")

All forms have been attached to this solicitation.

Austin Independent School District ("AISD") requests proposals in a one-step process to select one or more Construction Managers-at-Risk to provide professional services and to perform the construction of the work described below in connection with Norman Elementary School described in the attached Exhibit "A" - Prospectus of Construction Manager-at-Risk Projects ("Prospectus"). AISD is interested in receiving proposals from Construction Managers-at-Risk with experience in successfully completing projects that are similar in scope, size and complexity to the Project for which proposals are submitted and meeting any specialized requirements set forth below.

Proposals sent by Facsimile (Fax) or Electronic Mail (E-mail) or Proposals submitted to any address other than the place for submitting Proposals described above will NOT be accepted. The clock used at the place for submitting Proposals shall conclusively determine the time that proposals are received. Proposals received after the Proposal Deadline will be returned unopened. The Proposal Deadline may be extended by Addendum to this Request for Proposals.

Proposals which have been timely received will be publicly opened at the place for submitting and the names of the Offerors and, if any are required to be stated, the fees and prices stated in each Proposal will be read aloud.

AISD may conduct a pre-submission conference to allow questions to be asked related to the RFP, if so the time and location will be posted to the district's website. The pre-submission conference is an opportunity for construction firms to meet and discuss sub-consultant and teaming possibilities and Historically Underutilized Business (HUB) opportunities in preparation of their responses. Attendance is not mandatory, but is strongly encouraged.

AISD may conduct interviews with the top ranked respondents. If selected, your firm will be contacted to schedule an interview. Interview panels will include representatives from schools.

In accordance with Board policy, AISD encourages full participation in all phases of procurement activities and shall afford a full and fair opportunity to all vendors to compete for District contracts. Historically Underutilized Businesses are businesses in which at least 51 percent of the ownership and management is by minority group members or women, or in the case of a publicly owned business, at least 51 percent of the stock is owned and managed by minority group members or women in all phases of the procurement.

Responding firms are advised to determine if they are required under Chapter 176 of the Texas Local Government Code to file a completed conflict of interest questionnaire with AISD. If completion of the questionnaire is required, the Conflict of Interest Questionnaire (Form CIQ) should be completed and submitted online at:

https://www.austinisd.org/cp/forms

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Texas Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

An AISD Selection Panel will evaluate all submittals with the anticipation of making recommendations to the Superintendent. The AISD Board of Trustees will take action on the consultant's selection recommendation during a regularly scheduled Board meeting, if required.

After the AISD Board of Trustees selects the Offeror, the successful Offeror will be required to complete an electronic Form 1295 ("Form 1295") on the Texas Ethics Commission website at

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and submit the completed and executed Form 1295, including the certification of filing, to AISD prior to entering into a contract with AISD in accordance with this statute. Additional information is available on the Texas Ethics Commission website at www.ethics.state.tx.us. Submission of a response to this Request for Proposals indicates the responding firm's acceptance and intended compliance with these requirements.

The responding firms, or their agents, shall undertake no activities, actions, or contacts to promote or advertise their RFP submissions to the AISD Board of Trustees, Superintendent, central office administrators, administering committees, and/or members of the Selection Panel. Violation of this provision will be grounds for disqualification of the responding firm.

The responding firms, or their agents, shall undertake no activities, actions or contacts to promote or advertise their responses to the AISD Board of Trustees, Superintendent, central office administrators, or members of the Construction Management Department staff.

Violation of this provision will be grounds for disqualification of the responding firm.

Authorized communications are to be with the designated AISD contact person as indicated in Section 1 of the RFP. Any substantive clarification or revision of the RFP will be made only by RFP Addendum in accordance with Section 6.

Responding firms shall not be eligible to be considered for this solicitation if the responding firms, or their agents, engaged in or attempted to engage in prohibited communications.

Section 2 Projects

2.1. Scope of Work. The selected Offeror for the Project must provide professional services and furnish all labor, materials and equipment required for the construction of the improvements for such Project (the "Work") as presented in the Prospectus to be constructed at the location (each a "Project Site") as specified for such Project in the Prospectus for such Project.

2.2. Estimated Project Budget. The estimated construction budget for the Project ("Estimated Project Budget") is stated in the Prospectus.

2.3. Minimum Qualifications. Because of the nature of the Work for each Project, each selected Offeror must meet the qualifications and/or must have any licenses or certifications specified for such Project in the Prospectus (the qualifications and/or licenses or certifications for each Project specified in the Prospectus are herein called the "Project Minimum Qualifications").

2.4. Texas Education Code §22.0834 (Criminal History Record Information Review of Certain Contract Employees).

Offeror must comply with the provisions of Sections 3.15 and 3.16 of the General Conditions regarding criminal history record information reviews for workers employed on this Project.

Section 3 Format

3.1. Each proposal ("Proposal") submitted by an offeror ("Offeror") shall consist of the following: (i) the Qualifications Binder, (ii) the Project Proposal Form, and (iii) the Proposal Guaranty.

3.2. Qualifications Binder – Offeror shall submit one (1) original Qualifications Binder under this Request for Proposals. Each original completed document in the Qualifications Binder requiring the signature of Offeror must contain the original signature of a person authorized to sign on behalf of the Offeror.

The completed Qualifications Binder must contain the following items:

3.2.1. The original completed Statement of Interest (the first page or pages of the Prospectus);
3.2.2. The original completed Construction Manager-at-Risk Selection Questionnaire
3.2.3. Additional firm information, brochures, photos, etc., referenced in the submittal and included as labeled attachments;
3.2.4. The original completed Felony Conviction Notice;
3.2.5. The original completed Suspension and Debarment Certification; and
3.2.6. Required HUB documents

3.3. All submission items in the Qualifications Binder must be bound together in a binder so that that the pages can be easily opened and laid flat for copying. One (1) original must be submitted in a sealed box along with Offeror's Proposal envelope, with one (1) identical soft copy on a thumb drive

3.4. The cover of the Qualifications Binder must include the following information:

3.4.1. "Qualifications Binder for AISD RFP No. 20CMR038"
3.4.2. Proposal Deadline Date
3.4.3. Name and mailing address of the Offeror.

3.5. Project Proposal Form and Proposal Guaranty – Offeror shall submit a completed original Project Proposal Form and a Proposal Guaranty (in accordance with Section 13 below) for the Project on the Prospectus for which Offeror is proposing to provide services. Each original completed Project Proposal Form (typed or neatly printed) must contain the original signature of a person authorized to sign on behalf of the Offeror.

3.5.1. Offeror must submit one (1) original copy of the Project Proposal Form and the Proposal Guaranty for the Project for which Offeror is submitting a Proposal in a sealed envelope with one (1) identical soft copy on a thumb drive which states on the outside the following information:

3.5.1.1. "Competitive Proposal for AISD RFP No. 20CMR038"
3.5.1.2. The name of the specific Project for which the Project Proposal Form and Proposal Guaranty are being submitted
3.5.1.3. Proposal Deadline Date

3.5.1.4. Name and mailing address of the Offeror

Section 4 Method of Selecting Construction Managers at Risk

4.1. Not later than the 45th day after the date on which Proposals are opened, AISD will evaluate and rank each Proposal submitted in relation to the Selection Criteria set out below. AISD will select the Offeror for the Project that submits the Proposal that, in the opinion of AISD, offers the best value for AISD based on the Selection Criteria and its ranking evaluation.

4.2. The Evaluation Committee ("Committee") will review all proposals to determine which proposers have qualified for consideration according to the criteria stated herein. The Committee's evaluations will be based on all available information, including qualification statements, subsequent interviews, reports, discussions, reference checks, and other appropriate checks. The highest rated proposer(s) evaluated by the Committee will be invited to make an oral presentation of their written proposal to the Committee.

4.3. The AISD Construction Management Department will make a recommendation to the Board of Trustees as to the selection ranking of the Offerors for each Project. The Board of Trustees will select the Offeror for each Project that submits the Proposal that offers the best value for AISD and will authorize the negotiation and execution of the contract. If AISD is unable to negotiate a satisfactory contract with the selected Offeror for a Project, AISD shall, formally and in writing, end negotiations with that Offeror and proceed to negotiate with the next Offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked Offerors for the Project end. AISD reserves the right to reject any and all Proposals.

Section 5 Selection Criteria

5.1. Offerors will be evaluated based on the following selection criteria ("Selection Criteria"):
- 5.1.1. Relevant Experience and Past Performance 35%
- 5.1.2. Proposed Personnel/Methodology 15%
- 5.1.3. Fees & Price 30%
- 5.1.4. Financial Condition 12%
- 5.1.5. Safety Record 8%

Section 6 Questions Regarding this Request for Proposals

Any questions or concerns regarding this Request for Proposals must be directed to the "Contact Person" as follows:

Jennifer Nix
Contract and Procurement Services
Austin Independent School District
1111 West 6th Street, Suite B-300
Austin, TX 78703

Phone: (512) 414-2241
E-mail: jennifer.nix@austinisd.org

AISD specifically requires that responding firms restrict all contact and questions regarding this Request for Proposals to the Contact Person.

Questions must be received by the Contact Person no later than 4 business days prior to the Submittal Deadline.

If the Contact Person determines that a response is required to any question received by the Contact Person, an answer will be provided to such question through an Addendum to this Request for Qualifications.

Any changes to this RFP will be provided in the form of a written addendum to this RFP. Such addendum will be disseminated to potential respondents by publication on AISD's web site as follows: https://www.austinisd.org/cp/bids and AISD's online Planroom at: www.planroom.millerids.com.

It is the obligation of each responding firm to make sure prior to submitting a response, that it has received all Addenda in connection with this RFP. Copies of Addenda issued to this RFP can be obtained from the Contact Person as provided above.

Only those responses to inquiries which are made by formal written Addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect, and shall not be binding on AISD. The responding firm must acknowledge receipt of all Addenda in its submittal. However, each responding firm will be bound by the terms of all Addenda, and its submittal will be construed to include the information contained in the Addenda, whether or not the responding firm has received them or acknowledged receipt.

Section 7 Withdrawal of Proposals

7.1. Prior to the Proposal Deadline, an Offeror may withdraw its Proposal for any or all Projects, and may, if it chooses, submit a new Proposal for any Proposal withdrawn, if the new Proposal is submitted before the expiration of Proposal Deadline. The request for withdrawal of a Proposal must be in writing and signed by an authorized representative of the Offeror.

7.2. After the Proposal Deadline, an Offeror may not withdraw its Proposal for any Project for a period of 90 days after Proposal opening, unless withdrawal is required by applicable law or permitted by AISD in accordance with AISD Board Policy.

7.3. Each Proposal received will be presumed to be accurate and free from error, unless clear and convincing evidence to the contrary is presented.

Section 8 Proposal Guaranty

8.1. Each Proposal submitted by Offeror must include a Proposal Guaranty which shall be in the form of a Proposal Bond and be in the amount of five percent (5%) of the Estimated Project Budget for the Project for which Offeror is submitting such Proposal. The Proposal Bond shall be in the form included with this Request for Proposals, issued by a corporate surety authorized to do business in the State of Texas that is listed on the U.S.

Treasury list of approved sureties.

8.2. The Proposal Guaranty will be held until the selected Offeror has signed the Contract and provided the required insurance and payment and performance bonds as provided in these instructions.

8.3. Should the selected Offeror for a particular Project fail or refuse to sign the Contract applicable to such Project and/or provide the required insurance and payment and performance bonds for such Project as provided in these instructions, then the Offeror's Proposal Guaranty will be forfeited to AISD as liquidated damages and not as a penalty.

8.4. If the selected Offeror for a particular Project fails or refuses to sign the Contract applicable to such Project and/or provide the required insurance, AISD may, in its discretion, disqualify the Offeror from selection for any or all other Projects for which Offeror has submitted a Proposal.

Section 9 Post-Proposal Information

9.1. By submitting a Proposal, the Offeror agrees to provide evidence upon request of AISD that the Offeror satisfies the Project Minimum Qualifications specified for such Project in the Prospectus.

9.2. By submitting a Proposal, the Offeror agrees to promptly furnish any additional information required by AISD in order to evaluate the Proposals.

Section 10 Rejection of Proposals

10.1. Proposals may be rejected if they do not contain the information required by this Request for Proposals or if they do not contain the information stated in Section 3 hereof, including the original completed and executed Construction Management at Risk (CMAR) Statement of Responsibility HUB Program Requirement.

10.2. Proposals may be rejected if the Project Minimum Qualifications specified for such Project in the Prospectus are not met.

10.3. Proposals may be rejected if they contain qualifications, conditions to performance, or if they are incomplete, or for any other reason authorized by law.

10.4. AISD reserves the right to waive any minor informality or irregularity in the Proposals or Proposal process, and to reject any and all Proposals.

Section 11 Bond and Insurance Requirements

11.1. Insurance meeting the requirements set out in the General Conditions must be furnished by the selected Offeror within 5 days after the Contract for a specific Project is signed by the Offeror.

11.2. In accordance with the requirements of Section 10.9 of the General Conditions of the Contract

for Construction, if the Estimated Project Budget for a Project is over $25,000, the selected Offeror for such Project must provide payment and performance bonds at the same time the selected Offeror executes and delivers to AISD an amendment to the Contract for such Project furnished by AISD establishing a Guaranteed Maximum Price for, as applicable, (i) the first phase of the Work described in such amendment, if such Project will be performed in two or more phases, or (ii) the final Guaranteed Maximum Price for the Work described in such amendment, if such Project is not phased. The payment and performance bonds must each be in the amount of 100% of the Guaranteed Maximum Price as established in such amendment or the Estimated Project Construction Budget as specified in the Agreement for Construction, whichever is greater.

11.3. Each Offeror's attention is directed to Subsection 10.4 of the General Conditions of the Contract for Construction which expressly sets out the Worker's Compensation Insurance requirements for each Project. Each Construction Manager-at-Risk and each subcontractor must maintain Worker's Compensation Insurance coverage as required in Subsection 10.4 and each Construction Manager-at-Risk is required to provide a certificate of coverage for each subcontractor prior to that subcontractor beginning Work on the Project Site, showing that coverage is being provided for all of its employees for the duration of the Work. Subsection 10.4 is incorporated herein for all purposes.

Section 12 Safety Program Manual and Project Safety Plan Requirements

12.1. The selected Offeror for each Project must submit its Safety Program Manual in accordance with the requirements set out in the General Conditions of the Contract for Construction prior to commencement of any Work on the Project Site.

12.2. The selected Offeror for each Project must submit a Safety Plan for each such Project meeting the requirements set out in the General Conditions of the Contract for Construction prior to commencement of any Work on the Project Site.

Section 13 Prevailing Wage Rates

13.1. The Construction Manager-at-Risk and each Subcontractor who performs work under the Contract must pay, at a minimum, the applicable prevailing wage rates to a worker employed by it in the performance of the Work. The prevailing wage rates applicable to each Project, which shall be in effect for the duration of the Contract for each such Project, are set forth in the Notice of Prevailing Wage Rates.

Section 14 Examination of Site and Contract Documents

14.1. Each Offeror is required to visit the Project Site for each Project for which a Proposal is submitted and to fully acquaint itself with the conditions and limitations as they exist at the Project Site, including the effect that weather conditions may have on the Project Site. Each Offeror shall also fully acquaint itself with the existing and anticipated sources and supplies of labor and materials, and shall also thoroughly examine the Contract Documents. Failure of the Offeror to visit the Project Site and acquaint itself with the conditions of the Work and the Contract Documents shall

in no way relieve the Offeror from any obligations with respect to its Proposal.

Section 15 Public Information

15.1. AISD considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non- proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (TEX. GOV'T CODE, Chapter 552.001, et seq.) after a contract is awarded.

15.2. Offerors are hereby notified that AISD strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information.

Section 16 Deadline For Signing Contract and AISD' s Rights If Delayed

16.1. The timely completion of each Project listed in the Prospectus is essential. AISD has the right to consider negotiations with the selected Offeror for the Contract incomplete until and unless the Contract is signed and the insurance is submitted in accordance with the following deadlines. In order to avoid unnecessary delays in the Project, the selected Offeror must:

16.1.1. sign the Contract no later than 10 days after the selected Offeror has been notified that it is the successful Offeror, and

16.1.2. provide all required insurance within 5 days after the selected Offeror signs the Contract.

16.2. If the selected Offeror for a Project fails to meet one or more of these deadlines, then in addition to any and all other rights and remedies to which AISD is entitled, AISD shall have the right to:

16.2.1. terminate its negotiations with the selected Offeror and begin negotiations with the next ranked Offeror; or

16.2.2. proceed with the Contract with selected Offeror, but treat each day beyond the 10 day deadline in which the Contract is unsigned by the Offeror, and/or each day beyond the 5 day deadline in which one or more of the required documents has not been submitted, as a day of unexcused delay under the Contract.

16.3. Waiver of Claims

16.3.1. Each Offeror by submission of a proposal to this request for proposals waives any claims it has or may have against the architect, its consulting engineers, or any other consultants, and their respective employees, officers, members, directors and partners, and AISD, its employees, officers, agents, representatives, and the members of AISD's governing body, connected with or arising out of this request for proposals, including, the administration of the request for proposals, the proposal evaluations and rankings, and the selection of the Offerors. Submission of a proposal indicates Offeror's acceptance of the evaluation technique and Offeror's recognition that some subjective judgments must be made by

AISD during the selection process. Without limiting the generality of the foregoing, each Offeror acknowledges that AISD shall document the basis of its selection and shall make the evaluations and rankings public not later than the 7th day after the date the contract is awarded, and each Offeror waives any claim it has or may have against the above-named persons, due to information contained in such evaluations.

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PROJECT PROPOSAL FORM

To: The Board of Trustees
Austin Independent School District
Austin, Texas

Re: AISD RFP No. **20CMR038**

Ladies and Gentlemen:

The undersigned offeror ("Offeror") submits this Project Proposal Form for the provision of professional services and the performance of the Work for:

Construction Manager at Risk Services for 2017 Bond Project
Norman Elementary School Modernization

The undersigned Offeror has carefully examined and considered the Project Site and relevant conditions and circumstances for the Work, information and requirements set out in the Request for Proposals Instructions to Offerors ("Request for Proposals") regarding the Work and the requirements of the proposed Contract Documents, including the Agreement For Construction between Owner and Construction Manager- at-Risk, the General Conditions of the Contract for Construction and the Notice of Prevailing Wage Rates, in making this Proposal. Capitalized terms used but not otherwise defined in this Project Proposal Form shall have the same meanings as designated in the Request for Proposals.

A. Proposal Terms

Based on the foregoing, the undersigned Offeror hereby offers and proposes to perform the Work in accordance with the Contract Documents, for a contract price computed as shown in the following Proposed Pricing Schedule, with a Guaranteed Maximum Price to be agreed to by AISD and Offeror, but subject to adjustment as provided in the Contract Documents:

1. **Proposed Pricing Schedule**

1. Fixed-fee percentage mark-up total on the actual cost of Work:		_____%
2a. Fixed-fee percentage mark-up for change orders when work performed by Construction Manager's own employees: 2b. Fixed-fee percentage mark-up for change orders when work performed by Subcontractors:		_____% _____%
3. Fixed not-to-exceed monthly cost for Pre-Construction Phase Services:		$_____
4. Not-to-exceed monthly cost for Project General Conditions (Project duration - _____months):		
	A. Personnel: Project Manager, Superintendent(s), Project Engineer, Secretary, and Personnel Insurance & Benefits	$_____
	B. Vehicles: Automobile, Truck and Other Vehicle and Equipment Expenses (including Fuel and Maintenance), and Vehicle-Related Travel Allowances	$_____
	C. Field Office: Project Office(s), Office Maintenance, Utilities, Computer Hardware, Scheduling Expenses, Data Processing, Office Supplies, Office Equipment/Furniture, Postage/Delivery Services, Communications/Cellular Phones, Water/Coffee Services, Security System, Level/Transit, and Storage Buildings/Containers	$_____
	D. Jobsite Expenses: Mobilization/Demobilization, Safety Program Expenses, Safety Equipment, Temporary Fencing, Temporary Toilets, and Team Building	$_____
	Total not-to-exceed monthly cost for Project General Conditions	$_____
5. Bond rate for this Proposal:		_____%

2. **Substantial Completion Date**
   All of the Work must be substantially completed no later than the dates shown below:

   - Norman Elementary School Modernization – **November 1st, 2020**

3. **Liquidated Damages**
   AISD shall have the right under the Contract to assess liquidated damages in the amount of $5,000.00 per day for each and every calendar day beyond the Substantial Completion Date set out in the Contract that the Work fails to be substantially complete.

B. Completed Proposals

1. If applicable, this Project Proposal Form includes completed sections of Offeror's Questionnaire which differ from the completed Questionnaire in the Qualifications Binder. (If no sections of the Questionnaire are attached to this Project Proposal Form, the completed Questionnaire in the Qualifications Binder is applicable to this Proposal.)

2. **OFFEROR ACKNOWLEDGES THAT A COMPLETED PROPOSAL CONSISTS OF (i) THIS COMPLETED PROJECT PROPOSAL FORM, (ii) THE PROPOSAL GUARANTY, AND (iii) THE QUALIFICATIONS BINDER SUBMITTED IN ACCORDANCE WITH SECTION 3 OF THE REQUEST FOR PROPOSALS.**

C. Offeror Representations and Certifications

By signing and submitting this Project Proposal Form, the undersigned Offeror and person signing on its behalf certifies and represents to the Austin Independent School District as follows:

1. (i) Offeror has not offered, conferred or agreed to confer any pecuniary benefit, as defined by Tex. Penal Code, Chapter 36, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this Proposal;

   (ii) Offeror has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this Proposal;

   (iii) Offeror has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like, and Offeror will not in the future offer, confer, or agree to confer any pecuniary benefit or other thing of value to any officer, Trustee, agent or employee of the Austin Independent School District in return for the person's having exercised official discretion, power or duty with respect to this Proposal;

   (iv) Offeror has not now and will not in the future offer, confer or agree to confer a pecuniary benefit or other thing of value to any officer, Trustee, agent or employee of the

Austin Independent School District in connection with information regarding this Proposal, the submission of this Proposal, the award of this Proposal or the performance, delivery or sale pursuant to this Proposal;

(v) Offeror has neither coerced nor attempted to influence the exercise of discretion by any officer, Trustee, agent or employee of the Austin Independent School District concerning this Proposal on the basis of any consideration not authorized by law; and

(vi) Offeror has not received any information not available to other offerors so as to give the undersigned a preferential advantage with respect to this Proposal.

2. All information submitted in connection with this Proposal, including the information provided in connection with Offeror's Questionnaire, is, to the best of the undersigned's knowledge and belief, true, complete and accurate.

3. **OFFEROR WAIVES ANY CLAIM IT HAS OR MAY HAVE AGAINST THE ARCHITECT, ITS CONSULTING ENGINEERS, OR ANY OTHER CONSULTANTS, AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, MEMBERS, DIRECTORS AND PARTNERS, AND AISD, ITS EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, AND THE MEMBERS OF AISD'S GOVERNING BODY, CONNECTED WITH OR ARISING OUT OF THIS REQUEST FOR PROPOSALS, INCLUDING, THE ADMINISTRATION OF THE REQUEST FOR PROPOSALS, THE PROPOSAL EVALUATIONS AND RANKINGS, AND THE SELECTION OF THE OFFEROR. SUBMISSION OF A PROPOSAL INDICATES OFFEROR'S ACCEPTANCE OF THE EVALUATION TECHNIQUE AND OFFEROR'S RECOGNITION THAT SOME SUBJECTIVE JUDGMENTS MUST BE MADE BY AISD DURING THE SELECTION PROCESS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OFFEROR ACKNOWLEDGES THAT AISD SHALL DOCUMENT THE BASIS OF ITS SELECTION AND SHALL MAKE THE EVALUATIONS AND RANKINGS PUBLIC NOT LATER THAN THE 7TH DAY AFTER THE DATE THE CONTRACT IS AWARDED, AND OFFEROR WAIVES ANY CLAIM IT HAS OR MAY HAVE AGAINST THE ABOVE-NAMED PERSONS, DUE TO INFORMATION CONTAINED IN SUCH EVALUATIONS.**

4. Offeror has received the following Addenda to the Request for Proposals, but agrees and understands that it will be responsible for performing the Work in accordance with all terms and conditions in all Addenda issued in connection with the Request for Proposals, and that its Proposal will be construed to include all requirements of all such Addenda, whether or not identified below:

Addenda No.(s) _____

Offeror must print, date and sign all addenda cover sheets and attached them to their bid package.

5. Prior to commencing any work on this Project, Contractor will certify, on the form provided by Owner, all national criminal history record information required for Contractor's employees under Texas Education Code Section 22.0834, 22.08341 and Texas Administrative Code Sections 153.1101 and 153.1117. Contractor will be further required to

obtain, on the form provided by Owner, similar certifications from each and every subcontractor or independent contractor relating to the employees of such subcontractors. Contractor and all subcontractors shall have a continuing duty, throughout the Project, to amend or update the certification forms when required to do so by law.

6. Restricted Contact Period: The restricted contact period shall begin upon the date of issuance of a solicitation and shall end upon execution of the awarded contract by all parties.

   In an effort to demonstrate its commitment to ethical procurement and contracting standards, and to improve accountability and public confidence, all District purchases of goods and services through competitive methods as provided in CH(LEGAL) and CV(LEGAL) shall be subject to a restricted contact period. Except as provided in this policy communication between a vendor and vendor's representative, and a Board member, the Superintendent, assistant superintendent, chief, officer, executive director, principal, department head, director, manager, project manager, or any other District representative who has influence on or is participating in the evaluation or selection process is prohibited.

   Please review the full board policies available here.

7. Offeror meets all of the Project Minimum Qualifications specified in the Prospectus of Construction Manager-at-Risk Projects attached to the Request for Proposals.

Executed as of this _____day of _____, 20___.

Offeror: _____

Address: _____

City, State, Zip Code: _____

By: _____

Name:_____

Title: _____

Date: _____

Telephone: _____

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CONSTRUCTION MANAGER-AT-RISK SELECTION QUESTIONNAIRE

NOTE: The submittal of the following information must be in a binder with separated sections (I- VIII below), and in the exact sequence and format as prescribed by this questionnaire, including numbering system prescribed by this questionnaire. Though not required, additionally, you may attach (outside of the above referenced binder) supplemental materials that describe your firm's services, organization, and examples of your school projects.

NAME OF FIRM: _____

BUSINESS ADDRESS (Address of office from which Offeror will conduct the work): _____

PRIMARY CONTACT PERSON: _____

PRIMARY CONTACT PERSON'S ADDRESS: _____

PRIMARY CONTACT PERSON'S TELEPHONE NUMBER: _____

PRIMARY CONTACT PERSON'S EMAIL ADDRESS: _____

OFFEROR'S HOME OFFICE ADDRESS: _____

Does any relationship exist between the Offeror, its officers, principals, or employees and any of AISD's officers, or Trustees? _____Yes _____No

If yes, please explain: _____

Principal Business:

_____General Construction _____Mechanical/Electrical/Plumbing
_____Roofing _____Interior Finish-out
_____Other (Please specify) _____

Licensing/Certifications for Prime Contractors:
List trade categories in which your organization is legally qualified to do business in Austin, Texas, and indicate registration or license numbers, as applicable.

_____

_____

TYPE OF ORGANIZATION: _____ NO. YRS. FIRM IN BUSINESS _____
(Individual, Partnership, Corporation, Association)

I. FIRM BACKGROUND

A. Date firm established _____, and number of years in business providing construction

management or building construction in the current organizational form:_____

B. How many years has your organization been in business under its present business name:_____

C. Under what other or former names has your organization?

Name: _____ Years: _____

Name: _____ Years: _____

D. If a corporation: Date of incorporation_____ State of incorporation_____

Style of incorporation_____

Names of all officers _____

_____

E. If a partnership: Date of organization_____State of organization:_____

Full legal name of partnership_____

Type of partnership _____

Name(s) of all general partner(s) _____

F. If a limited liability company: Date of organization _____State of organization _____

Full legal name of company_____

Name of all members or managing member and/or offices_____

G. If sole proprietorship: Date first opened for business _____

Name of owner _____

Address _____

Telephone/Fax _____

H. Provide a brief history of your firm, including date established, record of growth, type of work, and any specialties:

I. For all business entities other than publicly held corporations, provide the following:

Award to Nonresident Bidders

Is your business organized under the laws of the State of Texas? ☐ YES ☐ NO
What is the location of your principal place of business? _____
Proposals from nonresident contractors shall be evaluated according to Tex. Gov. Code § 2252.002.

J. Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.

K. Describe what you believe is unique about your firm's potential contribution to the pending AISD building project.

L. State the categories of work or trades normally performed with "in-house" forces:

K. Provide the names of all subcontractors or vendors in which your firm has any ownership interest, and the categories of work each normally provides:

L. Claims and Suits. (If the answer to any of the questions below is yes, provide detailed summary.)

1. Has your firm ever failed to complete any work awarded to it?

2. Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your firm? (If so, include in summary the name those suits or claims brought against your firm.)

3. Has your firm filed any lawsuits or requested arbitration with regard to construction contracts within the last eight (8) years?

4. Within the last eight (8) years, has an officer or principal of your firm ever been an officer or principal of another firm when it failed to complete a construction contract?

II. Project Experience

A. List below all school (K-12 and higher education) projects in Texas for which Construction Management-at-Risk Services were performed in the last 8 years beginning with AISD projects, if any: *(Limit to 12, selecting those most similar to those of AISD. Add as many pages as necessary.)*

1. Project Name: _____

Project by: _____ Offeror _____ Principal of offeror when with another firm

Firm's role (prime or sub): _____

Name and location of building: _____

Building. owner: _____

Owner contact and title: _____ Current telephone no. _____

Function of building: _____ Building size (sq. ft.): _____

Brief project description describing the scope of work performed by your firm and work subcontracted: _____

Bid date: _____ Construction cost: $ _____

Date construction completed: _____ Liquidated damages (Yes or No): _____

Offeror's managing principal: _____

Project architect or engineer (A/E): _____

A/E contact: _____ Current telephone no. _____

Project delivery method utilized: _____

Was the project subject to HUB, MWBE, SBE or other similar requirements, and if so, the firm's utilization rate for the project: _____

2. Project Name: _____

Project by: _____ Offeror _____ Principal of offeror when with another firm

Firm's role (prime or sub): _____

Name and location of building: _____

Building. owner: _____

Owner contact and title: _____ Current telephone no. _____

Function of building: _____ Building size (sq. ft.): _____

Brief project description describing the scope of work performed by your firm and work subcontracted: _____

Bid date: _____ Construction cost: $ _____

Date construction completed: _____ Liquidated damages (Yes or No): _____

Offeror's managing principal: _____

Project architect or engineer (A/E): _____

A/E contact: _____ Current telephone no. _____

Project delivery method utilized: _____

Was the project subject to HUB, MWBE, SBE or other similar requirements, and if so, the firm's utilization rate for the project: _____

B. List all non-school projects <u>in Texas</u> for which Construction Management-at-Risk Services were performed in the last 8 years beginning with projects in Austin, if any: *(Add as many pages as necessary.)*

1. Project Name: _____

Project by: _____ Offeror _____ Principal of offeror when with another firm

Firm's role (prime or sub): _____

Name and location of building: _____

Building. owner: _____

Owner contact and title: _____ Current telephone no. _____

Function of building: _____ Building size (sq. ft.): _____

Brief project description describing the scope of work performed by your firm and work subcontracted: _____

Bid date: _____ Construction cost: $ _____

Date construction completed: _____ Liquidated damages (Yes or No): _____

Offeror's managing principal: _____

Project architect or engineer (A/E): _____

A/E contact: _____ Current telephone no. _____

Project delivery method utilized: _____

Was the project subject to HUB, MWBE, SBE or other similar requirements, and if so, the firm's utilization rate for the project: _____

2. Project Name: _____

Project by:_____Offeror _____Principal of offeror when with another firm

Firm's role (prime or sub): _____

Name and location of building:_____

Building. owner:_____

Owner contact and title:_____ Current telephone no._____

Function of building: _____ Building size (sq. ft.): _____

Brief project description describing the scope of work performed by your firm and work subcontracted:_____

Bid date: _____Construction cost: $_____

Date construction completed:_____ Liquidated damages (Yes or No): _____

Offeror's managing principal:_____

Project architect or engineer (A/E):_____

A/E contact:_____Current telephone no._____

Project delivery method utilized: _____

Was the project subject to HUB, MWBE, SBE or other similar requirements, and if so, the firm's utilization rate for the project: _____

C. List all building projects in Texas for which construction delivery methods other than Construction Management-at-Risk were performed in the last 8 years, beginning with Austin projects, if any: *(Add as many pages as necessary.)*

1. Project Name: _____

Project by: _____ Offeror _____ Principal of offeror when with another firm

Firm's role (prime or sub): _____

Name and location of building: _____

Building. owner: _____

Owner contact and title: _____ Current telephone no. _____

Function of building: _____ Building size (sq. ft.): _____

Brief project description describing the scope of work performed by your firm and work subcontracted: _____

Bid date: _____ Construction cost: $ _____

Date construction completed: _____ Liquidated damages (Yes or No): _____

Offeror's managing principal: _____

Project architect or engineer (A/E): _____

A/E contact: _____ Current telephone no. _____

Project delivery method utilized: _____

Was the project subject to HUB, MWBE, SBE or other similar requirements, and if so, the firm's utilization rate for the project: _____

2. Project Name: _____

Project by:_____Offeror _____Principal of offeror when with another firm

Firm's role (prime or sub): _____

Name and location of building:_____

Building. owner:_____

Owner contact and title:_____ Current telephone no._____

Function of building: _____ Building size (sq. ft.): _____

Brief project description describing the scope of work performed by your firm and work subcontracted:_____

Bid date: _____Construction cost: $_____

Date construction completed:_____ Liquidated damages (Yes or No): _____

Offeror's managing principal:_____

Project architect or engineer (A/E):_____

A/E contact:_____Current telephone no._____

Project delivery method utilized: _____

Was the project subject to HUB, MWBE, SBE or other similar requirements, and if so, the firm's utilization rate for the project: _____

D. List below three (3) school districts in Texas with which your firm has most recently worked beginning with AISD, if applicable:

1. District _____ Construction Delivery Method: _____

Project Description: _____

Bid Date: _____ Initial Contract Price: $ _____

Total Amount of Change Orders to Date: $ _____

Total Contract Cost to Date (initial price + total change order cost): $ _____

Change Orders Instigated by District: No.: _____ Amount: $ _____

Reason(s):

Describe change(s):

Change Orders Instigated by Your Firm: No.: _____ Amount: $ _____

Reason(s):

Describe change(s):

District Contact: _____ Current Telephone No.: _____

2. District _____ Construction Delivery Method: _____

Project Description:_____

Bid Date:_____ Initial Contract Price: $_____

Total Amount of Change Orders to Date: $_____

Total Contract Cost to Date (initial price + total change order cost): $_____

Change Orders Instigated by District: No.:_____ Amount: $_____

Reason(s):

Describe change(s):

Change Orders Instigated by Your Firm:
No.:_____Amount: $_____

Reason(s):

Describe change(s):

District Contact:_____Current Telephone No.:_____

3. District _____ Construction Delivery Method: _____

Project Description: _____

Bid Date: _____ Initial Contract Price: $_____

Total Amount of Change Orders to Date: $_____

Total Contract Cost to Date (initial price + total change order cost): $_____

Change Orders Instigated by District: No.: _____ Amount: $_____

Reason(s):

Describe change(s):

Change Orders Instigated by Your Firm: No.: _____ Amount: $_____

Reason(s):

Describe change(s):

District Contact: _____ Current Telephone No.: _____

E. Provide a brief overview of your firm's involvement in sustainability (energy and utility conservation) related projects, including some examples:

III. Current Work Load

Provide the following information for five largest projects in which your firm is currently engaged:

1. Name:_____

   Location:_____

   Owner:_____

   Owner Contact: _____ Current Telephone No.: _____

   Architect:_____

   A/E Contact: _____ Current Telephone No.: _____

   Contract Amount:_____

   Percent (%) Complete:_____

   Scheduled Completion Date: _____

2. Name:_____

   Location:_____

   Owner:_____

   Owner Contact: _____ Current Telephone No.: _____

   Architect:_____

   A/E Contact: _____ Current Telephone No.: _____

   Contract Amount:_____

   Percent (%) Complete:_____

   Scheduled Completion Date: _____

3. Name:_____

   Location:_____

   Owner:_____

   Owner Contact: _____ Current Telephone No.: _____

   Architect:_____

   A/E Contact: _____ Current Telephone No.: _____

   Contract Amount:_____

   Percent (%) Complete:_____

   Scheduled Completion Date: _____

4. Name:_____

   Location:_____

   Owner:_____

   Owner Contact: _____ Current Telephone No.: _____

   Architect:_____

   A/E Contact: _____ Current Telephone No.: _____

   Contract Amount:_____

   Percent (%) Complete:_____

   Scheduled Completion Date: _____

5. Name:_____

Location:_____

Owner:_____

Owner Contact: _____ Current Telephone No.: _____

Architect:_____

A/E Contact: _____ Current Telephone No.: _____

Contract Amount:_____

Percent (%) Complete:_____

Scheduled Completion Date: _____

IV. Personnel and Methodology

A. Name all persons and their titles in your firm to be utilized for this project and provide a resume and biography for each, including Principals, Corporate Officers, Project Managers, Cost Estimators, and Project Superintendents (All questions pertain to Austin or local Central Texas office only.).

Identify and describe the proposed designated staff of the responding firm (key personnel) committed to AISD and providing the services described in this solicitation. Identify key personnel that would be assigned to AISD and that will provide the services described in the solicitation. Describe how the team will be organized to deliver the services defined in this CSP. Provide brief resumes (not more than one (1) page) for each key personnel.

Information provided in this section should include the following:

- An illustration of each proposed team member's unique qualifications, experience and education as it pertains to scope of services required in this solicitation.
- Availability and commitment of the proposed personnel to undertake the services described in this solicitation.
- Personnel's job functions, role, percent of time to be assigned to this project, both on site and off-site.
- For each proposed team member, provide a list of similar recent projects (within the past 3 years) where the individual has provided services of the same type and magnitude required in this solicitation.

B. Provide your firm's project management approach, including a brief work plan and organizational chart with personnel responsibilities.

C. Describe your firm's concepts for working in a team relationship with Owner and Architect during the design, bidding and construction phases of major projects.

D. Describe your firm's methods for estimating costs, during the design and construction documents phases. Include what approach is utilized to bring a project into budget. *(It is anticipated that the guaranteed maximum price will be submitted within 30 days prior to the completion of construction documents phase.)*

E. Describe your firm's pre-construction phase services approach and results achieved as a direct result of such approach.

F. Attach a sample conceptual cost estimate prepared during the design phase of a project, and a sample of the final cost estimate/breakdown used to fix the contract amount for the construction of the same project. *(The identity of the project may be concealed, as the intent is to see the nature and format of the cost information provided.)*

G. Describe your firm's cost control system utilized during the construction phase.

H. Describe your firm's methods for scheduling during the design and construction phases.

I. State the methods and management techniques your firm utilizes to accomplish an aggressive schedule of design and construction. Provide examples of successful projects with aggressive design and construction schedules.

J. Describe your firm's scheduling control system utilized during the construction phase. (*To the extent that Offeror's response, or portion thereof, is the same as indicated in Section IV, Item H, Offeror can simply refer to Item H.)*

K. Explain your firm's experience with and approach to the following:

1. Value engineering analysis

2. Life cycle cost analysis

3. Design constructability reviews

4. Quality assurance plan

L. Describe the most frequently occurring problems your firm has encountered in the management of the construction of a school building program, and how your firm solved them.

M. Describe your firm's experience utilizing the project delivery method selected for this project.

N. Describe your firm's approach to quality control and quality assurance.

O. Describe your firm's approach to resolving disputes with design professionals and subcontractors.

P. Describe your firm's approach to warranty services.

Q. Describe your firms approach to ensuring HUB/MWBE participation on projects.

R. Describe your firm's overall approach to ensuring success of a project of this particular scope and duration, including what you perceive as being the challenges of a project of this nature and how your firm proposes to meet such challenges.

V. Financial

A. Provide **in a separate sealed envelope within the sealed submittal package**, one (1) copy of your firm's most recent audited financial statement. Financial statements that are more than one year old are not acceptable. Include your firm's latest balance sheet, income statement, statement of cash flows and the related notes to the financial statement, with the balance sheet and income statement showing the following items:

   a. Current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses)
   b. Non-current assets (e.g., net fixed assets, other assets)
   c. Current liabilities (e.g., accounts payable, notes payable (current), accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes)
   d. Non-current liabilities (e.g., notes payable)
   e. Capital accounts and retained earnings (e.g., capital, capital stock, authorized and outstanding shares par value, earned surplus and retained earnings)

Financial statement and supporting information will be kept confidential to the extent permitted by law.

B. Identify the preparer of the financial statement:

Firm Name:_____ Contact Person: _____

Address:_____ Date statement completed: _____

C. Is the attached financial statement for the identical firm named in Section I. above? Yes__ No If "No", explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent, subsidiary, etc.) _____

D. Will the organization for which the financial statement is presented act as guarantor of the contract for construction?

E. Attach a written statement from your firm's bonding company stating the bonding company's intent to provide the payment and performance bonds required by the Contract, if you are awarded a Contract, and your firm's total bonding capacity.

F. Provide Principal Bank Reference(s)

Individual, Title
Name of Bank
Address_____
Telephone_____

G. Firm's Financial Strength Relative to Project Size

- Provide a statement from the president, owner or financial officer on company letterhead certifying that the company is in good financial standing and current in payment of all taxes and fees including but not limited to state franchise fees.

- Disclose whether your company is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If so, specify date(s), details, circumstances, and prospects for resolution.

- State whether your company is currently contemplating or has pending a petition in bankruptcy for debt relief, or whether a creditor has threatened to file an involuntary petition against Offeror.

- Attach an audited or reviewed financial statement, including an independent auditor's report, balance sheet, income statement, and the related notes to the financial statement. Financial statements that are more than one-year old are not acceptable.

- Provide a bid/proposal bond for the Project.

- Provide a letter from your surety certifying your firm's total bonding capacity and available bonding capacity.

VI. Safety Record

Provide the following information in connection with your firm's safety record:

1. Your firm's OSHA (Occupational Safety and Health Administration) 300 Logs for the last three (3) years.

    - OSHA log must be completed. If no accidents, record "0" in appropriate column totals.

2. Loss run from your firm's insurance carrier or insurance agent covering your firm's workers' compensation insurance coverage. (Loss run is also referred to as "statement of claims" or SOC.)
    - Loss run must be provided by your firm's insurance carrier or insurance agent. Insurance carrier's company name or insurance agent (agency) must be clearly legible on documents provided.
    - Names of claimants on loss run may be redacted.
    - If there have been no losses, provide copy from your firm's insurance carrier showing no losses.
    - Loss run must be from the most recently completed policy year.
    - This report must be produced and printed 60 calendar days or less before the bid due date.

3. Loss ratio from your firm's insurance carrier or insurance agent covering your firm's workers' compensation insurance coverage.
    - Loss ratio must be provided by your firm's insurance carrier or insurance agent. Insurance carrier's company name or insurance agent (agency) must be clearly legible on documents provided.
    - Loss ratio must be based on manual (unmodified) premium. Manual (unmodified) premium is premium without experience modifier applied.
    - If paid premium is submitted, experience modifier (from insurance carrier) must be provided.
    - Time period corresponding to loss ratio must be provided.
    - Typed or handwritten information concerning loss ratio prepared by your firm WILL NOT be accepted.
    - Experience rating documents WILL NOT be accepted for this Paragraph 3.
    - Loss ratio must be from the most recently completed policy year.
    - This report must be produced and printed 60 calendar days or less before the bid due date.

4. Your firm's current experience modifier from your firm's insurance carrier, insurance agent or rating agency from your firm's workers' compensation insurance premiums.
    - Experience modifier must be provided by your firm's insurance carrier, insurance agent or rating agency. Insurance carrier's company name or insurance agent (agency) must be clearly legible on documents provided.
    - Experience modifier must be from most recent completed policy year.
    - Experience modifier must clearly indicate time period/year covered.
    - Hand-written experience modifiers WILL NOT be accepted.
    - Experience rating documents indicating a calculated experience modifier will be accepted provided there is a final calculated experience modifier with applicable year indicated.
    - This report must be produced and printed 60 calendar days or less before the bid due date.

VII. Offeror's Certification

The person signing below on behalf of the Offeror represents to AISD that:

(1) the information provided in all documents comprising the Proposal is true, complete and accurate to the best of the knowledge and belief of the undersigned;

(2) He/She has full authority to execute this certification on behalf of the Offeror;

(3) AISD, or any authorized representative of AISD, is authorized by the undersigned to contact any firm, institution, or person listed above to obtain information about Offeror's services, financial condition, and any other information that AISD might determine as being desirable; and

(4) Offeror has received all Addenda to this Request for Proposals, specifically, Addenda No.(s) _____.

Executed this _____ day of _____, 20___.

OFFEROR:

_____

By: _____

Name: _____

Title: _____

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AISD PROJECT:
Construction Manager at Risk Services for Selected 2017 Bond Projects

PROPOSAL BOND

KNOW ALL BY THESE PRESENTS: that the undersigned Principal and Surety are firmly bound to the Austin Independent School District ("AISD") in the principal sum of

_____Dollars
($_____).

Now the condition of the bond is this: that, whereas the undersigned Principal has submitted to AISD a proposal to enter into a certain contract for the AISD project listed above whereunder Principal undertakes to perform the work of construction, alteration or repair as per the *OFFEROR'S PROPOSAL FORM* for the project.

NOW, THEREFORE, if the Principal shall, within ten (10) days following acceptance by the Board of Trustees of AISD of such proposal and award by said Board to said Principal of a contract, execute and return all contracts and other required contract documents applicable to such project, includin g but not limited to the Agreement for Construction Between Owner and Construction Manager-at-Risk ("Agreement"), for which an award was made to the Principal, and within five (5) days after execution of such contract documents, deliver such insurance documents as may be required by the terms of the proposal accepted, and at the same time as Principal executes and delivers to AISD an amendment to Agreement furnished by AISD establishing a Guaranteed Maximum Price for the first phase of the work described in such amendment, if the project will be performed in two or more phases, or the final Guaranteed Maximum Price for the work described in such amendment, if not phased, deliver such bonds as may be required by the terms of the proposal accepted, then this obligation shall be null and void, otherwise it shall remain in full force and the amount hereof shall be paid to and retained by AISD as liquidated damages for Principal's failure to do so.

Principal: _____

By: _____

Title: _____

Date: _____

Surety: _____

By: _____

Title: _____

Date: _____

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AUTHORIZATION FORM

The foregoing is true and correct. The Austin Independent School District, or any authorized representative of the Austin Independent School District, is authorized by the undersigned to contact any firm, institution, or person listed above to obtain information about our firm's services, financial condition, and any other information which the Austin Independent School District might determine as being desirable.

Firm: _____

By: _____

Title: _____

Date: _____

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Exhibit "A" – Prospectus

Construction Managers at Risk

Request for Proposals 20CMR038

The following 2017 Bond Projects will be implemented using the Construction Manager at Risk construction delivery method and a Project Data Sheet is provided for each project:

- **Project Name:** Norman Elementary School Modernization
  Construction Budget: $18,500,000

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Project Data Package

Norman Elementary School

Schools Overview

Norman Elementary School, located at 4001 Tannehill Lane, is 58,519 Square Feet and sits on 10 acres. The campus fosters a cooperative environment that enhances the academic, social and emotional moral growth of students. The school, which is a part of the LBJ vertical team, opened in 1969, and serves Pre-k through 5th grade. There have been two additions added to the original footprint, one in 1989, and the other in 2006 which make up the 58,519 Sq Ft. The educational program is aligned with the Early College High School initiative that supports preparation for college level courses beginning in 9th grade.

Project Description Summary

The 2017 Bond calls for a modernization project in the LBJ Vertical Team, the construction of a single, modernized elementary school at the Norman campus site to accommodate students at both Norman and Sims elementary schools and serve the LBJ vertical team. The new facility will be a 40,000 square foot renovation modernization and a 34,000 square foot new 2-story building, which will follow the AISD ed specs for creating 21st-century learning spaces and offer state-of-the-art technology and community spaces. Shifting away from the traditional classroom configuration, the learning areas shall incorporate open spaces that encourages mobility and invites interaction between students, ultimately enhancing the learning experience. The school shall have integrated technology as an essential tool for student research, analysis, and communication, as well as, the integration of multiple spaces to support community needs. All building systems and features will reflect the latest in design advances, fully addressing accessibility, sustainable (or "green") construction, and the provision of a healthy, safe, and secure environment for students, teachers, and staff.

This project is planned for occupancy in January 2021 with a capacity of 522. The total project budget is $25 million with a construction budget of $18.5 million.

The architect for this project is Kirksey Architecture.

This project was previously solicited under AISD's solicitation number 19CMR035. Partial work on site is complete for the structural demolition, abatement, foundation installation, wet utilities and sitework portions of the work. Structural Steel fabrication is also in progress.

Drawings and Specifications at 100% Issued for Construction have been issued along with this solicitation for your reference.

Documents Provided by AISD

Associated documents that may be accessed and printed are on the AISD website at:

https://www.austinisd.org/construction-management/designinformation

https://aecomconnect.com/AISD_FCA/Reports.Html

- AISD Educational Specifications (Ed Specs)
- AISD Project Development Manual (PDM)
- Educational Suitability Assessment
- Facility Condition Assessments
- Sustainability Requirements
- Structural Assessment Reports
- Facility Master Plan

Exhibit "B"

Construction Managers at Risk

Request for Proposals 20CMR038

Contract Documents (collectively referred to in this Request for Proposals as the "Contract")

- AISD's Agreement for Construction Between Owner and Construction Manager- at-Risk ("Agreement for Construction")
- AISD's General Conditions of the Contract for Construction ("General Conditions")
- AISD's Notice of Prevailing Wage Rates ("Notice of Prevailing Wage Rates")

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AISD PROJECT NO. _____

PROJECT TITLE _____

AGREEMENT FOR CONSTRUCTION BETWEEN OWNER AND CONSTRUCTION MANAGER-AT-RISK

AGREEMENT
made as of the _____ day of _____ 20___

BETWEEN the Owner:

Austin Independent School District
1111 West 6th Street
Suite B,300
Austin, Texas 78703

and the Construction Manager:
(Name and address)

_____
_____
_____

The Project is:
(Name, address and brief description)

_____

The Architect/Engineer is:
(Name and address)

_____
_____
_____

The Owner and Construction Manager agree as set forth below:

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ARTICLE 1 GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect/Engineer in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect/Engineer, Construction Manager and other persons or entities employed by the Owner for the Project.

1.2 GENERAL CONDITIONS

For the Construction Phase, the general conditions of the contract shall be the AISD General Conditions of the Contract for Construction dated February 2019 (hereinafter referred to as the "General Conditions"), which is attached hereto as Attachment "C" and incorporated herein by reference. For the Preconstruction Phase, the General Conditions shall apply to the Preconstruction Phase only as specifically provided in this Agreement or in the General Conditions. The term "Contractor" as used in the General Conditions shall include the Construction Manager. The term "Agreement" as used in this document and in any other Contract Documents, shall refer to the Agreement portion of the Contract and shall be considered to have the same meaning as "Contract". The term "Contract" shall have the same meaning as "Contract Documents." Capitalized terms used but not otherwise defined in this Agreement shall have the same meanings as designated in the General Conditions.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase Services. All professional services rendered under this Contract shall be performed in accordance with high professional standards, the terms of the Contract Documents and all applicable laws, and shall be free from negligence. Work performed under the Contract shall be performed in a good and workmanlike manner, free from defects in materials and labor, and in accordance with the Contract Documents, and all applicable Federal, State and local laws. Construction Manager shall be responsible for all services and Work performed under the Contract.

2.1 PRECONSTRUCTION PHASE

2.1.1 Preliminary Evaluation

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

2.1.2 Consultations and Reviews

The Construction Manager with the Architect/Engineer shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult

with the Owner and Architect/Engineer regarding site use and improvements and the selection of materials, building systems and equipment.

The Construction Manager shall provide recommendations and written reports on construction feasibility, overall coordination of Drawings and Specifications, actions designed to minimize adverse effects of labor or material shortages, time requirements for procurement, installation and construction completion, and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies including but not limited to identifying and documenting Project cost and schedule savings opportunities. The report shall be updated monthly during the Preconstruction Phase, or as frequently as reasonably requested by Owner.

2.1.3 Preliminary Project Schedule

2.1.3.1 When Project requirements described in Article 2 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project Schedule as described herein. The Project Schedule, including updates, shall be submitted to the Architect/Engineer and Owner for their review and approval. Owner and Architect/Engineer shall accept or reject the submittal of a schedule within the same period allowed for review of other submittals, or if no time period is expressly provided, within a reasonable time after receipt. Unless otherwise agreed to by the parties, updates of the Project Schedule shall be submitted to Owner and Architect/Engineer monthly, or more frequently if necessary to show the effect of an event that has a substantial impact on the Project Schedule. The Construction Manager shall obtain the Architect/Engineer's approval of the portion of the preliminary Project Schedule relating to the performance of the Architect/Engineer's services, and Architect/Engineer shall cooperate with Construction Manager in achieving a Project Schedule that achieves Owner's requirements. Architect/Engineer shall perform its services in accordance with the approved Project Schedule, as the same may be updated and approved from time to time. If at any time Construction Manager becomes aware that Architect/Engineer is not performing in accordance with the time frames established in the then current approved Project Schedule, Construction Manager shall notify Owner and Architect/Engineer and shall request a meeting to discuss and resolve any problems.

2.1.3.2 The Construction Manager shall coordinate and integrate the preliminary Project Schedule with the services and activities of the Owner, Architect/Engineer and Construction Manager. As design proceeds, the preliminary Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed Substantial Completion Date. In the event Owner and Construction Manager agree to a Guaranteed Maximum Proposal and enter into the Construction Phase, the Construction Manager

shall refine the Project Schedule into the Construction Schedule. If preliminary Project Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect/Engineer as to the way in which Construction Manager will meet Owner's time requirements. If delays are caused in whole or in part by Architect/Engineer's failure to meet time requirements established in the Architect Agreement or the Contract Documents, or established in the approved Project Schedule, Architect/Engineer shall make recommendations to the Owner and Construction Manager as to the way in which Architect/Engineer will meet the time requirements.

2.1.3.3 Acceptance of a Project Schedule, update or revision does not indicate the approval by Owner of the Construction Manager's proposed sequences and duration, nor does it indicate Owner's agreement to be responsible to Construction Manager for the payment for any construction activities performed during the Preconstruction Phase, including the procurement by Construction Manager of long-lead items. Owner shall not be responsible for the payment for construction services performed by Construction Manager, its subcontractors or suppliers, prior to the commencement of the Construction Phase as provided in Subsection 2.3.1.

2.1.4 Phased Construction

The Construction Manager shall make recommendations to the Owner and Architect/Engineer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 Preliminary Cost Estimates and Fixed Construction Budget

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect/Engineer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques. The Construction Manager shall have primary responsibility for determining the estimated construction cost, but the Architect/Engineer shall review estimates and other information provided by Construction Manager and shall notify the Owner and Construction Manager if at any time it believes that the estimates or other information provided by the Construction Manager are, or may be, incorrect, inaccurate or incomplete, or are based on incorrect assumptions regarding the design or other factors regarding the Work.

2.1.5.2 The cost estimate shall be based on the total cost to the Owner of all elements of the Project designed or specified by the Architect/Engineer and its consultants. The Architect/Engineer shall, throughout the Preconstruction Phase, provide Construction Manager with adequate

information for estimating the construction costs. Construction Manager will request any information that it needs from the Architect/Engineer. The cost estimate for the Work shall include (1) the cost at current market rates of labor and materials to be furnished by the Construction Manager, [including the total not-to-exceed cost of the Project General Conditions (identified as the Maximum PGC Costs in Attachment "A" attached hereto and made a part hereof, and as further defined in Subsection 6.1.5(f))] and the Construction Manager's fee for construction phase services as provided in this Contract, together with a reasonable allowance for contingencies to be included for market conditions at the time of bidding and any contingency required by Owner to be included in the construction budget exclusively for the use of Owner; and (2) the cost at current market rates of labor and materials, to be furnished by the Owner, together with a reasonable allowance for contingencies for market conditions at the time of bidding, and Construction Manager shall itemize the information in (1) and (2) separately, and shall ask Owner and Architect/Engineer for all information on items to be provided by Owner or Architect/Engineer as stated in (1) in order to accurately prepare the cost estimate. The items described in (1) shall sometimes be referred to herein as the "Construction Manager's Portion of the Fixed Construction Budget." Architect/Engineer shall review the estimates each time they are provided by the Construction Manager and notify Construction Manager and Owner of any questions regarding the estimate. Construction Manager shall consider the questions and determine whether any changes are required in its estimate. Construction Manager shall provide a response to any questions asked by Architect/Engineer regarding the estimate to both the Architect/Engineer and the Owner.

2.1.5.3 When Schematic Design Documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect/Engineer and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

2.1.5.4 When Design Development Documents have been prepared by the Architect/Engineer and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect/Engineer and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect/Engineer and Construction Manager.

2.1.5.5 The Estimated Project Construction Budget is $_____. The Fixed Construction Budget will be established by Owner during the Preconstruction Phase based on the Drawings and Specifications provided by Architect/Engineer and the estimates and recommendations provided by Construction Manager. The Construction Manager's Portion of the Fixed Construction Budget will be 100% of the Fixed Construction Budget, unless otherwise indicated in the Contract Documents.

2.1.6 Subcontractors and Suppliers

2.1.6.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from subcontractors and from suppliers of materials or equipment for the Work in accordance with applicable law and the provisions of Section 11.2 hereof.

2.1.6.2 The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect/Engineer for their information a list of possible subcontractors and suppliers. The Architect/Engineer will promptly reply in writing to the Construction Manager if the Architect/Engineer or Owner knows of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect/Engineer to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect/Engineer later to object to or reject any proposed subcontractor or supplier.

2.1.6.3 Construction Manager is encouraged to create a single point of contact in its organization to facilitate Construction Manager's outreach to and utilization of qualified minority and women-owned businesses as subcontractors and suppliers.

2.1.7 Long-Lead-Time Items

The Construction Manager shall recommend to the Owner and Architect/Engineer a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project Schedule, provided, however, that Owner shall be under no obligation to approve, order or pay for such long-lead items. If Construction Manager believes that it is necessary to order any of such items before the Construction Phase in order to meet the time objectives of the Project, Construction Manager may do so at its own cost and expense and Owner shall not be responsible for paying or reimbursing Construction Manager for such items in the event the Owner does not accept Construction Manager's Guaranteed Maximum Price proposal. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

2.1.8 Extent of Responsibility

2.1.8.1 The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect/Engineer and Owner in writing.

2.1.8.2 Any provision in this Contract or in any of the Contract Documents to the contrary notwithstanding, it is understood and agreed that Construction Manager shall be primarily liable for ensuring that the total cost of all Work to be performed by the Construction Manager (together with Construction Manager's Fees), as measured by the lowest bona fide Guaranteed Maximum Price proposal, does not exceed the Construction Manager's Portion of the Fixed Construction Budget as described in Subsection 2.1.5. If the total cost of all Work to be performed by the Construction Manager (together with Construction Manager's Fees), as measured by the lowest bona fide Guaranteed Maximum Price proposal, does exceed the Construction Manager's Portion of the Fixed Construction Budget, then the Owner shall have the right to (1) give written approval of an increase in such Fixed Construction Budget, (2) authorize rebidding of the Project within a reasonable time, (3) abandon or terminate the Project, or (4) cooperate in revising the Project scope and quality as required to reduce the construction cost.

2.1.8.3 If Owner gives written approval of an increase in the Fixed Construction Budget as provided in (1), the Construction Manager's Fee for construction services as provided in this Agreement will be increased by any increase in the Construction Costs over the Cost of Work component of the original Fixed Construction Budget.

2.1.8.4 If Owner authorizes rebidding as described in (2), and the lowest bona fide Guaranteed Maximum Price proposal exceeds the Fixed Construction Budget primarily due to preconstruction recommendations or services performed by the Construction Manager, Construction Manager shall pay for all costs of printing, readvertising and rebidding the Project.

2.1.8.5 If Owner determines to abandon or terminate the Project as described in (3), Construction Manager shall not be entitled to payment for any Preconstruction Phase Services following the date of abandonment or termination.

2.1.8.6 If Owner determines to cooperate in revising the Project scope and quality, as described in (4), and the lowest bona fide Guaranteed Maximum Price proposal exceeds the Fixed Construction Budget primarily due to preconstruction recommendations or services performed by the Construction Manager, then the Construction Manager shall be responsible for paying directly to Architect/Engineer (or, at Owner's option, reimbursing Owner for) all reasonable fees and expenses charged by Architect/Engineer to modify the Drawings and Specifications as necessary to comply with the Fixed Construction Budget, and Construction Manager shall re-perform all of its Preconstruction Phase Services, while the modifications to the Drawings and Specifications are being performed, at no additional cost to Owner. In addition to the foregoing, Construction Manager shall pay for all costs of printing, readvertising and rebidding the Project as redesigned.

2.1.8.7 If the Project is rebid as described in (2) or rebid after redesign as described in (4), and the resulting lowest bona fide Guaranteed Maximum Price proposal is again in excess of the Construction Manager's Portion of the Fixed Construction Budget, Owner shall again have the rights set forth above in Subsection 2.1.8.2.

2.1.8.8 As used in this Agreement, the terms "bid" and "bidding" shall refer to any solicitation process used in selecting a contractor or subcontractors, including competitive sealed bids, and requests for competitive sealed proposals. The term "bid" shall refer to any response to the solicitation process, and the term "bidder" shall mean any person who responds to the solicitation process, through a bid, proposal or other appropriate response.

2.1.9 Equal Employment Opportunity

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunities.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 At the time mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work (including the Owner's Contingency described in Subsection 2.2.3 below) and the Construction Manager's Fee, and which shall be an amount equal to or less than the Owner's Fixed Construction Budget. If the Owner determines to perform the Project in two or more phases, or to fast-track the Project, the Owner and Construction Manager may enter into more than one Amendment each establishing a Guaranteed Maximum Price for the portion or phase of the Work described in such Amendment, provided, however, that the total amount of compensation to be paid to Construction Manager under this Agreement and all of such Amendments, (both the Cost of the Work and Construction Manager's Fee) shall never exceed the Guaranteed Maximum Price established for the total amount of the Work described in this Agreement, or if no Guaranteed Maximum Price has been established for the entire Work, then the compensation shall never exceed the Construction Manager's Portion of the Fixed

Construction Budget. The Guaranteed Maximum Price proposal shall expressly set out all qualifications, clarifications and assumptions made by Construction Manager in establishing its proposal. The Architect/Engineer will review the proposed Guaranteed Maximum Price and verify that the clarifications, qualifications and assumptions are reasonable relative to the design intent and can be accommodated in the Construction Documents. Architect/Engineer shall promptly notify Owner in the event that it believes the clarifications, qualification or assumptions are not reasonable or cannot be so accommodated. In the event the Architect/Engineer determines that there is a problem with the Guaranteed Maximum Price proposal, or if the proposal exceeds the Construction Manager's Portion of the Fixed Construction Budget, then Owner, Architect/Engineer and Construction Manager shall meet to discuss and endeavor to resolve the problem. In any event, Owner shall have the rights set forth in Subsection 2.1.8 of this Agreement.

2.2.2 If the Drawings and Specifications will not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect/Engineer that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Subsection 2.2.2 above, if applicable, and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The estimated Cost of the Work shall, if requested by Owner, also include an amount approved by the Owner as an Owner's contingency for the Owner's exclusive use to cover unexpected costs resulting from changes in the scope of the Work. Any contingency amounts not expended at the completion of the Project shall be returned to Owner, and Construction Manager shall give an accounting to Owner of the portions of the contingency amounts (both Construction Manager's contingency and Owner's contingency) expended and for what Work.

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

a. A list of the Drawings and Specifications, including all addenda thereto and the General Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

b. A list of allowances and a statement of their basis.

c. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

d. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Construction Manager's Fee that comprise the Guaranteed Maximum Price.

e. The proposed Substantial Completion Date upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the Substantial Completion Date is based.

f. The Project General Conditions as identified in Attachment "A" hereto.

g. All qualifications and assumptions made by Construction Manager in establishing its Guaranteed Maximum Price proposal.

h. The amount of the Construction Manager's contingency allowance, and if one is required by Owner, the amount of the Owner's contingency allowance.

2.2.5 The Construction Manager shall meet with the Owner and Architect/Engineer to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect/Engineer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the last date for such acceptance as agreed to by Owner and Construction Manager and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written consent by the Construction Manager.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may expressly authorize in advance in writing. Construction Manager shall be responsible for the payment of any materials or equipment that it orders prior to the commencement of the Construction Phase, without Owner's prior written consent.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis and the Substantial Completion Date shall be set forth in an amendment to this Agreement. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Substantial Completion Date shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect/Engineer to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the amendment to this Agreement described in Subsection 2.2.8 above. Such revised Drawings and Specifications

shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect/Engineer and Construction Manager. The Construction Manager shall promptly notify the Architect/Engineer and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications and Architect/Engineer and Construction Manager shall promptly reconcile the inconsistencies.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established and for which Owner is responsible for paying. Owner is a tax exempt entity under Texas law, and Construction Manager shall take all action required to obtain an exemption from sales tax for the Work in accordance with applicable law. In the event Construction Manager fails to do so, the Cost of the Work shall be reduced by the amount of such taxes. The statutory provisions regarding the sales tax exemption are more fully described in the General Conditions.

2.3 CONSTRUCTION PHASE

2.3.1 The Construction Phase shall commence when all of the following have occurred:

a. the Owner has accepted the Construction Manager's Guaranteed Maximum Price proposal in writing as established in an Amendment signed by both parties for all or a defined portion of the Work; and

b. the Owner has issued to Construction Manager a Notice to Proceed or has otherwise authorized the Construction Manager to begin Work; and

c. Owner has obtained all requisite authorizations for financing the construction of the Project; and

d. Construction Manager has obtained and delivered to Owner the Payment and Performance Bonds and proof of insurance required by the Contract, and the same have been approved by Owner; and

e. Construction Manager's Safety Program Manual and Construction Manager's Safety Plan for the Project have been delivered to and reviewed by Owner and the designated Safety Representative has been identified by Construction Manager in the Safety Plan; and

f. the designated Safety Representative is on site.

Any provision in the Contract to the contrary notwithstanding, an agreement by Owner and Construction Manager authorizing the Construction Manager to order long-lead-time items shall not constitute the commencement of the Construction Phase unless the parties expressly agreed in writing that the Construction Phase has commenced.

2.3.2 If the Guaranteed Maximum Price has been established and a specific bidder or offeror among those whose bids or proposals are delivered by the Construction Manager to the Owner and Architect/Engineer (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work;

and (3) has submitted a bid or proposal which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid or proposal be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference, if any, between the bid or proposal of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. This provision shall not apply if Owner or Architect/Engineer has a reasonable objection to the bidder or offeror recommended by Construction Manager, or if the bidder or offeror is debarred or otherwise not licensed, qualified or authorized to perform the Work on the Project.

2.3.3 Subcontracts and agreements with suppliers furnishing materials or equipment shall conform to the payment provisions of Article 7 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect/Engineer, Construction Manager and appropriate subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with the General Conditions, including the Owner's occupancy requirements.

2.3.6 The Construction Manager shall provide monthly written reports to the Owner and Architect/Engineer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner or Architect/Engineer may reasonably require. The log shall be available to the Owner and Architect/Engineer.

2.3.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and promptly report the variances to the Owner and Architect/Engineer at regular intervals or more frequently, as appropriate given the nature or size of the variance.

2.3.8 The Construction Manager shall maintain a field office at the Project site. The field office shall be staffed with appropriate personnel for the Project, the adequacy of which may be determined or revised in Owner's reasonable discretion, and which office contains all submittal documents required by the General Conditions.

2.4 PROFESSIONAL SERVICES

The provisions of the General Conditions applying to professional services of the Construction Manager shall apply to both the Preconstruction and Construction Phases.

2.5 ASBESTOS AND HAZARDOUS MATERIALS

The provisions of the General Conditions applying to asbestos and hazardous materials shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase, furnish to the Construction Manager reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect/Engineer, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

3.2 PRECONSTRUCTION TESTS, SURVEYS AND REPORTS

3.2.1 In the Preconstruction Phase, the Owner shall furnish tests, surveys, and reports as indicated below with reasonable promptness and at the Owner's expense. Except as otherwise provided in the General Conditions or to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests furnished by Owner, but shall exercise customary precautions relating to the performance of the Work. Owner, however, does not warranty or guarantee the accuracy or completeness of any reports, surveys, drawings or tests provided by it, including but not limited to, the Drawings, Specifications, and other design documents provided by Architect/Engineer and Owner disclaims all such warranties, express or implied.

3.2.2 Unless required by law, Owner shall determine the tests, surveys and reports to be furnished and the quantity and scope of the services to be provided. Such tests, surveys and reports may include one or more of the following:

a. Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

b. Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing

buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark. Pursuant to the terms of the General Conditions, Construction Manager has full responsibility for determining the location of utilities affecting the Project site and surrounding areas, and protecting them from damage during construction, despite any information provided by Owner.

c. The services of a geotechnical engineer when such services are determined by Owner to be necessary or are requested by the Construction Manager and agreed to by Owner. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

d. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

e. The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager and approved by Owner.

3.3 OWNER'S DESIGNATED REPRESENTATIVE

The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager, except to the extent such decisions and approvals are required to be made by Owner's Contracting Officer or Board of Trustees. Except as otherwise provided in the General Conditions, the Architect/Engineer and/or Project Manager does not have such authority with regard to any changes or decisions regarding the Work that would affect the Contract Time or the Contract Amount.

3.4 ARCHITECT

The Owner shall retain an Architect/Engineer to provide Basic Services, including normal structural, mechanical, civil, electrical engineering, and roofing services, described in the Agreement between Owner and Architect/Engineer and the General Conditions. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect/Engineer and Construction Manager.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase Services as follows:

4.1 COMPENSATION

4.1.1 For the services described as Preconstruction Phase Services, the Construction Manager's compensation shall be calculated as follows, subject to the terms and provisions of the Contract:

A monthly fee, not to exceed _____ ($_____) per month, for Preconstruction Phase Services, calculated on an as-earned basis and subject to the terms of this Agreement.

4.2 PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice for actual services rendered for the prior month's period (which invoice shall include sufficient detail for all costs billed, including a statement based on time sheets and billable rates for all personnel time), subject to the monthly not-to-exceed amount stated above. Provided, however, if Construction Manager's invoice for a given month during the Preconstruction Phase is less than the stated monthly not-to-exceed amount, the unused portion of the monthly not-to-exceed amount may, with Owner's approval, be applied to subsequent monthly invoices for actual Preconstruction Phase Services rendered to cover invoiced costs which exceed the monthly not-to-exceed amount in a subsequent month.

4.2.2 Payments are due and payable as provided above, or if no payment schedule is provided above, then thirty (30) days from the date the Construction Manager's Preconstruction Phase Services are completed in accordance with the Contract Documents.

4.2.3 Undisputed amounts unpaid 30 days after the date on which payment is due shall bear interest at the rate calculated in accordance with the applicable provisions of Chapter 2251 of the Texas Government Code. All payment obligations are subject to the provisions of the Contract Documents.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

5.1 COMPENSATION

5.1.1 For the Construction Manager's performance of the Work described as Construction Phase Services, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows subject to the provisions of the Contract Documents:

A stipulated sum equal to __% of the Cost of the Work included in the Guaranteed Maximum Price proposal accepted by Owner as established by Amendment to this

Contract, provided that the sum of the Cost of the Work and the Construction Manager's Fee shall not exceed the Guaranteed Maximum Price.

5.1.2 Construction Manager shall be allowed the following stipulated sum on Change Orders: For work performed by Construction Manager's own employees: _____% of the actual Cost of the Work; for Work performed by subcontractors: _____% of the sum of the subcontractor's cost of the Work and the subcontractor's mark-up determined in accordance with the provisions of the General Conditions.

5.1.3 If Owner agrees to an increase in the Cost of the Work in an amendment increasing the Guaranteed Maximum Price, Construction Manager shall be entitled to an equitable adjustment in the Construction Manager's Fee as provided in Subsection 5.1.1.

5.1.4 If Owner agrees to an increase in the Cost of the Work as a result of a Change Order without increasing the Guaranteed Maximum Price (for example, through use of contingencies), the markup on the Cost of the Work contained in the Change Order shall be the percentages provided in Subsection 5.1.2 above or as provided for Change Orders in the General Conditions, but *not* the percentage markup provided in 5.1.1.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided by Amendment, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

5.2.2 In the event the actual Cost of the Work paid by Construction Manager's plus the Construction Manager's Fee is less than the Guaranteed Maximum Price established by the Contract Documents (including approved Change Orders), the Owner shall be entitled to 100% of the savings.

5.3 CHANGES IN THE WORK

5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Amendment establishing the Guaranteed Maximum Price may be determined by any of the methods listed in the General Conditions which are approved and agreed to by Owner.

5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the adjustments shall be determined in accordance with the provisions of the General Conditions. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in Article 6 of the General Conditions shall mean the actual Cost of the Work as defined in Article 6 of this Agreement, except as limited by the terms of the General Conditions.

5.3.4 The Maximum PGC Costs as specified in Attachment "A" hereto shall not be increased on account of changes in the Work.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

6.1.1 The term "Cost of the Work" shall mean actual costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with the prior consent of the Owner, provided that the payments for labor shall not be less than the prevailing wage rates provided in the Contract Documents. Construction Manager shall be responsible for complying with all requirements of law with regard to the prevailing wage rate and for any penalties or liabilities imposed by law for failure to comply. Owner may withhold all appropriate amounts, including additional wages, to satisfy Construction Manager's obligations. The Cost of the Work shall include only the items set forth in this Section 6.1.

6.1.2 The Cost of the Work shall include labor costs, consisting of:

a. Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.

b. Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement for the portion of their time spent working on this Project.

c. Wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the Project site office shall not be included in the Cost of the Work unless expressly approved as off site personnel.

d. Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, and with Owner's prior consent.

e. Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under this Article 6.

6.1.3 The Cost of the Work shall include payments made by the Construction Manager to subcontractors in accordance with the requirements of the subcontracts.

6.1.4 The Cost of the Work shall include the cost of the following materials and equipment incorporated into the completed construction:

a. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

b. Costs of materials described in the preceding Subsection 6.1.4.a in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.1.5 The Cost of the Work shall include the cost of other materials, equipment, temporary facilities and related items as follows:

a. Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities, machinery, and equipment, exclusive of all hand tools and such other machinery and equipment of the trade customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work, and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

b. Rental and repair charges for temporary facilities, machinery, and equipment, exclusive of all hand tools and such other machinery and equipment of the trade customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

c. Costs of removal of debris from the site.

d. Reproduction costs for Drawings and Specifications for which Construction Manager is required to pay with reimbursement by Owner under the terms of the Contract Documents.

e. That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling out of town in discharge of duties connected with the Work provided such out of town travel and the method of calculating reimbursable travel and subsistence expenses is approved by the Owner in advance in writing.

f. Actual costs for the items listed as the Project General Conditions in Attachment "A" hereto incurred after acceptance of Construction Manager's Guaranteed Maximum Price proposal and receipt of a Notice to Proceed with construction from the Owner and prior to Substantial Completion, provided that the Construction Manager shall only be entitled to payment for those items listed as Project General Conditions once, regardless of whether any of those items are also listed under any other provision of Article 6 describing the Cost of the Work. In no event, however, shall the total costs to be included in the Cost of the Work for the Project General Conditions exceed the Maximum PGC Costs specified in Attachment "A". As used herein, the "Maximum PGC Costs" shall be as defined in Attachment A. Any costs for Project General Conditions in excess of the Maximum PGC Costs shall not be included in the Cost of Work and shall be the responsibility of Construction Manager.

6.1.6 The Cost of the Work shall include the following miscellaneous costs:

a. Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable, except those taxes which Owner is not required to pay under applicable law.

b. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

c. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

6.1.7 The Cost of the Work shall include costs described in Section 6.1 which are incurred by the Construction Manager in connection with emergencies, as follows:

a. In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons or property, as provided in the General Conditions.

b. In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's subcontractors or suppliers, (other than Warranty Period work) provided that such damaged or nonconforming Work was not caused by Construction Manager fault, including the negligence or failure to fulfill a responsibility to the Owner set forth in this Agreement, or the failure of the Construction Manager's personnel to supervise adequately the Work of the subcontractors or suppliers.

6.1.8 Construction Manager shall be entitled to reimbursement for that portion directly attributable to this Contract of premiums for insurance and bonds which Owner has required Construction Manager or subcontractors to maintain pursuant to the Contract Documents; provided, however, the bond rate shall not exceed the percentage for bonds as set forth in Attachment "A" hereto. If Construction

Manager requires subcontractors to maintain payment and/or performance bonds, or subcontractor default insurance, the cost to subcontractors of the bonds, shall be included in the Cost of the Work under this Contract only if Owner approves the inclusion. Construction Manager shall not be entitled to reimbursement for deductibles or co-payments. Construction Manager shall not be entitled to any additional markups on the costs described in this Subsection. The costs of insurance and bonds shall not be included in the Cost of the Work.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

a. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office, except as specifically provided in Subsection 6.1.2.

b. Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

c. Overhead and general expenses, except as may be expressly included in Section 6.1.

d. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

e. Rental costs of machinery and equipment, except as specifically provided in Subsection 6.1.5.

f. Costs due to the negligence of the Construction Manager or to the failure of the Construction Manger to fulfill a specific responsibility to the Owner set forth in this Contract.

g. Costs incurred in the performance of Preconstruction Phase Services.

h. Any cost not specifically and expressly described in Section 6.1.

i. Costs which would cause the Guaranteed Maximum Price to be exceeded.

j. Costs of insurance obtained or maintained by Construction Manager or any subcontractor which Owner has not required to be provided under the terms of this Contract or otherwise, and the cost of subcontractor bonds, unless Owner expressly agrees that such costs will constitute part of the Cost of the Work.

k. Costs incurred in the performance of warranty obligations, including repairs or replacements conducted during the warranty period.

l. Costs incurred by Construction Manager and which are not to be reimbursed by Owner under the provisions of the Contract, including, but not limited to, replacement of nonconforming Work.

m. Costs incurred by Construction Manager for Project General Conditions in excess of the amounts set forth in Attachment "A", in accordance with Subsection 6.1.5.f.

n. Costs incurred by Construction Manager for the items listed as the Project General Conditions in Attachment "A" after Substantial Completion, unless approved in writing in advance by the Owner.

o. Deductibles or co-payments for insurance policies required by the Contract Documents or for those policies otherwise agreed upon by Owner and Construction Manager.

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subsection 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and 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. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law or in the Construction Documents.

6.4.2 Prior to final payment and as a condition thereto, Construction Manager shall furnish to Owner a full and final accounting of the total Cost of the Work for the Project in relation to the Contract Amount in a form satisfactory to Owner. The final accounting shall include, without limitation, (i) a summary of any savings to Owner pursuant to the applicable provisions of the Contract, including without limitation, Subsection 5.2.2 hereof, and (ii) a separate line item summary of those costs included in the Cost of the Work attributable to the Project General Conditions in accordance with Subsection 6.1.5.f hereof, the total of which shall in no event exceed the Maximum PGC Costs.

ARTICLE 7 CONSTRUCTION PHASE

7.1 PROGRESS PAYMENTS

7.1.1 Based upon the Application for Payment submitted to the Architect/Engineer by the Construction Manager and approved by the Architect/Engineer and Owner, the Owner shall make progress payments to the Construction Manager as provided in the General Conditions. Provided, however, prior to Construction Manager's submission of an Application for Payment that includes costs to be allocated to Construction Manager's contingency, Construction Manager shall submit to Owner for its review and approval an explanation of such costs incurred and documentation in reasonable detail substantiating such costs. Retainage shall be retained by Owner in accordance with the provisions of the General Conditions. Retainage shall be withheld on both the Cost of the Work and Construction Manager's Fee.

7.1.2 Except with the Owner's prior approval, payments to subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

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

7.2 FINAL PAYMENT

Final payment shall be made by the Owner to the Construction Manager in accordance with the provisions of the General Conditions.

ARTICLE 8 INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

Construction Manager and subcontractors shall be responsible for obtaining and maintaining insurance coverage in accordance with the provisions of the General Conditions throughout the term of the Contract, and for providing the information required under this Contract. Default by any subcontractor in the performance of its obligations shall constitute a default by Construction Manager under the Contract.

8.2 PERFORMANCE AND PAYMENT BONDS

If the Estimated Project Construction Budget exceeds $25,000.00, the Construction Manager shall deliver to Owner Payment and Performance Bonds in accordance with this Section 8.2 and the General Conditions. Unless otherwise required by Owner, the Construction Manager shall deliver such Payment and Performance Bonds to Owner at the same time Construction Manager executes and delivers to Owner an amendment to this Agreement furnished by Owner establishing a Guaranteed Maximum Price for, as applicable, (i) the first phase of the Work described in such amendment, if the Project will be performed in two or more phases, or (ii) the final Guaranteed Maximum Price for the Work described in such Amendment, if the Project is not phased. The Payment and

Performance Bonds shall each be in the amount of 100% of the Guaranteed Maximum Price as established in such amendment or the Estimated Project Construction Budget, whichever is greater. Construction Manager shall not commence any Work at the Project site until the Payment and Performance Bonds and insurance have been provided by the Construction Manager and approved by Owner, the Safety Program Manual and Safety Plan have been delivered to and reviewed by Owner, and the designated Safety Representative is on site.

ARTICLE 9 DISPUTE RESOLUTION

9.1 DISPUTE RESOLUTION

During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved in accordance with the Administrative Procedure provided in the General Conditions. No decision by the Architect/Engineer shall be a condition precedent to mediation.

9.2 OTHER PROVISIONS

9.2.1 Terms

Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

9.2.2 Extent of Contract

This Contract, which includes this Agreement and the documents incorporated herein by reference, and the Contract Documents as defined in the General Conditions represents the entire and integrated agreement between the Owner and the Construction Manager as to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager as provided in the General Conditions. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.2.3 Ownership and Use of Documents

The Ownership and use of the Construction Documents is governed by the terms of the Agreement between Owner and Architect/Engineer and the provisions of the General Conditions. Construction Manager shall have the right to use the Construction Documents in connection with the construction of this Project.

9.2.4 Governing Law

The Contract shall be governed by the laws of the State of Texas.

9.2.5 Assignment

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party

in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in the General Conditions, neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

ARTICLE 10 TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO COMMENCEMENT OF THE CONSTRUCTION PHASE

10.1.1 Prior to execution by both parties of by the Amendment establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause. Construction Manager may only terminate this Contract with cause during the Pre-Construction and Construction Phases after giving notice of default to Owner and opportunity to cure in the same manner set forth in the General Conditions.

10.1.2 If the Owner terminates this Contract for convenience prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Subsection 4.1.1.

10.1.3 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 6.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Subsection 10.1.3, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

10.1.4 Subcontracts, purchase orders and rental agreements entered into by the Construction Manager prior to the execution by Amendment shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the Contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.1.5 The Owner shall have the right to suspend performance by Construction Manager during the Preconstruction Phase. Construction Manager shall not be entitled to any compensation during the period of suspension.

10.1.6 If Construction Manager terminates the Contract for Owner default during the Preconstruction Phase, Construction Manager shall be entitled to compensation as provided in Subsection 10.1.2.

10.2 TERMINATION SUBSEQUENT TO COMMENCEMENT OF THE CONSTRUCTION PHASE

10.2.1 Subsequent to the Commencement of the Construction Phase as defined in this Agreement, the Contract may be terminated as provided in the General Conditions. Construction Manager shall only have the right to terminate for cause as provided in the General Conditions.

10.2.2 If the Owner terminates this Contract without cause after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Subsection 10.1.2, be paid an amount calculated as follows:

a. Take the actual Cost of the Work incurred by the Construction Manager.

b. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion.

c. Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

10.2.3. In the event of termination by the Construction Manager for Owner default before commencement of the Construction Phase, the amount to be paid to the Construction Manager for such default shall not exceed the amount the Construction Manager would have been entitled to receive under Subsection 10.1.2 above.

10.2.4 In the event of termination by the Construction Manager for Owner default after commencement of the Construction Phase, the amount to be paid to the Construction Manager under the General Conditions shall not exceed the amount the Construction Manager would have been entitled to receive under Subsection 10.2.2 above

10.3 SUSPENSION

The Work may be suspended after commencement of the Construction Phase by the Owner as provided in the General Conditions.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

11.1 MISCELLANEOUS

11.1.1 Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Contract and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Contract shall not be construed more strongly against any part hereto regardless of who is responsible for its preparation.

11.1.2 The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Travis County, Texas, or in federal courts in the City of Austin, Texas.

11.1.3 In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceedings shall be entitled to recover reasonable attorney fees and court costs.

11.1.4 All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered upon deposit in the U. S. Mail, when sent by certified mail, return receipt requested, postage prepaid, correctly addressed to the party as set forth below, with a copy sent to such party by e-mail on the date of deposit into the mail, as set forth below:

Owner:	Construction Manager:
Austin Independent School District 1111 W. 6th Street Austin, Texas 78701 Attn: Executive Director, Contracts And Procurement Department Telephone: _____	_____ _____ _____ Attn: _____ Telephone: _____
With copy to:	With copy to:
Architect/Engineer: _____ _____ _____ Attn: _____ Telephone: _____ E-Mail: _____	_____ _____ _____ Attn: _____ Telephone: _____

Notice given in any other manner will be deemed delivered if and when actually received. Either party may change its address for notice by giving the other party notice of the change as provide herein. Such notice will be effective 14 days after delivery.

11.1.5 Construction Manger certifies pursuant to Texas Government Code 2252.151 *et al.* that it is not identified on the Texas Comptroller's list of companies known to have contracts with, or provide services to, a foreign terrorist organization. Contractor further certifies that it will not take any action that would cause it to be included on the Texas Comptroller's list, and that any such action will result in immediate termination of this Agreement by Owner.

11.1.6 Construction Manager certifies and verifies that prior to or contemporaneously with the execution of this Agreement, it has delivered to Owner a fully executed written verification in accordance with Texas Gov't Code Section 2270.001 *et al.*, and attached hereto as Attachment "B" verifying that Construction Manager and any affiliate, subsidiary, or parent company of Construction Manager does not boycott Israel and will not boycott Israel during the term of this Agreement. If Construction Manager violates such verification it will result in immediate termination of this Agreement by Owner. Owner will not execute this Agreement until such verification is fully executed and delivered to Owner.

11.1.7 Construction Manager shall, at its sole cost and expense, comply with the provisions of Section 3.15 and Section 3.16 of the General Conditions, as applicable, in connection with the Project, concerning criminal history record information review and badging.

11.2 SELECTION OF SUBCONTRACTORS

11.2.1 Pursuant to Section 2269.255(a) of the Texas Government Code, the Construction Manager shall publicly advertise, as prescribed for a governmental entity under Section 44.031(g) of the Texas Education Code, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the Work other than minor work that may be in the Project General Conditions identified in Attachment "A" hereto.

11.2.2 The Construction Manager may seek to perform portions of the Work itself if the Construction Manager submits its bid or proposal for those portions of the Work in the same manner as all other trade contractors or subcontractors and if the Owner determines that the Construction Manager's bid or proposal provides the best value for the Owner. Owner may request all information or grade sheets related to trade contractor or subcontractor bids or proposals, and further information relating to whether they provide the best value for the Owner.

11.2.3 The Construction Manager shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the Construction Manager, Engineer, Architect/Engineer or Owner. All bids or proposals shall be made available to the Owner on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals. Construction Manager shall provide to Owner all other information

reasonably requested by Owner related to the selection of trade contractor or subcontractor bids or proposals, and the Construction Manager's recommendation of particular trade contractors or subcontractors.

11.2.4 The Construction Manager shall recommend to Owner the trade contractor or subcontractor that was selected in accordance with this Subsection 11.2. After receipt of the recommendation and all other information requested in accordance with this 11.2, Owner may take no exception to the recommended trade contractor or subcontractor, or require that another bid or proposal be accepted. If the Construction Manager reviews, evaluates, and recommends to the Owner a bid or proposal from a trade contractor or subcontractor but the Owner requires another bid or proposal to be accepted, the Owner shall compensate the Construction Manager by a change in price, time or Guaranteed Maximum Price for any additional cost and risk that the Construction Manager may incur because of the Owner's requirement that another bid or proposal be accepted, subject, however, to the provisions of Subsection 2.3.2.

11.2.5. If requested by a trade contractor, subcontractor or material supplier who submits a bid or proposal to Construction Manager for performance of a portion of the Work but whose bid or proposal is not accepted, Construction Manager agrees to provide feedback to such trade contractor, subcontractor or supplier as to how its bid/proposal compared with the other bids/proposals received by Construction Manager for the same services or materials (e.g., bid was highest bid received, bid fell in the middle of bids received, etc.).

11.2.6 If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this Article 11, the Construction Manager may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

11.2.7 By law, Owner is required to provide or contract separately with a third party to provide for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the improvements by Owner. Construction Manager shall not include costs for these services in the Cost of the Work.

11.2.8 To promote and encourage the involvement of small, local firms and firms owned or operated by minorities or women, Construction Manager agrees to solicit and consider bids or proposals from trade contractors or subcontractors covering only certain components of the scope of the Work for which particular bids or proposals are solicited.

11.3 PREVAILING WAGE RATE REQUIREMENTS

11.3.1 In the execution of the Contract for this Project, the Construction Manager must comply with and require each subcontractor to comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code.

11.3.2 For the duration of this Agreement, the Construction Manager and each subcontractor who performs Work under this Contract, must pay not less than the prevailing wage rates, including fringe benefits, as set forth in the Notice of Prevailing Wage Rates to any worker performing labor in connection with the Work.

11.4 LIQUIDATED DAMAGES

Owner shall have the right to assess liquidated damages in the amount of $5,000.00 per day for each and every calendar day beyond the Substantial Completion Date of _____ that Construction Manager fails to achieve Substantial Completion of the Work. Any sums due and payable hereunder by the Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at or before the time of executing this Agreement. Any amounts due hereunder shall be paid by Construction Manager within ten (10) days following notice from Owner of the amount due. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required to, withhold from any amounts otherwise due the Construction Manager an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Construction Manager overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Construction Manager those funds withheld, but no longer applicable, as liquidated damages.

11.5 UNEXCUSED DELAY FOR FAILURE TO SIGN OR PROVIDE DOCUMENTS

As provided in the Solicitation Documents, Construction Manager had a period of 10 days from the date Construction Manager was notified of the award of contract to execute the Agreement, and 5 days after the date the Agreement was signed by Construction Manager in which to provide the insurance required by the Contract Documents. If Construction Manager failed to sign the Agreement within the 10 day time period, and/or to submit insurance meeting all of the applicable Contract requirements within the 5 day time period, then Owner has the right to treat each day beyond the 10 day deadline in which the Agreement was unsigned, and/or each day beyond the 5 day deadline in which one or more of the required documents was not been submitted, as a day of unexcused delay under the Contract.

11.6 WORKERS' COMPENSATION INSURANCE

Pursuant to Section 406.096 of the Texas Labor Code, by execution of the Contract, Construction Manager certifies to Owner that it has Workers' Compensation insurance coverage for each employee of the Construction Manager employed on this Project. Construction Manager shall obtain from each subcontractor a certificate which certifies that the subcontractor has Workers' Compensation insurance coverage for each employee of the subcontractor employed on this Project and shall promptly provide Owner with all such certificates.

This Agreement entered into as of the day and year first written above, which will be filled in by Owner at the time it executes this Agreement.

OWNER: **AUSTIN INDEPENDENT SCHOOL DISTRICT**	**CONSTRUCTION MANAGER:** _____
By: _____ *(Signature)*	By: _____ *(Signature)*
_____ *(Printed name and title)*	_____ *(Printed name and title)*
_____ **Date**	_____ **Date**

ATTACHMENT "A"

1. Monthly cost for Project General Conditions (Construction Phase duration to achieve Substantial Completion- _____ months):		
	A. Personnel: Project Manager, Superintendent(s), Project Engineer, Secretary, and Personnel Insurance & Benefits	$_____
	B. Vehicles: Automobile, Truck and Other Vehicle and Equipment Expenses (including Fuel and Maintenance), and Vehicle-Related Travel Allowances	$_____
	C. Field Office: Project Office(s), Office Maintenance, Utilities, Computer Hardware, Scheduling Expenses, Data Processing, Office Supplies, Office Equipment/Furniture, Postage/Delivery Services, Communications/Cellular Phones, Water/Coffee Services, Security System, Level/Transit, and Storage Buildings/Containers	$_____
	D. Jobsite Expenses: Mobilization/Demobilization, Safety Program Expenses, Safety Equipment, Temporary Fencing, Temporary Toilets, and Team Building	$_____
	Total monthly cost for Project General Conditions	$_____
2. Maximum PGC Costs [being the product of total monthly cost for Project General Conditions and the number of months stated as the Construction Phase duration above]		$_____
3. Bond rate for this Project:		_____%

ATTACHMENT "B"

TEX. GOV'T CODE CHAPTER 2270 VERIFICATION

STATE OF TEXAS }
COUNTY OF TRAVIS }

Date: _____
Name of Affiant: _____
Title of Affiant: _____
Business Name of company ("Company"): _____
County of Company: _____

Affiant herby swears, verifies, and declares under penalty of perjury that the following statements are true in accordance with the terms, definitions, and conditions of Texas Government Code Chapter 2270 (the "Code"):

1. Affiant is authorized by Company to make this affidavit.

2. Affiant is fully aware of the facts stated in this affidavit.

3. Affiant can read the English language and is over eighteen (18) years of age.

4. Company does not currently boycott Israel.

5. Company will not boycott Israel during the term of the Agreement with Austin Independent School District in accordance with the Code.

_____
Signature of Affiant

_____
_____
Address

SUBSCRIBED AND SWORN TO before me by _____ on ___ _____ 20_____.

_____
Notary Public's Signature

CONSTRUCTION FORM AISD/GCC (Rev. Feb. ’19)
AUSTIN INDEPENDENT SCHOOL DISTRICT

GENERAL CONDITIONS OF THE CONTRACT

FOR CONSTRUCTION

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GENERAL CONDITIONS OF THE CONTRACT

FOR CONSTRUCTION

1. Article 1. GENERAL PROVISIONS

1.1 DEFINITIONS

A. “Agreement” means, as applicable, AISD’s Agreement for Construction Contract between Owner and Contractor (Form AISD/Con), AISD’s Agreement for Construction between Owner and Construction Manager-at-Risk (Form AISD/Con-CMR), AISD’s Agreement Between Owner and Design/Build Contractor (AISD/Con-Design Build, hereinafter sometimes specifically referred to as a “Design/Build Agreement”) or AISD’s Job Order Contract between Owner and Contractor (Form AISD/Con-JOC), which incorporates each Task Order executed thereunder.

B. “AISD” or “Owner” means the Austin Independent School District of Travis County, Texas.

C. “Architect/Engineer” means the person or organization designated to perform the functions of Architect/Engineer or Project Architect, for this Contract, or in a separate writing signed by a Contracting Officer.

D. “Change Order” means a written amendment to the contract mutually agreed to by the Owner and Contractor that is generally based on a Change Order Request.

E. “Change Order Request” means a written document initiating a change in the Work.

F. “Claim” means, as between the Owner and the Contractor, an assertion that the party making the claim is entitled, as a matter of right, to an adjustment in the Contract Amount, and/or the Contract Time, or is otherwise entitled to payment or damages. With regard to third persons, including subcontractors, a claim is an assertion of entitlement to payment or damages.

G. “Contract” means the Contract Documents that form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect/Engineer and Contractor, or between the Owner and a subcontractor.

H. “Contract Amount” or “Proposal” means the amount identified in the Contract as the sum of the Cost of the Work and the Contractor overhead and profit, subject to adjustment as provided in the Contract Documents. The term Contract Amount shall have the same meaning as “Contract Sum” or “Contract Price.” In Contracts

establishing a Guaranteed Maximum Price, the Contract Amount shall not exceed the Guaranteed Maximum Price.

I. "Contract Documents" consist of the (i) Agreement, (ii) Special Conditions (if any), (iii) Supplemental Conditions (if any), (iv) Owner's General Conditions of the Contract for Construction ("General Conditions"), (v) Owner's Notice of Prevailing Wage Rates (the "Notice of Prevailing Wage Rates"), (vi) Drawings and Specifications, (vii) Owner's Solicitation Documents and the Contractor's response. The Contract Documents listed above include their respective attachments and exhibits, and Modifications issued after execution of the Contract. In the event of a conflict between two or more of the Contract Documents, each shall prevail over the other in the order of preference listed above, unless otherwise provided by the terms of the Contract Documents. In the event of a conflict between the Drawings and the Specifications, the provisions of Section 1.2.B. shall apply.

J. "Contract Time" means the time provided in the Contract Documents for Substantial Completion of the Work.

K. "Contracting Officer" means a person authorized to bind Owner in matters relating to the Contract; specifically, the President of the Board of Trustees of AISD, the Superintendent of Schools of AISD, the Chief Financial Officer of AISD, the Executive Director of Facilities of AISD, the Executive Director of Construction Management of AISD, or such other person as may be authorized by resolution of the Board of Trustees of AISD to exercise the functions of a Contracting Officer for this Contract.

L. The "Contractor" means "Contractor," "Design/Build Contractor," "Construction Manager-at-Risk," "Proposer", "Offeror," or "Bidder" as identified in the Contract Documents.

M. "Cost of the Work" shall mean the actual cost of all Work provided by Contractor under the Contract which is subject to payment or reimbursement by Owner, unless otherwise provided in the Agreement.

N. "Day" means a calendar day unless the context indicates otherwise or the term "business day" is used. A business day shall mean weekdays but exclusive of Federal holidays.

O. "Drawings" means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. The term "Drawings" does not include shop drawings.

P. "Final Completion" means the date the Contract has been fully performed by the Contractor (except for the Contractor's responsibility to correct defective or nonconforming Work, and to satisfy other requirements, if any, which necessarily

survive final payment), and a final Certificate for Payment approved by the Owner has been issued by the Architect/Engineer.

Q. "Modification" is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) an Interim Change Authorization, or (4) a written order for a minor change in the Work issued by the Architect/Engineer or Owner.

R. "Person" means an individual, sole proprietorship, corporation, limited liability company, partnership, limited partnership, or other entity.

S. "Personal property" means any property that is not real estate.

T. "Preconstruction" or "Preconstruction Phase" means the period after execution of the Contract but prior to the commencement of construction.

U. 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 or by separate contractors.

V. The "Project Manual" is a volume assembled for the Work which may include the bidding requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

W. "Solicitation Documents" means the documents issued by Owner to solicit construction services, including the Request for Bids, Request for Competitive Sealed Proposals, Request for Qualifications, the Instructions, the Forms, any Drawings, Specifications or other documents or information referred to therein, and all Addenda.

X. "Solicitation Process" means the process by which the Owner advertises for and selects the Contractor for the performance of services and the Work.

Y. "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

Z. "Subcontractors" are those persons or organizations having a contract with the Contractor or another subcontractor to (i) perform labor, (ii) supply materials or equipment, or (iii) fabricate materials or equipment off-site.

AA. "Submittals" means shop drawings, product data, and samples as defined in Article 3, Section 3.7A and B herein, and any other documents or items required to be submitted by Contractor to Architect/Engineer or Owner under the terms of the Contract Documents or in connection with the Contract.

BB. "Substantial Completion" is that stage of completion, short of final completion, at which the Work, or a discrete portion thereof, is usable by the Owner for the purpose

for which it is intended (any necessary Certificate of Occupancy having been obtained), and at which, in order to obtain possession and control of the Work or the particular discrete portion, it is advantageous to the Owner to assume the burden of maintenance and risk of loss thereof.

CC. The "Work" means the construction and services defined in the Agreement and required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services to be provided by the Contractor to fulfill the Contractor's obligations and labor, materials, equipment and services provided or to be provided by subcontractors, sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible under or pursuant to the Contract. The Work may constitute the whole or part of the Project.

Any terms used in the General Conditions which are not expressly defined herein, or in the other Contract Documents, or which do not have a specific meaning inferable from the context in which they are used, shall have the meanings normally ascribed to them in the construction industry, particularly as those terms are used and understood in Austin, Texas or in the location where the Work is performed.

1.2 CORRELATION AND INTENT

A. 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 any one Contract Document shall be as binding as if required by all. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are evidently necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the Work, but they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. In the event Contractor has any questions or concerns regarding the Drawings or Specifications, or the completeness, adequacy or constructability of any of the design documents, or if Contractor believes that there is an error or inconsistency in any of the design documents, Contractor shall notify Owner and Architect/Engineer as soon as possible, and shall request clarification or additional information from Architect/Engineer.

B. In the case of an inconsistency between Drawings and Specifications, or within either document, and not clarified by addendum, or responses to requests for information, the better quality or greater quantity of Work described shall be provided in accordance with the Owner's interpretation.

C. Organization of the Specifications and arrangement of Drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of what is to be performed by any trade.

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

E. The Specifications and the accompanying Drawings are the property of Owner and shall be returned to Owner upon request at the completion of the Work. The Contractor may retain one record set.

F. Time is of the essence in this Contract.

1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

A. The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect/Engineer and the Architect/Engineer's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. Neither the Contractor nor any subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect/Engineer and the Architect/Engineer's consultants who shall be deemed the authors of them and will retain the rights provided in the Agreement between Owner and Architect/Engineer. All copies of Instruments of Service, except the Contractor's record set, shall be suitably accounted for to the Architect/Engineer and Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect/Engineer and the Architect/Engineer's consultants, and copies thereof furnished to the Contractor, are solely for use with respect to this Project. The Contractor, subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect/Engineer and the Architect/Engineer's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect/Engineer and the Architect/Engineer's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect/Engineer's or Architect/Engineer's consultants' copyrights or other reserved rights.

B. Contractor shall restrict its Work to the designated areas of the Project site, and any other work areas which Contractor is permitted to use by Contract or lease. Contractor shall not trespass onto the property of any other person or conduct Work in areas prohibited by Owner. Contractor shall not permit vehicles, debris, materials or equipment to be placed or stored on the property of a third party or within public rights of way, unless Contractor has obtained a permit, license or other written permission to do so, or is otherwise complying with applicable law. In using easements or rights

of way, Contractor shall conform to all applicable usage requirements established by law or the documents creating the easement or right of way.

2. Article 2. RESPONSIBILITIES OF THE ARCHITECT/ENGINEER

2.1 OWNER/ARCHITECT/ENGINEER RELATIONSHIP

A. All formal communications from the Contractor to Owner in connection with the Contract shall be in writing addressed to the attention of the Owner's Contracting Officer, with a copy to Owner's designated project manager ("Owner's Project Manager"), shall reference the Contract by project name and number, and shall be transmitted in duplicate. Any or all of the Owner's formal communications to Contractor will be issued by the Owner or through the Architect/Engineer. In the case of a Design/Build Agreement, formal communications from the Contractor to Owner in connection with the Design/Build Agreement shall be in writing addressed to the attention of the Owner and the Owner's Contracting Officer, with a copy to Owner's Consultant.

B. The Owner's Project Manager and Owner's Consultant do not have the authority to execute Change Orders or agree to changes in the Work which affect the Contract Amount or the Contract Time. These changes must be approved by the appropriate Contracting Officer.

C. The Architect/Engineer shall advise and consult with the Owner as is necessary for the proper administration of the Project.

D. The Contracting Officer may delegate any part of his respective functions hereunder, but the Contractor will be notified in writing of any such delegation and the extent thereof.

2.2 CONTRACT ADMINISTRATION

A. Architect/Engineer will perform all obligations under the Agreement between Owner and Architect/Engineer, including those set forth below. The Architect/Engineer will inspect the Work for general compliance with the Contract Documents. The Architect/Engineer will initiate Change Orders Requests and evaluate the Contractor's proposed cost and related time. The Architect/Engineer will conduct inspections required (a) to determine the date or dates of Substantial Completion and (2) for the final inspection in accordance with Section 8.4 of these General Conditions of the Contract. The Architect/Engineer will review, upon receipt from the Contractor, the as-built drawings, written warranties, owner's manuals and related documents required by the Contract. The Architect/Engineer will review requests for payment submitted by Contractor and will make recommendations to Owner on payment. In the case of a Design/Build Agreement, the parties' responsibilities will be governed by the Construction Contract Administration provisions contained within the Design/Build Agreement.

3. Article 3. RESPONSIBILITIES OF THE CONTRACTOR

3.1 SUPERVISION AND DUTY

A. Contractor will provide all labor, equipment, and materials necessary to perform the Work in accordance with the terms of the Contract Documents and will supervise the performance of such Work and perform the other obligations set out in the Contract Documents within the time periods provided therein. Contractor will perform all Work in a good and workmanlike manner, free from negligence and defects in labor and materials, and in conformance with all applicable federal, state and local laws and the Contract Documents. The Contractor shall give adequate attention to the faithful prosecution and completion of this Contract and shall keep on the Project site at all times, skilled subcontractors and laborers sufficient in number and expertise to perform the Work in accordance with the Contract Documents, and within the Contract Time. Contractor shall be responsible for the performance and services of all subcontractors, suppliers, and persons providing labor or materials for the Work in connection with the Contract, and the acts and omissions of such persons in the performance of the Work shall be deemed to be those of Contractor.

B. The Owner will furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site to the extent provided in the Agreement or otherwise agreed to by Owner and Contractor in writing. Owner shall decide what surveys, soil analyses and other studies by consultants are to be performed in accordance with the Work and the scope of such consulting services and shall provide Contractor with the results of all such surveys, studies and analyses, provided however that Owner does not warrant or guarantee the accuracy or completeness of any information so provided. Contractor shall have the full responsibility for determining the location of all utilities. Contractor shall confirm the location of each utility shall excavate and dispose of each on-site utility and shall cap each off-site utility as required by the Work and as may be included in the Specifications. The Contractor shall make available the results of any site investigation, test borings, analyses, studies or other tests conducted by, or in possession of the Contractor or any of its agents. The Contractor represents that it is generally familiar with the Project site. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements and easements. Nothing in this subsection shall be read or construed as limiting the responsibilities of the Contractor or its subcontractors pursuant to the terms of these General Conditions, or under other terms of the Contract.

C. Subject to Section 7.1.C hereof, the Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

D. Except as provided in the Contract Documents to the contrary, direct communications between Owner and Contractor that affect performance or administration of the Contract shall be made or confirmed in writing by Contractor with copies forwarded to Architect/Engineer.

E. 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, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe or may otherwise be objectionable, the Contractor shall give timely written notice to the Owner and Architect/Engineer and shall not proceed with that portion of the Work without further written instructions from the Architect/Engineer. If the Contractor is then instructed by Owner to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Contractor shall not be responsible to Owner for any resulting loss or damage unless caused by the negligence or intentional misconduct of Contractor or persons performing Work under the Contract.

F. 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.

G. 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.

H. All employees and subcontractors of the Contractor shall be qualified by training and experience to perform their assigned tasks. The Contractor shall not use in the performance of the Work or permit to be used any employee or subcontractor who is incompetent, careless, or unqualified to perform the Work assigned to it. Contractor shall engage sufficient workers on the Project at all times to perform the Work in a good and workmanlike manner and in the time periods required by the Contract Documents.

I. The Contractor agrees that in the performance of the Work called for by this Contract, it will employ only such labor, and engage subcontractors that employ only such labor, with the requisite skills, expertise and experience to perform the Work required of such persons in a good and workmanlike manner, and who will not delay or interfere with the lawful progress of the Project within the Contract Time, and will be

acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure or other improvement which the Contractor or any other contractors may then be erecting or altering on behalf of Owner.

J. In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its subcontractors, Owner, at its option and without demand, may terminate the Contract for convenience unless the Contractor shall remedy the strike or work stoppage or other disruption within twenty (20) calendar days after the dispute arises.

K. Contractor shall furnish Owner, on request, resumes of Contractor's key personnel involved in the day-to-day Work on the Project.

L. Contractor will not permit at any time alcohol, controlled substances or firearms to be present at the Project site. No smoking will be permitted in any area of the Project which is enclosed or in the finish-out stage of construction.

M. Lot lines and permanent benchmarks have been established as shown on the Drawings. The Contractor shall be solely responsible for properly laying out the Work and the Project unless there are errors not reasonably discoverable by Contractor, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. Contractor shall verify the figures shown on the Drawings before laying out the Work and will be held responsible for all costs resulting from its failure to do so.

N. The Contractor has the responsibility to ensure that all material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and times and that they provide materials on time. The Contractor shall coordinate its Work with that of all other persons or entities performing Work on the Project including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of all materials and equipment required under the Contract Documents. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

O. The Contractor shall employ at the Project site at all times during the progress of the Work a competent, English-speaking project manager ("Contractor's Project Manager"), a competent, English-speaking superintendent ("Superintendent") and any necessary English-speaking assistants to supervise and direct the Work. The list of all supervisory personnel, including the Contractor's Project Manager and Superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect/Engineer for approval. The Contractor shall not engage supervisory personnel or utilize an

organizational structure and chain-of-command other than as approved by Owner and Architect/Engineer, and shall not change such form or organizational structure without the written approval of the Owner and Architect/Engineer. The Contractor's Project Manager or Superintendent shall represent the Contractor in Contractor's absence and all communications given to the Contractor's Project Manager or Superintendent shall be as binding as if given to the Contractor. The Contractor shall not remove an approved Superintendent from the Work without written, timely notice to Owner of such Superintendent's removal and the proposed replacement having been approved by the Architect/Engineer and Owner. Owner and Architect/Engineer shall have the right to reasonably require Contractor to remove from the Project any Superintendent or on-site supervisor whose performance is not reasonably satisfactory to Owner and Architect/Engineer and replace such Superintendent or on-site supervisor with a Superintendent or on-site supervisor satisfactory to Owner and Architect/Engineer.

P. The Contractor shall provide the Owner and Architect/Engineer access to the Work in preparation and progress wherever located at all times.

3.2 CONDITIONS AFFECTING THE WORK

A. In agreeing to perform the Work within the Contract Time and for the Contract Amount as set forth in the Contract, including any Contract Time and Guaranteed Maximum Price established by amendment to a Construction Manager-at-Risk Contract, Contractor acknowledges, represents and warrants to Owner that it has thoroughly reviewed all of the Contract Documents, and has visited and examined the site as to visible surface conditions or conditions ascertainable from the results of any subsurface tests or information provided in connection with the Project, the Contract Documents, and reasonably examined all legal, physical, and other conditions affecting the Work, including without limitation, all soil, subsurface, water, survey and engineering reports and studies delivered to or obtained by the Contractor in connection therewith. Contractor specifically warrants and represents to the Owner that it has by such careful examination of such information and based thereon, satisfied itself as to: (1) the nature, location, and character of the Project and the Project site; (2) the nature, location, and character of the general area in which the Project is located; (3) the conditions prevailing at the Project site, including climactic and weather conditions that are normal for the area, and those that are currently prevailing at the Project site; (4) anticipated labor supply and costs; (5) sufficiency and completeness of the Contract Documents, including the Drawings and Specifications, and the (6) availability and costs of labor, materials, supplies, professional services and equipment, in order to complete the Work in accordance with the Contract Documents, within the Contract Time and for not more than the Contract Amount. Contractor represents that all subcontractors engaged or to be engaged in the performance of the Work will be familiar with the requirements for performance by them of their obligations. The Owner shall not be obligated to make any adjustment in the Contract Time, Contract Amount and/or Guaranteed Maximum Price (if any) set out in the Contract, due to any failure by the Contractor to perform any of the

foregoing examinations or determinations, or any misestimate or miscalculation of Contractor, or any subcontractor or supplier in connection therewith.

B. Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to the Contract, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Project site affecting it. The Contractor shall notify the Architect/Engineer of materials, systems, procedures or methods of construction, either shown on the Drawings or Specifications, that it believes are incorrect, inadequate, obsolete, unsuitable for the purpose intended, or which could have an adverse effect upon installation or completion by others under separate contracts. These services shall be performed during the Preconstruction Phase to the greatest extent possible, but in any event before the commencement of Work affected by such matters. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect/Engineer and Owner as a request for information in the form as the Architect/Engineer and Owner may require. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect/Engineer and Owner, but 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. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect/Engineer and Owner. All notifications required by this Section 3.2 shall be given no later than five (5) days after Contractor first becomes aware of the problem. If the Contractor fails to perform its obligations under this Section, or performs Work that it reasonably should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect/Engineer and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. In addition, if the Contractor fails to perform the obligations as provided in Subsections B and C, Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

C. If the Contractor believes that additional cost or time is involved in the Work because of matters noted during the Construction Phase which could not reasonably have been detected by the Contractor during the Preconstruction Phase, or because of clarifications or instructions issued by the Architect/Engineer as a result thereof, the Contractor shall promptly notify Architect/Engineer and Owner in writing as soon as possible after Contractor becomes aware of the need for additional time or cost, but in no event later than five (5) days thereafter, and shall subsequently make a request for Change Order as provided in this Contract in order to be entitled to additional compensation or an extension of the Contract Time. Contractor shall not be entitled to any additional time or compensation for matters that it should have reasonably noted

during the Preconstruction Phase, particularly where Contractor has performed Preconstruction Services for Owner as a Construction Manager-at-Risk. If Contractor's claim for additional time or additional cost is approved by Owner, the Contract Time and/or Contract Amount shall be equitably adjusted by Change Order.

D. Any provision in the Contract Documents to the contrary notwithstanding, nothing in Sections 3.2 B and C shall reduce, diminish, limit or relieve Contractor from its obligations, representations and warranties contained in Section 3.2.A, and the Agreement.

3.3 DIFFERING SITE CONDITIONS

A. The Contractor shall promptly, and before such conditions are disturbed, notify the Owner in writing of:

1. Subsurface or latent physical conditions at the Work site differing materially from those indicated in the Contract Documents, or

2. Unknown physical conditions at the Work site, of an unusual nature, differing materially from those which could reasonably be anticipated to be encountered at the Project site or generally recognized as inherent in work of the character provided for in the Contract Documents.

Notice must be given to Owner as soon as possible, but in no event later than 5 days after Contractor first becomes aware of the condition.

B. The Owner and/or the Architect/Engineer shall promptly investigate the conditions, and if the Owner finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under the Contract, an equitable adjustment shall be made and the Contract shall be modified by Change Order accordingly.

C. No claim of the Contractor under this Section 3.3 shall be allowed unless the Contractor shall have given the notice required in Section 3.3.A above.

3.4 PERMITS, FEES, AND RESPONSIBILITIES

A. The Contractor shall, at Contractor's expense as part of the cost of the Work, be responsible for obtaining all necessary licenses, fees, and permits, and for complying with any applicable Federal, State and municipal laws, codes and regulations, in connection with the prosecution of the Work. Contractor shall take proper safety and health precautions to protect the workers, the public, the Work and the property of others. Contractor shall be responsible for all materials delivered and work performed until final completion and acceptance of the entire Work.

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

3.5 PATENTS, COPYRIGHTS, AND LICENSES

A. The Contractor shall be responsible for obtaining all consents and licenses required to perform the Work, and to pay all royalties and license fees arising in connection with the Work performed under the Contract Documents.

B. The Contractor will defend suits or claims for infringement of intellectual property rights, patent rights, or breach of license agreements, and indemnify Owner, the Architect/Engineer and their respective officers, members of their governing body, agents and employees against all liability, loss and expense (including attorneys' fees) for such alleged infringement or breach arising out of the performance of the Contract, or out of the use or disposal by or for the account of Owner of supplies furnished, or construction Work performed under the Construction Documents. These obligations are in addition to any other indemnification obligations provided by the Contract Documents and shall survive termination of the Contract or completion of Contractor's obligations under the Contract as to events occurring prior to such termination or completion.

3.6 CONSTRUCTION SCHEDULE

A. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect/Engineer's review and approval a Contractor's Construction Schedule for the Work ("Construction Schedule") meeting the requirements set forth in this Section. In no event shall the Construction Schedule be submitted later than the time the Contractor submits its first Application for Payment.

B. The Construction Schedule shall show the dates for starting and completing the various component activities making up the Work, and the logical relationships between them, and shall be in a format and in sufficient detail to permit the Work to be competently managed and its progress monitored. The level of detail shall be appropriate to the complexity of the Project and as directed by Owner, and both the level of detail and the terminology used to describe the components must align with the Contractor's Schedule of Values. The Construction Schedule shall take account of the time required for the preparation and review of required Shop Drawings and other submittals and the time periods provided in the Contract Documents for review and approval of submissions by Architect Engineer and/or Owner. The Contractor shall utilize scheduling program software pre-approved or as otherwise specified by Owner in its reasonable discretion, which shall employ the Critical Path Method ("CPM") of scheduling to develop the network logic diagrams, computer-produced schedules, and other schedule supporting data as required. The Contractor shall use the CPM schedule to plan, coordinate and manage all construction activities of the subcontractors.

C. The Construction Schedule shall be related to the entire Project, including the time period necessary for equipment, furnishings and other materials or work to be provided by Owner through its employees or through separate contracts to be performed, and shall provide for Substantial Completion of all of the Work within the Contract Time.

D. In performing the Work, the Contractor shall comply with the most recent approved Construction Schedule. Contractor shall submit updated schedules monthly thereafter for the review and approval of the Architect/Engineer and Owner with each Application for Payment, or more frequently if the schedule is impacted by events occurring in connection with the Work. Such submittal is a condition to Owner's obligation to make progress or other payments to Contractor under the Contract. The effect of all Change Orders and the onset of any adverse weather conditions or other events which impact the Construction Schedule or which are cited by Contractor as the basis for a request for a time extension shall be duly noted on the updated Construction Schedule and their effect on the Construction Schedule and the critical path shown. Failure to comply with this requirement may result in a denial of the Contractor's request or claim for an extension of time due to such delays. Contractor shall promptly notify Architect/Engineer and Owner as soon as it becomes aware that the Work is lagging behind the time frame shown on the latest approved Construction Schedule, regardless of the cause for such delay, and will notify them of the action that Contractor recommends or will take in order to bring the Project back on schedule, including, but not limited to, acceleration of the Work in accordance with the provisions of the Contract Documents.

E. Submittal of the Construction Schedule, and successive updates or revisions, is for the information of the Owner and Architect/Engineer, to allow them to monitor progress and to permit the coordination of their activities with those of the Contractor. Owner and Architect/Engineer shall accept or reject the submittal of a schedule within the same period allowed for review of other submittals, or if no time period is expressly provided, within a reasonable time after receipt. Acceptance of a Construction Schedule, schedule update or revision indicating a completion prior to the end of the Contract Time does not give rise to an acceleration or delay claim by the Contractor for any time outside of the schedule but included in the Contract Time. Similarly, the Owner's acceptance of a Construction Schedule, update or revision, that depicts an event which Contractor asserts as the basis for a delay claim, or a request for a time extension or cost increase, does not constitute an agreement by Owner to such request or claim, and does not relieve the Contractor from pursuing the procedure for requesting a Change Order, time extension or claim for delay set forth in the Contract Documents. Acceptance of a Construction Schedule, update or revision does not indicate the approval by the Owner or Architect/Engineer of the Contractor's proposed sequences and duration. Acceptance of a Construction Schedule update or revision indicating late completion does not constitute the Owner's consent to a late finish, or waive either the Contractor's responsibility for timely completion or the Owner's rights and remedies for the Contractor's failure to do so.

F. The Contractor shall prepare and keep current, for the Architect/Engineer's approval, a separate schedule of submittals which is coordinated with the Contractor's Construction Schedule and allows the Architect/Engineer and/or Owner reasonable time to review submittals. It is understood and agreed that in establishing a reasonable time period for review of any submittals or requests, Owner shall be allowed a sufficient time period to submit any matter requiring Board approval to the AISD Board of Trustees at a regularly scheduled Board meeting.

3.7 SUBMITTALS

A. "Shop Drawings" means drawings, diagrams, schedules, and other data, which are prepared for the Work by the Contractor or any subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. "Product Data" means 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.

B. "Samples" means physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to assist in the establishment of standards by which the Work will be judged.

C. The Contractor shall review and designate (stamp) its approval and submit, with reasonable promptness and in orderly sequence, all Shop Drawings, Product Data and Samples required by the Contract Documents, or subsequently by the Owner and/or Architect/Engineer as covered by a Change Order or Construction Change Directive.

D. Shop Drawings, Product Data and Samples shall be properly identified, as specified, or as the Architect/Engineer may require. At the time of submission, the Contractor shall inform the Architect/Engineer in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Work and of the Contract Documents.

E. By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that Contractor has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that Contractor has checked and coordinated each Shop Drawing, Product Data and Sample with the requirements of the Work and of the Contract Documents.

F. The Contractor shall submit to the Architect/Engineer, with such promptness as to cause no delay in the Work or in the activities of the Owner or of separate contractors, the number of Contractor-approved copies of Shop Drawings, Product Data and Samples required for the Owner's, Architect/Engineer's and Contractor's use. The review by the Architect/Engineer of the Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the

requirements of the Contract Documents unless the Contractor has informed the Architect/Engineer in writing of such deviation at the time of submission and the Architect/Engineer has given written approval to the specific deviation, nor shall the review of the Architect/Engineer relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples.

G. The Contractor shall make any corrections required by the Architect/Engineer and shall resubmit the required number of corrected copies of the Shop Drawings, Product Data or new Samples of materials until approved. The Contractor shall direct specific attention in writing to any new revisions other than the corrections requested by the Architect/Engineer on previous submissions. In the event Contractor resubmits Shop Drawings, Product Data or Samples of materials more than one time because not previously approved, and Architect/Engineer charges Owner for Additional Services for such multiple reviews under the provisions of the Agreement between Owner and Architect/Engineer, Contractor shall be responsible for paying for, or reimbursing Owner for, the cost of such Additional Services.

H. No work requiring a Shop Drawing, Product Data or Sample submittal shall be commenced until the submittal has been reviewed and approved by the Architect/Engineer. All such Work shall be in accordance with reviewed and approved Shop Drawings, Product Data and Samples.

I. The Contractor shall maintain at the site (field) office for the Owner and Architect/Engineer, one copy of all reviewed Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

J. The Contractor shall submit all requests for information to the Architect/Engineer for resolution.

K. The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work as provided in Section 3.9, signed by the Contractor, certifying that they show complete and "as-built" conditions, stating sizes, kind of materials, vital piping, conduit locations and similar matters.

3.8 MATERIALS AND WORKMANSHIP

A. Contractor warrants that all materials and labor provided under this Contract shall be installed and performed in a good and workmanlike manner in accordance with the Contract Documents, and shall be free from defects and deficiencies.

B. Unless otherwise specifically provided in the Contract, all equipment, material, and articles incorporated in the Work covered by the Contract shall be new and of the most suitable grade for the purpose intended. The Contractor shall furnish to the Architect/Engineer for its approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment that the Contractor contemplates incorporating into the Work. When required by the Contract or when called for by the Owner or Architect/Engineer, the Contractor shall furnish the Architect/Engineer, for approval, full information concerning the material or articles the Contractor contemplates incorporating into the Work. When so directed by Owner or Architect/Engineer, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, materials, and articles installed or used without required approval shall be at the risk of subsequent rejection.

C. Architect/Engineer shall not call for lead based paint or asbestos containing materials to be used in connection with the Project. No lead based paint and no materials containing asbestos shall be incorporated into the Project. Contractor, subcontractors, and suppliers may be required to certify that these materials were not provided or installed as part of this Contract.

D. All Work under the Contract shall be performed in a skillful and workmanlike manner. The Owner may, in writing, require the Contractor to remove from the Work any person the Owner deems incompetent, careless, or otherwise objectionable.

E. Neither custom nor usage of trade shall require Owner to accept materials or workmanship not in strict and complete compliance with the Contract Documents.

F Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, electricity and other 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 into the Work.

G. Should the Contract Documents require Work to be performed after regular working hours or should the Contractor elect to perform work after regular working hours, the additional cost of such Work shall be borne by the Contractor as part of the Contract Amount.

H. Should the Owner, through no default of Contractor, desire to reduce the Contract Time and authorize overtime, the additional cost (premium portion only) shall be paid by the Owner and the Contract Amount shall be adjusted accordingly, only if such work is authorized in writing by the Owner as a Change Order prior to performance.

I. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not

permit employment of unfit persons or persons not skilled in tasks assigned to them, or who are disorderly or who fail to observe Owner's rules for Work on the Project site.

J The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

K. The Contractor shall not damage or endanger a portion of the Work of fully or partially completed construction of the Owner or separate contractors including damage or endangerment by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate Contractor; such consent shall not be unreasonably withheld. Structural members shall not be cut except with written permission of the Architect/Engineer. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

L. After installation of the Work, Contractor shall carefully fit around, close up, repair, patch and point up such Work to match adjoining surfaces by use of proper tools and materials using workers skilled in the required trades.

3.9 AS-BUILT DRAWINGS

A. During the performance of Work under the Contract, the Contractor shall record and delineate accurately on one set of prints of the Drawings, which will be furnished to Contractor by the Architect/Engineer, all changes in such Work which constitute significant departures from the original Drawings. The set of Drawings thus corrected and changed shall show the Work as actually constructed ("As-Built Drawings"). Such As-Built Drawings shall be delivered to the Architect/Engineer for review and approval at the earliest practicable date prior to completion of all Work under the Contract, but in any event not later than the date of final acceptance of the completed Work.

B. The Contractor shall review said As-Built Drawings on site with the Architect/Engineer at monthly intervals to verify proper recording of data and shall incorporate such revised Drawings as may be furnished by the Architect/Engineer as the job progresses.

C. The As-Built Drawings shall show sufficient detail to convey, among other pertinent information, the following:

1. Physical dimensions, relation to existing conditions, and horizontal and vertical location of all underground or hidden installations; and

2. All modifications to the Work as recorded in Change Orders.

D. With the As-Built Drawings, Contractor shall submit manufacturers' literature, including service manuals, schematic diagrams, control diagrams, maintenance charts, parts lists, etc., as required to provide complete equipment operation and maintenance information.

3.10 CLEANUP

A. The Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract, and shall establish a regular maintenance program to minimize accumulation of dirt and dust. Contractor shall promptly remove any dirt or debris resulting from the Work which is on adjacent streets and shall with the consent of adjoining landowners, remove such dirt or debris from adjoining properties.

B. At Substantial Completion, all interior floors shall be cleaned in accordance with Owner's directions, carpets shall be vacuumed, glass in doors and windows shall be cleaned, countertops, cabinets and other surfaces shall be free from debris, dirt and dust, landscaping shall be neat and plants and grass installed as part of the Work shall be healthy and in good condition, and exterior surfaces and walkways shall be free from dirt and debris. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

C. Upon completion of the Work and before acceptance and final payment will be made, the Contractor shall clean and remove from the Work site all surplus and discarded materials, temporary structures and debris of every kind.. Surplus and waste materials removed from the Work site shall be disposed of in accordance with applicable laws and regulations. The Contractor shall remove from and about the Project site the Contractor's tools, construction equipment and machinery, and all spillage and tracking arising from the performance of the Work from such areas.

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

3.11 WARRANTIES

A. In addition to all other warranties provided in or pursuant to the Contract Documents, and without limitation or restriction on the rights and remedies of Owner arising in connection with the obligations of the Contractor under the Contract Documents, the Contractor warrants the materials, workmanship and Work to be in conformance with the Contract Documents and to be free from defects in materials and workmanship for a period of one year. Unless (i) the terms of the Contract Documents call for the warranty period to begin at final completion, (ii) Owner expressly agrees to a warranty period for a component of the Work which runs from the date of Substantial

Completion of the component, (iii) otherwise provided in the Contract Documents, (iv) otherwise agreed to by Owner and Contractor in writing, or (v) otherwise provided in Architect's Certificate of Substantial Completion for certain punch list items pursuant to Section 8.3.A hereof, the warranty provided by this Subsection 3.11.A will be deemed to run from the date of Substantial Completion of the Work as documented by the Architect/Engineer pursuant to the terms of the Contract. The warranty described herein binds the Contractor to repair or replace (at the option of Architect/Engineer or Owner) without cost to Owner, any Work that is out of compliance with the Contract Documents and any Work which during the one-year period described herein exhibits defects in workmanship or materials or which malfunctions or fails to work correctly or in the manner intended. The Contractor shall, at Contractor's own expense, correct any such defect or deficiency no later than thirty days after receiving written notice of such defect from the Owner or Architect/Engineer, or within such shorter period of time as Owner or Architect/Engineer may reasonably request. Contractor shall be obligated as part of its warranty obligation, to repair or replace any other portion of the Work damaged or destroyed by (i) the non-complying, malfunctioning or defective Work, or (ii) the process of repairing or replacing the non-complying, malfunctioning or defective Work. The warranty provided herein will be extended by any work performed by the Contractor (or performed by the Owner or Surety in the event Contractor fails to perform its warranty obligations) in repairing or replacing non-complying, malfunctioning or defective work or materials, so that all repaired or replaced work shall have, in addition to any manufacturer's warranty, a one-year warranty from Contractor from the date repairs or replacements are completed. In the event Contractor fails to comply with these provisions, Owner shall have, in addition to any other rights and remedies provided by law or the Contract Documents, the right to (i) perform the repair or replacement by its own employees or other contractor and demand reimbursement from Contractor for all amounts incurred by Owner, in which event Contractor shall pay said amounts to Owner within 30 days after demand, and/or (ii) make demand on Surety to perform Contractor's obligations. The Contractor's warranty excludes remedy for damage or defect caused by Owner's abuse, modifications not executed by the Contractor except as authorized herein, improper or insufficient maintenance by Owner, improper operation by Owner, or normal wear and tear and normal usage. If required by the Architect/Engineer or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used in the Work.

B. Work not conforming to Contract requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall perform all work reasonably required to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to the Owner.

C. All warranties required by the Contract Documents shall include labor and materials and shall be signed by the manufacturer and/or subcontractor as the case may be and countersigned by the Contractor. All warranties shall be delivered to the Architect/Engineer upon completion of the Work and before the submission of

Contractor's Final Application for Payment. At the time of final completion of the Work, the Contractor agrees to assign to the Owner any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties.

D. In addition to the foregoing stipulations, the Contractor shall comply with all other warranties referred to in any portions of the Contract Documents, and where warranties overlap, the more stringent requirement shall govern.

E. The Contractor represents, warrants and covenants to the Owner that it is fully authorized and qualified to enter into the Contract and that if all or any portion of the Work is required by law or by the Contract Documents to be performed by persons with special or specific licensure, certifications, training or qualifications, the employees and/or subcontractors selected to perform such Work shall be, and shall remain, fully licensed, certified, trained and qualified to perform such Work throughout the term of the Contract. Contractor will provide evidence of the same to the Owner upon request.

F. The provisions of this Section 3.11 shall survive the termination of this Contract, howsoever caused, and no partial payment, or final payment by Owner, nor issuance of a certificate of Substantial Completion nor a certificate of final completion, nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of this section or constitute an acceptance of defective Work or Work which does not comply with the Contract Documents.

G. In the event items on the punch list (as defined in Section 8.3 below) at Substantial Completion are not completed within the period fixed by Architect/Engineer in the Certificate of Substantial Completion pursuant to Section 8.3.A hereof, the warranty on those items shall commence on the date of final acceptance of the Work or completion of those items to the reasonable satisfaction of Architect/Engineer and Owner, whichever is later.

3.12 INDEMNIFICATION

A. To the fullest extent permitted by applicable law, the Contractor agrees to indemnify, defend and hold harmless Owner, its officers, trustees, agents, employees, and representatives from and against any liability, damages, costs, loss, expenses, claims, actions, proceedings, suits (including attorneys' fees, court costs and other expenses of suit), whether groundless or not, judgments and awards, arising out of, in connection with or related to the performance of Work by Contractor, its employees, any subcontractor, or other person performing services or work on behalf of any of them, including a default by Contractor under the provisions of the Contract Documents or a failure to obtain or maintain insurance required by the Contract Documents. This indemnification shall apply to, but not be limited to, any damage to property or injury (including death) to person (including any damage or injury to

property or person or any employee of the Contractor, its subcontractors, Owner, or the Architect/Engineer) which may occur or be alleged to have occurred in connection with the performance of this Contract. Contractor shall not be obligated to indemnify any of the indemnified parties against their own negligence; **however, to the fullest extent permitted by applicable law, Contractor shall be required to defend the indemnified parties against liability, damages, costs, loss, expenses, claims, actions, proceedings, or suits (including attorneys' fees, court costs and other expenses of suit), whether groundless or not, for the bodily injury or death of an employee of the Contractor, its agent or its subcontractor of any tier, regardless of whether the action giving rise to such liability, damages, costs, loss, expenses, claim, action, proceeding or suit (including attorneys' fees, court costs and other expenses of suit), is founded in whole or in part upon the alleged negligence of one or more parties indemnified hereunder.** The Contractor assumes all risk of damage or injury (including death) to the Contractor's own property or person or to the property or person of the Contractor's employees or subcontractors from any cause whatsoever. This indemnification shall survive termination of the Contract or completion by the Contractor of all of its obligations under this Contract, as to events arising prior to such termination or completion.

B. In claims against any person or entity indemnified under this Section 3.12 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section shall not be limited by a limitation on amount or type of damages, insurance, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The provisions of this indemnification and all other indemnification obligations set out in the Contract Documents, shall survive the termination of this Contract, howsoever caused, or completion of the Contract as to events occurring prior to such termination or completion, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of Final Completion nor acceptance or occupancy in whole or in part of the Work shall waive or release any of the provisions of this section or of any other indemnification contained in the Contract Documents.

3.13 REPARATIONS FOR DAMAGED PROPERTY, IMPROVEMENTS AND WORK

A. Should the Contractor cause damage to the property or improvements of the Owner or the work of any separate contractor to the Owner, or to the property of any third party, Contractor shall, upon due written notice by the Owner, separate contractor, or third party, make timely reparations acceptable to the damaged party or parties.

3.14 SUBSTITUTIONS OF MATERIALS OR EQUIPMENT

A. The Owner may refuse to accept substitutions of materials or equipment which were not requested by the Contractor and approved by Owner during the Solicitation Process.

B. Owner may, in its discretion, agree to accept substitutions of materials or equipment after the Contract has been signed for good cause shown. The Contractor may make substitutions of materials or equipment only with the prior written consent of Owner after evaluation and approval by the Architect/Engineer and in accordance with a Change Order. A request for substitution constitutes a representation by Contractor that Contractor:

1. has investigated the proposed product and determined that it is equal or superior in all respects to the specified product;

2. shall provide identical warranties as those required for the specified product or any extended warranties required by Owner as a condition for approval of the substitution;

3. shall coordinate installation and make changes to other Work which may be required at no cost to Owner;

4. waives claims for additional costs or time extension which may subsequently become apparent;

5. certifies that the proposed product will not affect or delay the approved Construction Schedule; and

6. shall pay for changes to the design of the building, Work, or any components thereof, including architectural or engineering design, detailing and construction costs caused by or resulting from the requested substitution.

3.15 CRIMINAL HISTORY RECORD INFORMATION REVIEW AND IDENTIFICATION BADGES FOR COVERED EMPLOYEES

Contractor shall, at its sole cost and expense, comply and cause each subcontractor to comply with the provisions of this Section 3.15 and all provisions of Texas Education Code ("TEC') §22.08341 regarding criminal history record information review and issuance of identification badges for all covered employees (hereafter defined) in connection with the Work. Contractor's failure to comply with any of the terms and conditions of this Section 3.15 shall be a material default under the Contract.

A. As used herein, the term "covered employee" shall mean an individual employed by or offered employment by Contractor or a subcontractor, or an individual subcontractor, who (i) has or will have continuing duties on the Project site related to

the services to be performed in connection with the Work, and (ii) has or will have the opportunity for direct contact with students in connection with the individual's continuing duties in connection with the Work. An individual does *not* have the opportunity for direct contact with students only if the appropriate conditions of TEC §22.08341(c) are satisfied. If the Solicitation Documents state that Texas Education Code ("TEC") §22.08341 is applicable to workers, or if at any time during the Work it is determined by Owner that some or all of the workers on the Project are covered employees, Contractor and each affected subcontractor shall comply with this Section 3.15 with regard to their respective workers who are covered employees. If an individual employed by or offered employment by Contractor is not a covered employee, the Contractor shall make a reasonable effort to ensure that the conditions or precautions that resulted in that determination continue to exist throughout the time the contracted services are provided.

B. In accordance with TEC §22.08341, Contractor shall, at its sole cost and expense: (i) send or ensure that the individual sends to the Department of Public Safety information that is required for obtaining national criminal history record information in accordance with TEC §22.08341, and (ii) obtain with regard to its covered employees and cause each subcontractor, at its sole cost and expense, to obtain with regard to its covered employees, the criminal history record information as required by TEC §22.08341 for each such covered employee,. **[Contact the Texas Department of Public Safety Crime Records Service at (512) 424-5079 for instructions on obtaining national criminal history record information.]**

C. Contractor shall not assign to, permit, or allow on the Project site any covered employee who has a disqualifying criminal history. A covered employee has a "disqualifying criminal history" under this Section 3.15 if the covered employee has been convicted of one of the following offenses or crimes during the preceding 30 years and the victim was under 18 years of age or was enrolled in a public school: (i) a felony offense under Title 5 of the Texas Penal Code; (ii) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; (iii) an offense or crime (whether a felony or a misdemeanor) involving moral turpitude, including without limitation theft, bribery, fraud, perjury, sexual offenses, or offenses involving intentional acts of violence toward persons or property; or (iv) an offense under the laws of another state or federal law that is equivalent to an offense under (i), (ii) or (iii) above. Provided, however, Contractor or a subcontractor may assign to, permit or allow a covered employee on the Project site if the only convictions reported on the criminal history record information are crimes involving only misdemeanor theft offenses (other than theft of school district funds or property) occurring more than seven (7) years prior to the date the worker would commence work on the Project.

D. Contractor shall maintain at all times a list of all covered employees on the Project (as updated from time to time by Contractor, the "List of Covered Employees") which contains the following information for each covered employee: (i) full name; (ii) whether, in accordance with the applicable requirements of TEC §22.0834, national

or state criminal history record information was obtained; (iii) the full name of the covered employee's employer, if applicable; and (iv) Texas driver's license or other identification number or such other information as Owner may request from time to time to enable Owner to obtain criminal history record information for the covered employee. The covered employees on the List of Covered Employees shall be grouped by employer.

E. Prior to commencement of the Work, Contractor shall deliver to Owner, or its designee if directed by Owner:

(a) an electronic copy in PDF format of the initial List of Covered Employees for all covered employees on the Project; and

(b) an electronic copy in PDF format of Contractor's duly completed and executed certification on a form provided by Owner ("Contractor Certification") by the terms of which Contractor certifies to Owner that

(i) all information on the List of Covered Employees is true and correct in all respects;

(ii) Contractor has obtained (with respect to its covered employees) and has caused to be obtained (with respect to all other covered employees on the Project) all required criminal history record information relating to each covered employee on the List of Covered Employees in accordance with TEC §22.08341;

(iii) each subcontractor providing any part of the Work, contracting directly with Contractor (each a "First Tier Subcontractor"), has duly completed and executed a First Tier Subcontractor Certification (hereafter defined) and each First Tier Subcontractor Certification is attached to the Contractor Certification;

(iv) each Sub-subcontractor (hereafter defined) on the Project has provided a duly completed and executed Sub-subcontractor Certification (hereafter defined) to the appropriate First Tier Subcontractor in accordance with these General Conditions; and

(v) none of the covered employees on the List of Covered Employees has a disqualifying criminal history under this Section 3.15. If it is determined that any statement in any Contractor Certification, First Tier Subcontractor Certification or Sub-subcontractor Certification is untrue or misrepresented when made, Contractor shall be in material default under the Contract.

F. As used herein, "First Tier Subcontractor Certification" shall mean a duly completed and executed certification on a form provided by Owner by the terms of which First Tier Subcontractor certifies to Owner and Contractor that (i) all of the covered employees employed by First Tier Subcontractor on the Project are included on the List of Covered Employees and properly identified as employees of First Tier Subcontractor; (ii) all information on the List of Covered Employees with respect to the covered employees employed by First Tier Subcontractor is true and correct in all respects; (iii) First Tier Subcontractor has obtained all required criminal history record information relating to each covered employee of First Tier Subcontractor on the List

of Covered Employees in accordance with TEC §22.08341; (iv) none of the covered employees on the List of Covered Employees employed by First Tier Subcontractor has a disqualifying criminal history under this Section 3.15; and (v) if applicable, attached to the First Tier Subcontractor Certification is a duly completed and executed Sub-subcontractor Certification in the form provided by Owner obtained by First Tier Subcontractor from each subcontractor employed on the Project by or under First Tier Subcontractor (each a "Sub-subcontractor") and employing one or more covered employees. As used herein "Sub-subcontractor Certification" shall mean a duly completed and executed certification in a form provided by Owner from each Sub-subcontractor that contains the certifications required in a First Tier Subcontractor Certification.

G. Owner has notified Contractor that Owner has contracted with a provider of workforce screening services (the "Provider") to perform certain criminal history record information reviews and drug tests and to issue identification badges for all covered employees employed in connection with the Work. Upon Provider's receipt of a copy of the List of Covered Employees from Owner and a completed consent and authorization form as required by Provider for each covered employee requiring an initial or renewal AISD badge (defined below), Provider will perform for each such covered employee a name-based criminal history record information review (using criminal records and sex offender databases) ("Name-based Search"), and the covered employee must submit to a urine based drug test specified by Provider ("Drug Test"), scheduled through Provider. Contractor shall be responsible for paying or causing each subcontractor to pay, as applicable, to Provider all costs associated with the Name-based Searches, Drug Tests and issuance of AISD badges for the respective employees of each such employer.

H. Each covered employee employed on the Project by Contractor or a subcontractor must wear a valid and unexpired Austin Independent School District identification badge issued by Provider (each an "AISD badge") at all times while on the Project site. Provider will not issue an AISD badge for a covered employee and will revoke a previously issued AISD badge if such employee has a disqualifying criminal history under this Section 3.15 or has failed the Drug Test (based on Department of Transportation Guidelines). After the issuance of an AISD badge and until the AISD badge expires, Provider will repeat the Name-based Search on each active covered employee on the List of Covered Employees on a monthly basis. In addition, any covered employee involved in a safety incident on the Project site will be required to immediately submit to a new Drug Test. If Provider determines at any time that an employee on the List of Covered Employees has a disqualifying criminal history under this Section 3.15 or has failed a Drug Test (based on Department of Transportation guidelines), Provider will notify Contractor and the subcontractor employing such employee that an AISD badge will not be issued for such employee or is revoked (if previously issued) effective immediately, whereupon such employee shall be marked as "inactive" on the List of Covered Employees and, if applicable, the previously issued AISD badge shall be immediately returned to Provider. If Provider does not issue an AISD badge for a covered employee or the AISD badge is revoked or has

expired, the covered employee is prohibited from entering the Project site. Owner and/or its safety consultants may conduct periodic random checks of workers on the Project site to determine compliance with the badging requirements of this subsection.

I. Contractor and each subcontractor shall, as the Work progresses, comply with the provisions of this Section 3.15 with respect to each new covered employee to be employed on the Project and not previously listed on the List of Covered Employees. Each new covered employee shall be added to the List of Covered Employees, with the name highlighted and the dated of such addition noted. In addition, as the Work progresses, each covered employee on the List of Covered Employees who is no longer employed on the Project shall be marked as "inactive" and the last date of such employee's employment on the Project shall be noted, and for each covered employee previously designated as "inactive" and once again employed on the Project, the "inactive" designation shall be removed and the date of reemployment shall be noted. Each time Contractor makes a change to the List of Covered Employees, Contractor must submit to Owner, or its designee if directed by Owner, within five (5) business days of the date of such change, (i) an electronic copy in PDF format of the updated List of Covered Employees current as of the third (3rd) business day prior to the date of delivery, and (ii) a fully executed electronic copy in PDF format of the Contractor Certification dated within three (3) business days of the date of delivery.

J. If, at any time as the Work progresses, Contractor, a subcontractor or Owner receives updated criminal history record information for a covered employee that includes a disqualifying criminal history under this Section 3.15, or it is determined that a covered employee is on the Project site in violation of this Section 3.15, then, notwithstanding anything contained in Section 13.3.A hereof to the contrary, Contractor shall immediately remove such employee from the Project site with no requirement of written notice from Owner, notify Provider in writing that such employee is prohibited from future entry on the Project site unless notice of same has been received from Provider, return the AISD badge to Provider, and mark such employee as "inactive" on the List of Covered Employees. All Work on the Project performed by the Contractor or any subcontractors shall stop (with no extension of the Contract Time or adjustment in the Contract Amount) until such worker is no longer on the Project site. Owner reserves the right to cause Owner's police or other security personnel to remove such worker from the Project site.

3.16 CRIMINAL HISTORY RECORD INFORMATION REVIEW AND IDENTIFICATION BADGES FOR NON-COVERED EMPLOYEES

Contractor shall, at its sole cost and expense, comply and cause each subcontractor to comply with the provisions of this Section 3.16 regarding criminal history record information review and issuance of identification badges for all non-covered employees (hereafter defined) in connection with the Work. Contractor's failure to comply with any of the terms and conditions of this Section 3.16 as to all non-covered employees shall be a material default under the Contract.

A. As used herein, the term "non-covered employee" shall mean in connection with the Work an individual employed or offered employment by Contractor or a subcontractor or an individual subcontractor who is not a covered employee under Section 3.15 above. If workers employed on the Project in connection with the Work are non-covered employees, Contractor shall comply with the provisions of this Section 3.16 for such non-covered employees, and, if applicable, Contractor certifies and shall cause each subcontractor to certify that it shall maintain or cause to be maintained the conditions imposed and/or precautions taken on the Project site to ensure that such workers will not become covered employees and failure to do so shall be a material default under the Contract. If the Work involves construction, alteration, or repair of a new facility, Contractor shall comply with this Section 3.16 for so long as the individual is not a covered employee under the provisions of TEC §22.08341.

B. Contractor shall, at its sole cost and expense, cause to be conducted a criminal history record information review in accordance with Subsection 3.16.E below for each non-covered employee employed in connection with the Work.

C. Contractor shall not assign to, permit or allow on the Project site any non-covered employee who has a disqualifying criminal history. A non-covered employee has a "disqualifying criminal history" under this Section 3.16 if the non-covered employee has been convicted of one of the following offenses or crimes during the preceding 30 years and the victim was under 18 years of age or was enrolled in a public school: (i) a felony offense under Title 5 of the Texas Penal Code; (ii) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; (iii) an offense or crime (whether a felony or a misdemeanor) involving moral turpitude, including without limitation theft, bribery, fraud, perjury, sexual offenses, or offenses involving intentional acts of violence toward persons or property; or (iv) an offense under the laws of another state or federal law that is equivalent to an offense under (i), (ii) or (iii) above. Provided, however, Contractor or a subcontractor may assign to, permit or allow a non-covered employee on the Project if the only convictions reported are crimes involving only misdemeanor theft offenses (other than theft of school district funds or property) occurring more than seven (7) years prior to the date the worker would commence work on the Project.

D. Contractor shall maintain at all times a list of all non-covered employees on the Project (as updated from time to time by Contractor, the "List of Non-covered Employees") which contains the following information for each non-covered employee: (i) full name; (ii) the full name of the non-covered employee's employer, if applicable; and (iii) Texas driver's license or other identification number. The non-covered employees on the List of Non-covered Employees shall be grouped by employer. Prior to commencement of the Work, Contractor shall deliver to Owner, or its designee if directed by Owner, an electronic copy in PDF format of the initial List of Non-covered Employees for all non-covered employees on the Project.

E. Owner has notified Contractor that Owner has contracted with Provider (as defined in Subsection 3.15.G above) to perform certain criminal history record information

reviews and drug tests and to issue identification badges for all non-covered employees employed in connection with the Work. Upon Provider's receipt of a copy of the List of Non-covered Employees from Owner and a completed consent and authorization form as required by Provider for each non-covered employee requiring an initial or renewal AISD badge, Provider will perform for each such non-covered employee a name-based criminal history record information review (using criminal records and sex offender databases) ("Non-covered Employee Name-based Search"), and the non-covered employee must submit to a Drug Test (as defined in Subsection 3.15.G above), scheduled through Provider. Contractor shall be responsible for paying or causing each subcontractor to pay, as applicable, to Provider all costs associated with the Non-covered Employee Name-based Searches, Drug Tests and issuance of AISD badges for the respective employees of each such employer.

F. Each non-covered employee employed on the Project by Contractor or a subcontractor must wear a valid and unexpired AISD badge (as defined in Section 3.15.H above) issued by Provider at all times while on the Project site. Provider will not issue an AISD badge for a non-covered employee and will revoke a previously issued AISD badge if such employee has a disqualifying criminal history under this Section 3.16 or has failed the Drug Test (based on Department of Transportation Guidelines). After the issuance of an AISD badge and until the AISD badge expires, Provider will repeat the Name-based Search on each active non-covered employee on the List of Non-covered Employees on a monthly basis. In addition, any non-covered employee involved in a safety incident on the Project site will be required to immediately submit to a new Drug Test. If Provider determines at any time that an employee on the List of Non-covered Employees has a disqualifying criminal history under this Section 3.16 or has failed a Drug Test (based on Department of Transportation Guidelines), Provider will notify Contractor and the subcontractor employing such employee that an AISD badge will not be issued for such employee or is revoked (if previously issued) effective immediately, whereupon such employee shall be marked as "inactive" on the List of Non-covered Employees and, if applicable, the previously issued identification badge shall be immediately returned to Provider. If Provider does not issue an AISD badge for a non-covered employee or the AISD badge is revoked or has expired, the non-covered employee is prohibited from entering the Project site. Owner and/or its safety consultants may conduct periodic random checks of workers on the Project site to determine compliance with the badging requirements of this subsection.

G. Contractor and each subcontractor shall, as the Work progresses, comply with the provisions of this Section 3.16 with respect to each new non-covered employee to be employed on the Project and not previously listed on the List of Non-covered Employees. Each new non-covered employee shall be added to the List of Non-covered Employees, with the name highlighted and the dated of such addition noted. In addition, as the Work progress, each non-covered employee on the List of Non-covered Employees who is no longer employed on the Project shall be marked as "inactive" and the last date of such employee's employment on the Project shall be noted, and for each non-covered employee previously designated as "inactive" and

once again employed on the Project, the "inactive" designation shall be removed and the date of reemployment shall be noted. Each time Contractor makes a change to the List of Non-covered Employees, Contractor must submit to Owner, or its designee if directed by Owner, within five (5) business days of the date of such change, (i) an electronic copy in PDF format of the updated List of Non-covered Employees current as of the third (3rd) business day prior to the date of delivery.

H. If, at any time as the Work progresses, it is determined that a non-covered employee is on the Project site in violation of this Section 3.16, then notwithstanding anything contained in Section 13.3.A hereof to the contrary, Contractor shall immediately remove such employee from the Project site with no requirement of written notice from Owner, notify Provider in writing that such employee is prohibited from future entry on the Project site unless notice of such violation has been received from Provider, return the AISD badge to Provider, and mark such employee as "inactive" on the List of Non-covered Employees. All Work on the Project performed by the Contractor or any subcontractors shall stop (with no extension of the Contract Time or adjustment in the Contract Amount) until such worker is no longer on the Project site. Owner reserves the right to cause Owner's police or other security personnel to remove such worker from the Project site.

I. Notwithstanding any provision of this Section 3.16 to the contrary, if at any time during the Project, Owner determines (in its sole discretion) that some or all of the workers have or will become covered employees, Owner shall so notify Contractor and thereafter Contractor and all affected subcontractors, with regard to their respective covered employees, shall comply with the provisions of TEC §22.08341 and Section 3.15 above. In addition, if at any time during the Project, Contractor becomes aware that some or all of the workers employed in connection with the Work have or will become covered employees, Contractor shall immediately notify Owner in writing with specificity as to the conditions on the Project site resulting in such workers becoming covered employees and thereafter Contractor and all affected subcontractors, with regard to their respective covered employees, shall comply with the provisions of TEC §22.08341 and Section 3.15 above.

4. Article 4. SUBCONTRACTORS.

4.1 AWARD OF SUBCONTRACTS FOR PORTIONS OF THE WORK

A. Contractor has submitted or will submit, as applicable, to Owner the Contractor's list of proposed subcontractors and material suppliers, identifying their respective subcontract amounts, in connection with the Work on the form HUB Utilization Report ("HUR") supplied by Owner or such other form required by Owner ("HUB Utilization Report ("HUR")"). Contractor shall not contract with any subcontractor or supplier in connection with the Work until the Architect/Engineer and the Owner have approved the selection in writing. If the HUB Utilization Report ("HUR") has been submitted to Owner prior to Owner's execution of the Agreement, then, unless Owner notifies Contractor in writing at the time of Owner's execution of the

Agreement that Owner does not approve a subcontractor or supplier listed on the HUB Utilization Report ("HUR"), Owner and the Architect/Engineer shall be deemed to have approved each subcontractor and supplier on the HUB Utilization Report ("HUR") and Contractor shall be obligated to contract with such subcontractors and suppliers in connection with the Work. If, in good faith, Contractor determines at any time during the Project that the replacement of an approved or deemed approved subcontractor or supplier is necessary, Contractor must obtain Owner's and Architect/Engineer's prior written approval of such replacement. Contractor shall submit a written request for such approval to Owner and Architect/Engineer, which shall include a detailed explanation of the reason(s) for Contractor's proposed replacement, along with an amended HUB Utilization Report ("HUR") reflecting the proposed replacement. Contractor shall submit an amended HUB Utilization Report ("HUR") to reflect each approved change in subcontractors, suppliers, and/or value of subcontractor/supplier contracts resulting from change orders or other Project circumstances. Notwithstanding any provision of this Section 4.1.A to the contrary, Owner's and Architect/Engineer's approval or deemed approval of Contractor's subcontractors and suppliers during the Project shall not be deemed verification by Owner or Architect/Engineer that an approved subcontractor or supplier meets the minimum qualifications of the Project as set forth in Owner's Project Manual and Specifications. Contractor shall have an ongoing obligation during the Project to ensure that its subcontractors and suppliers on the Project meet all such applicable minimum qualifications. Contractor's failure to comply with the provisions of this Section 4.1.A shall be a material default under the Contract. In the event of any conflict between this Section 4.1 and the provisions in the Agreement regarding subcontractor selection, the Agreement shall control.

B. If requested by a subcontractor or material supplier who submitted a bid or proposal to Contractor during the Solicitation Process but is not listed by Contractor as a proposed subcontractor or supplier on HUB Utilization Report ("HUR"), Contractor agrees to provide feedback to such subcontractor or supplier as to how its bid/proposal compared with the other bids/proposals received by Contractor for the same services or materials (e.g., bid was highest bid received, bid fell in the middle of bids received, etc.).

4.2 SUBCONTRACTUAL RELATIONS

A. All subcontracts shall be in writing.

B. Nothing contained in the Contract Documents shall create any contractual relation between Owner and any subcontractor or supplier or any party with whom Owner or any of its subcontractors or suppliers contracts.

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

subcontractor's Work which the Contractor, by the Contract Documents, assumes toward the Owner and Architect/Engineer.

D. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect/Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor, including Owner's rights to terminate for convenience, so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with 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 which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such Contract Documents available to their respective proposed subcontractors.

E. Each such subcontract shall:

1. require that such Work be performed in accordance with the terms and requirements of the Contract Documents;

2. require the subcontractor to carry and maintain insurance in accordance with the Contract Documents;

3. require the subcontractor to furnish such reasonable certificates and waivers as the Owner may request;

4. require that any subcontractor waive any rights it may have against the Owner for damage caused by fire or other perils covered by property or risk insurance maintained by the Contractor or subcontractor or required to be maintained by the Contractor's subcontractor in connection with the Project.

5. provide that all warranties provided to Contractor, including material warranties, are fully assignable to the Owner;

6. provide for contingent assignability of the subcontract as herein provided;

7. require each subcontractor provide a certificate in writing to Owner that it provides workers compensation insurance coverage for each employee as required by law;

8. require subcontractor compliance with the prevailing wage rate requirements established by law and the Contract Documents; and

9. provide that the subcontract is subject to Owner's right to terminate or suspend work on the terms set forth herein.

All provisions required by the Contract to be set out in subcontracts shall be deemed incorporated by reference into each subcontract entered into pursuant to or in connection with the terms of this Contract, as if set out in full. Contractor shall be liable to Owner for any damages resulting from Contractor's failure to comply with the provisions of this Section 4.2.

4.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

A. Each subcontract agreement for a portion of the Work is hereby assigned by the Contractor to the Owner and the Surety; provided, however, that such assignment shall be effective as to Owner only after Owner's written termination of the Contract or of Contractor's right to proceed under terms of the Contract, and acceptance in writing by Owner of the particular subcontract.

5. Article 5. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

5.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

A. Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site, and the Contractor shall cooperate fully with such other contractors and Owner's employees and carefully fit Contractor's own Work to such work as directed by the Owner or Architect/Engineer.

B. If the Contractor believes that it has suffered or will suffer delay or additional costs or damages as a result of the work performed by Owner or a separate contractor, the Contractor shall notify Architect/Engineer and the Owner in writing as soon as possible, but in no event more than 5 days after Contractor becomes aware of such conditions, in order to give Owner an opportunity to avoid, reduce or mitigate such events. Any claim by Contractor for a time extension or additional costs shall be submitted as a request for Change Order.

C. 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.

D. The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedule deemed necessary after a joint review and mutual agreement. Contractor's construction schedule shall reflect such approved construction schedules, as amended from time to time. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors

and the Owner until subsequently revised and approved by the Contractor, separate contractors and the Owner.

E. Time is of the essence of this Contract.

5.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

A. The Contractor shall indemnify Owner and its officers, trustees, employees and agents from all liability, loss or expense (including attorneys' fees) arising from alleged interference with or damage to the work or property of other contractors or Owner by Contractor, its subcontractors, or anyone performing Work under this Contract. This indemnification shall survive termination or completion of the Contract as to events occurring prior to such termination and completion, and shall be in addition to any other indemnification obligations set out in this Contract.

B. The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Owner's and/or Contractor's construction and operations with theirs as required by the Contract Documents.

C. 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, prior to proceeding with that portion of the Work, shall look for and promptly report to the Architect/Engineer and Owner any discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Contractor shall notify them no later than five (5) days after it becomes aware of the problem or potential problem. Failure of the Contractor so to report in a timely manner shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

D. The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor, to the extent not caused by the fault of the separate contractor. The Owner shall be liable to the Contractor for costs incurred by the Contractor because of delays or defective construction of a separate contractor of Owner, to the extent not resulting from the fault or breach by Contractor or Contractor's subcontractors or suppliers. Each party shall promptly notify the other as soon as it becomes aware of a delay, improperly timed activity or condition of defective construction which could result in damages to the other but in no event later than five (5) days after first becoming aware of the problem. Contractor's claim shall be submitted as a request for a Change Order as provided herein.

E. The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in the Contract Documents.

F. The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in the Contract Documents. If such separate contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at its own expense, and hold harmless and indemnify the Owner, its officers, trustees, agents and employees from any and all Claims, causes of action, damages, loss, liability and expenses arising from Contractor's acts or omissions or the acts or omissions of Contractor's employees, subcontractors or parties for whom Contractor has liability. The Contractor shall pay or reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor. These obligations are in addition to all other defense and indemnification obligations under the Contract Documents, and shall survive termination or completion of the Contract.

6. Article 6. CHANGES IN THE WORK.

6.1 CHANGE ORDERS

A. Owner and Contractor may at any time, without notice to or approval of the Surety, by written Change Order hereto, make changes in the Work, the Contract Amount, the Contract Time, or otherwise modify the Contract.

B. Except for a Unilateral Change Order pursuant to Section 6.3.D. below, a Change Order is a written modification of the Contract between the Owner and Contractor, signed by the Owner, the Contractor, and the Architect/Engineer, which authorizes a change in the Scope of the Work or an adjustment in the Contract Amount or the Contract Time. Work performed under a Change Order is subject to all provisions of the Contract Documents. A Change Order will not be deemed fully executed until signed by Owner's Contracting Officer.

C. All changes in the scope of the Work, the Contract Amount and the Contract Time shall be documented by a Change Order. Only the Contracting Officer has authority to sign and agree to a Change Order on behalf of Owner. Neither the Architect/Engineer nor the Owner's Project Manager has the authority to bind the Owner to the terms of a Change Order without the signature of the Contracting Officer.

6.2 THE CHANGE ORDER REQUEST PROCESS

A. If Owner initiates a change in the Work, Owner will request Architect/Engineer to promptly prepare a Change Order Request and deliver it to Contractor. The Change Order Request prepared by Architect/Engineer will include a description of the requested change and any related Drawings and Specifications developed and signed by the Architect/Engineer.

B. Upon receipt of the Change Order Request, the Contractor shall determine whether the requested change will affect the Contract Amount or the Contract Time, and shall prepare and deliver to Architect/Engineer a time extension request, if applicable, and proposed pricing for the Change Order Request, with sufficient back-up, for self-performed work and work of subcontractors, as soon as possible, but in no event later than 15 days after the receipt by Contractor of the Change Order Request.

C. Architect/Engineer will promptly review and evaluate with Owner the Contractor's proposed change to the Contract Time or Contract Amount, or both, as applicable.

D. If Contractor's proposal is acceptable to Owner, or if Owner otherwise negotiates acceptable terms with the Contractor, Owner will prepare a Change Order which will be signed by Architect/Engineer and delivered to Contractor for signature. Contractor shall execute and return the Change Order showing the agreed-upon terms within 10 days after Contractor's receipt of it.

E. Upon receipt of the Change Order signed by Owner, Contractor will promptly commence the requested work.

F. If the Owner and Contractor do not agree on the terms of the Change Order, Owner may issue a Unilateral Change Order as provided in Section 6.3.D or may decide not to pursue a change to the Work at that time.

6.3 AGREED AND UNILATERAL CHANGE ORDERS

A. A Change Order may be either an Agreed Change Order or a Unilateral Change Order.

B. An Agreed Change Order is a Change Order jointly executed by the Owner and the Contractor, in which each agrees to all of the terms of the amendment.

C. The execution of an Agreed Change Order by the Owner and the Contractor constitutes the full, final and complete settlement of all claims with regard to the modifications contained in the Change Order for impacts on the Contract Amount and/or the Contract Time; provided, however, that an Agreed Change Order may be reformed by a written modification signed by the Contractor and the Owner, for the limited purpose of correcting an error in computation. A Change Order is effective upon receipt by the Contractor, and entitles the Contractor to submit the adjusted cost of the Work on succeeding Pay Applications as it is completed.

D. A Unilateral Change Order is a Change Order issued by the Owner without the agreement of the Contractor. The issuance of a Unilateral Change Order does not prejudice any of the Contractor's rights to relief otherwise available under the Contract Documents. The Contractor may preserve such rights by submitting a written objection to the Unilateral Change Order within 30 days after receipt of the Unilateral Change Order. If the Contractor does not submit a written objection within that time, Contractor shall be deemed to have accepted the terms of the Unilateral Change Order

and the Unilateral Change Order shall have the full force and effect of an Agreed Change Order.

6.4 INTERIM CHANGE AUTHORIZATION

A. When the Owner determines that changes in the Work must be made promptly in order to prevent damage to the Work in place, to prevent significant delay in the Project or to maintain safety, the Owner may issue an Interim Change Authorization directing the Contractor to proceed with changes in the Work prior to completion of the Change Order process. The Interim Change Authorization shall provide for the work to be performed on the basis of cost and/or time not to exceed specified amounts.

B. Upon receipt of the Interim Change Authorization, Contractor shall commence the Work and keep records on the time and cost incurred in the performance of the Work. Contractor shall be entitled to payment for work performed under an Interim Change Authorization in an amount not to exceed 50% of the "Additional cost not to exceed" amount stated in the Interim Change Authorization. Contractor shall not be entitled to receive the balance of payment for such work until the Change Order is fully executed.

6.5 CHANGE ORDER REQUESTED BY CONTRACTOR

A. A request for a Change Order may be initiated by the Contractor as provided in Section 6.5.B or C.

B. If the Contractor believes that it will incur additional cost or time because of any written interpretation of the Contract Documents, or any written or oral instruction concerning the execution of the Work issued by the Owner or the Architect/Engineer, and constituting a change in the scope or character of the Work, the Contractor must promptly notify the Owner and Architect/Engineer of the Contractor's belief before beginning the requested work. Contractor shall provide Owner and Architect/Engineer with written notice that there will be a time extension and/or additional cost for the requested Work as soon as possible but in no event later than 5 days after Contractor receives the instructions from Owner or Architect/Engineer. In addition, Contractor must provide Owner and Architect/Engineer with a written proposal for the time and/or cost of the requested work, and a justification for such additional time or expense, within 15 days after Contractor receives the request for the change in Work.

1. If the Owner determines that the change in the Work should take place, the Owner will initiate the Change Order process, which will conclude in either an Agreed or Unilateral Change Order as provided herein.

2. Except for a change in the Work due to an Emergency Condition, as provided in Section 9.9, the Contractor may not commence the requested change in the Work without a signed Change Order or Interim Change Authorization. Contractor shall not be entitled to an increase in the Contract Amount or an

extension of the Contract Time if it performs a change in the Work without a signed Interim Change Authorization or Change Order, except as provided in Section 9.9 for an Emergency Condition.

3. Except as herein provided, no order, statement or conduct of an Owner or the Architect/Engineer shall entitle the Contractor to an increase in the Contract Time or Contract Amount for work performed.

C. The Contractor may request a Change Order for damages under the following circumstances only, provided that all notification and other requirements for Contractor’s establishment of those rights as provided in the Contract Documents have been met:

1. Unanticipated physical conditions at the site, pursuant to Section 3.3 which the Architect/Engineer addresses by means of changes in the Drawings and Specifications, or unanticipated environmental conditions at the site as described in Section 9.7;

2. The existence of errors, omissions and imperfections in the design documents which the Contractor could not reasonably have detected or brought to the attention of the Owner and Architect/Engineer in time to correct without a delay in the construction, as provided in Section 3.2;

3. Unexcused Owner delays, including failure of the Owner or the Architect/Engineer to take timely actions required under the Contract Documents or to provide information required by the Contractor to proceed with the Work within the time period provided by the Contract, or if no time period is specified, within a reasonable period of time; and subject to the provisions of Section 7.1.C;

4. Delays caused by Owner’s separate contractor in performing work on the Project as provided in the Contract in Section 5.1 and Section 7.1.C;

5. Additional cost or delays caused by emergency conditions, not due to the fault of Contractor or anyone for whom Contractor is liable, as provided in Section 9.9; or

6. Any other provision of the Contract that expressly permits Contractor to obtain an adjustment to the Contract Time and/or Contract Amount, in accordance with such provisions.

Contractor’s request for a Change Order must be in writing, must describe the events authorizing the adjustment in the Contract Time and/or Contract Amount, and must provide a justification for the amounts requested. Contractor’s request for a Change Order must be submitted to Owner within the time period provided by the Contract, or if no time period is provided, then no later than 15 days after the commencement of

the event which gives rise to a claim for a Change Order. Contractor's failure to observe the notice requirements set forth in the Contract Documents which are intended to provide Owner with notice of a problem, potential problem or delay and an opportunity to investigate and take action to eliminate or ameliorate the problem, may constitute a failure to mitigate damages affecting the Contractor's right to an adjustment of the Contract Time and/or Contract Amount.

D. The Contractor may request a time extension for excused delays as provided in Article 7. In order to request an extension of the Contract Time, Contractor must comply with the requirements of Article 7 and submit a Time Extension Request with its payment request, as provided therein.

E. In evaluating a request for an adjustment of Contract Time in response to Contractor's request for a Change Order, in no event will an extension of time be granted for delays that merely extend the duration of non-critical activities, or which consume only float without delaying the Substantial or Final Completion date. Any extension of the Contract Time granted shall be net of any unexcused delays caused by or due to the fault of Contractor or anyone performing Work under the Contract. No delay days shall be given for time periods in which the delay complained of ran concurrently with excused delays or with other conditions which prevented performance. If more than one cause of delay is asserted for any given time period, only one extension of time will be permitted for such period.

F. Except as expressly provided in this Section 6.5, and subject to the provisions of the Contract Documents, Contractor shall not be entitled to an increase in the Contract Sum or the Contract Time and shall bear full responsibility for all risks affecting the Contractor's cost of performance. Contractor's right and entitlement to adjustments in Contract Time or the Contract Amount are subject to applicable provisions in the Contract Documents establishing Contractor's rights or the waiver of those rights, including, without limitation, those set forth in Article 7. Nothing in this Section 6.5 is intended to enlarge the Contractor's rights, or to provide the Contractor with additional rights not otherwise granted under the terms of the Contract Documents.

6.6 BASIS FOR COMPENSATION FOR CHANGES

A. Method of Compensation. The cost for extra work performed by Contractor or subcontractor will be determined by either (1) an agreed lump sum, (2) an agreed unit price or (3) an actual field cost, as agreed to by Owner. The allowable mark-up percentages for extra work are described in Section 6.6.E below. Extra work will be subject to the following limitations and proposals will be submitted accordingly.

B. Lump Sum. If the lump sum method is used, the Contractor shall submit appropriate supporting data as described herein. For general construction Work, the Contractor shall submit a breakdown consistent with Contractor's pay estimate breakdown, detailed with estimated quantities for both labor and materials. Unless otherwise provided in the Contract Documents, costs for the purposes of Article 6 shall be

limited to the following, and the amounts charged shall only be those costs incurred as a direct result of the change in the Work:

1. costs of direct labor, including social security, old age and unemployment insurance, and workers' compensation insurance paid by Contractor. (Labor, as used in this subsection, shall mean labor or services performed by the Contractor's Superintendent and employees under the Superintendent, and all subcontractors and suppliers.);

2. costs of materials, supplies and equipment, exclusive of all hand tools and such other machinery and equipment of the trade customarily owned by construction workers, including cost of transportation, whether incorporated or consumed;

3. rental costs of machinery and equipment, exclusive of all hand tools and such other machinery and equipment of the trade customarily owned by construction workers, whether rented from the Contractor or others;

4. costs of premiums for all bonds and insurance required by Owner to be provided and permit fees related to the Work; and

5. field office expense where the Contractor's field office must be maintained primarily on account of the change in the Work.

C. Unit Price: If the unit price method is used, the Contractor shall submit a proposal based on unit prices stated in the Bid Proposal or Contract Documents, or agreed upon by the Contractor and Owner subsequent to Contract Bids.

D. Actual Field Cost: If actual field costs are used, the Contractor shall keep and submit, in such form as the Architect/Engineer and Owner may prescribe, an itemized accounting together with appropriate supporting data, of actual costs incurred as described in Article 6 above.

E. Allowable Mark-ups.

1. Unless otherwise expressly provided by the Agreement, the Contractor and subcontractor will be allowed mark-up percentages for overhead and profit for changes in the Work as described below. If the Agreement specifies allowed mark-up percentages for the Contractor, but not for the subcontractors, then the mark-up percentages provided in Section 6.6.E.2 below shall only apply to subcontractors, and the provisions of the Agreement shall control the mark-ups allowed to Contractor. All other provisions of this Section E regarding mark-ups, other than the allowed percentages, will apply to both Contractors and subcontractors, unless the Agreement expressly provides other terms and conditions. The percentage mark-up allowed the Contractor and subcontractor shall cover and compensate Contractor for Contractor's profit and overhead,

which include home and field office expense, home and field office personnel, and all other expenses not embraced in the Method of Compensation defined in Article 6. No separate allowance for overhead shall be allowed. Where the Contractor's field office must be maintained primarily on account of the change in the Work, the cost to operate and maintain the same shall be included in the Method of Compensation before calculation of allowable markup. On changes involving deleted items, the Owner shall receive credit for overhead and profit on each deleted item.

2. For Work performed by Contractor's own employees, the maximum allowable mark-up percentage of the actual cost of the Work will be 20% on the first $10,000, 15% on the next $10,000 and 10% on the balance over $20,000; however, the minimum total mark-up shall be not less than $75. If subcontracted Work is involved, the Contractor will include with Contractor's cost proposal a detailed breakdown for the subcontractor in accordance with the above requirements for the Contractor. For Work performed by a subcontractor's own employees, the subcontractor will be allowed the same mark-up percentages as provided above for the Contractor. The Contractor will be allowed the following mark-up on subcontracted Work being performed by forces other than Contractor's own employees: a maximum of 10% on the first $30,000, 7 1/2% on the next $30,000 and 5% on the balance over $60,000; however, the minimum total mark-up shall be not less than $75. For subcontracted Work being performed by forces other than the subcontractor's own employees (e.g, subcontracted Work being performed by the employees of a subcontractor to the Contractor's subcontractor), such subcontractor whose employees are not performing the subcontracted Work will be allowed the same mark-up percentages as provided in the immediately preceding sentence for Contractor.

3. If the scope of Work is reduced by the Owner such that the Contractor will not incur costs for deleted Work, the Contractor will credit those costs to the Owner and retain only Contractor's overhead and profit incurred prior to notification of Owner's reduction of the scope of the Work. If extra Work is requested by the Owner, the Contractor will be allowed to add to Contractor's actual costs a percentage as noted above to cover Contractor's overhead and profit. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

4. Contractor shall submit for payment of the Change Order Work as part of Contractor's regular submission of an Application for Payment.

7. Article 7. TIME DELAY

7.1 CONTRACTOR EXCUSED DELAYS

The Contractor's right to proceed or perform the Work shall not be terminated for default, nor the Contractor charged with liquidated damages or other remedies for delay under the Contract Documents, due solely to delays that are excused under the provisions of this Section 7.1. In order to have a delay considered an excused delay under this Article 7, Contractor must provide all notices regarding the delay required by this Article 7 and by any other provisions of the Contract Documents in a timely manner, including the submission of Time Extension Request forms with its Application for Payment as required under the terms of the Contract Documents. Any provision of the Contract Documents to the contrary notwithstanding, if Contractor fails to achieve Substantial Completion by the Substantial Completion Date set by the Contract, delays in the completion of the Work occurring after the Substantial Completion Date shall in no event be considered excused delays under this Article 7 and Contractor shall not be entitled to extensions of the Contract Time for any such delays.

A. Contractor Force Majeure.

1. A delay in the completion of the Work that arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor or any subcontractor, and which could not have been prevented through the exercise of reasonable care, including but not restricted to, acts of God, acts of the public enemy, acts of terrorism, acts of federal, state or local government in its sovereign capacity, fires, floods, epidemics, quarantines, restrictions, strikes, freight embargoes, unusually severe weather (excluding delays caused by above-average but not excessive rainfall) as described in B below, or delays of Owner as described in Section C below, shall be considered an excused delay provided that all notices are given as required by the Contract Documents. The failure of the Contractor or any subcontractor to order supplies, materials or equipment when shortages are known or expected, in time to perform the Work in accordance with the Contract Documents, is not an excused delay.

2. Within 5 days from the date that Contractor first becomes aware of a delay or the likelihood of delay from a force majeure event, Contractor must notify Owner, the Contracting Officer and Architect/Engineer in writing of the cause of delay and, if possible, Contractor's estimate of duration, to enable Owner to investigate and document the cause and duration of the delay. The Contractor shall submit with each Application for Payment a "Time Extension Request" form (provided by the Owner) documenting any requests for Contract time extension. If Contractor fails to provide the notice required by this subsection, and Owner is unable to adequately verify the cause or duration of the delay, or the impact of the force majeure event on the construction schedule, the delay will not be considered excused.

B. Delay for Weather Conditions.

1. The Contract Time set out in the Contract Documents is deemed to include normal weather conditions at the Project site. The Contractor may be entitled to an excused delay due to unusual and severe weather conditions if the

weather conditions (i) are excessive and severe for the period of time, (ii) could not have been reasonably anticipated, and (iii) had an adverse effect on the scheduled construction and Contractor reasonably performed other Work on the Project in place of the scheduled work and still incurred a delay in the construction schedule. In order to be entitled to a delay on this basis, Contractor must provide Owner and Architect/Engineer with notice of the delay (as provided herein) and (ii) data substantiating the claim, including weather information issued by the National Oceanic and Atmospheric Administration ("NOAA") for the city in which the Project site is located (or if such information is not available for the Project site location, then for the closest city) which shows that the weather conditions were in excess of those that are normal for the site, and job logs that indicate impacted work and estimated effect of the weather. Unless the parties agree to a different method of determining weather conditions, weather information produced by NOAA will be used to determine normal and abnormal weather conditions at the Project site.

2. In order to be entitled to a Contract Time extension due to weather conditions, Contractor must provide Owner and Architect/Engineer with notice of the adverse condition and its impact on the construction schedule as soon as Contractor becomes aware that a delay will or is likely to occur, to enable Owner to investigate and document the conditions, but in no event later than 5 days after the date of the commencement of the weather condition giving rise to the claim for the delay. The Contractor shall submit with each Application for Payment a "Time Extension Request" form (provided by the Owner) documenting any requests for Contract Time extension. If Contractor fails to provide the notice required by this subsection, and Owner is unable to adequately verify the cause or duration of the delay, or the impact of the weather condition on the construction schedule, the delay will not be considered excused.

C. Delay Caused by Owner.

1. If the Contractor is delayed at any time in the construction of the Work through no fault of Contractor or any subcontractor, by an act of the Owner or Architect/Engineer (other than an excused delay), or of a separate contractor employed by the Owner (other than an excused delay), then the Contractor shall promptly notify the Owner and Architect/Engineer, in writing, of such delay, to enable Owner and/or Architect/Engineer to take action to reduce or eliminate the delay. Contractor must notify Owner and Architect/Engineer in writing as soon as possible after it becomes aware of the condition that it believes has caused or will be likely to cause a delay, but in no event later than 5 days after it becomes aware of such condition. Contractor's failure to do so will constitute a failure to mitigate damages. Owner shall not be liable for damages or delays for the period before notice of the delay is given to Owner.

2. The Contractor shall submit with each Application for Payment a "Time Extension Request" form (provided by the Owner) documenting any requests for Contract time extension. Owner's proper exercise of any of its rights or remedies under the Contract Documents, including, but not limited to, remedies of suspension of the Work or requirement for correction or re-execution of any defective Work, shall not under any circumstances be construed as constituting a delay to Contractor's performance of the Work.

7.2 OWNER EXCUSED DELAYS

A. Owner shall not be deemed in default in its obligations under this Contract, nor shall Contractor be entitled to remedies, rights or damages as a result of a delay by Owner in the performance of its obligations under the Contract as a result of one or more of the following: unforeseeable causes beyond the control and without the fault or negligence of the Owner, its officers or employees, including but not restricted to, acts of God, acts of the public enemy, acts of terrorism, acts of federal, state or local government acting in its sovereign capacity, fires, floods, epidemics, quarantines, restrictions, strikes, freight embargoes, unusually severe weather, or acts of Architect/Engineer or its consultants or their respective employees or separate Contractors, at any time arising from unforeseeable causes beyond the control and without the fault or negligence of such parties, or delays caused by Contractor or any subcontractor. A delay described in this Section 7.2.A shall constitute an event of force majeure applicable to Owner.

B. Owner shall use reasonable efforts to notify Contractor promptly after it becomes aware of the occurrence of an event giving rise to a delay. If Owner's performance is delayed through an event constituting an excused delay, Owner shall be entitled to an equitable extension of time in which to perform its obligations.

7.3 CONTRACTOR REMEDIES FOR DELAY

A. In the event of an excused delay under Section 7.1 A, B or C. Owner will provide Contractor with such reasonable extension of the Contract Time as may be equitable, provided that all conditions for obtaining an extension are met, unless Owner determines to require acceleration of the Work, as provided in Section 7.3.C. The time extension will be set out in a Change Order as provided in Article 6. Any such extension of the Contract Time shall be net of any unexcused delays caused by or due to the fault of Contractor or anyone performing Work under the Contract, (including the financial condition of the Contractor or any subcontractor).

B. Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time (or payment for acceleration of the Work as provided in Section 7.3.C) shall be Contractor's sole remedy for any delay unless the same shall have been caused by acts of the Owner which are a direct and unavoidable cause of damage to Contractor, and then only to the extent that such

acts continue after Contractor's written notice to Owner of such delay as provided in Section 7.1 C.1 and Owner is not prevented from correcting the delay due to an event of force majeure.

C. Any provision in the Contract Documents to the contrary notwithstanding, in the event Contractor would be entitled to an extension of the Contract Time under the provisions of the Contract Documents, Owner shall have the right, instead of awarding additional time, to require Contractor to accelerate the Work, as provided in Section 13.2, and Owner shall pay Contractor for the reasonable additional costs incurred by Contractor that are attributable to such acceleration, as provided by Change Order.

7.4 OWNER REMEDIES FOR DELAY

A. Liquidated Damages: Time is of the essence in this Contract, it being important that this Project be quickly and timely completed. The Contractor and Owner acknowledge the difficulty of ascertaining actual damages for delay in performance, and therefore the Contractor and Owner understand and agree that for each and every day the Work or any portion thereof shall remain substantially incomplete after the Substantial Completion Date set by the Contract, Owner shall be entitled to liquidated damages as described in the Agreement. Liquidated damages may be withheld by Owner from amounts due to Contractor, or if not so withheld in full or in part, such amounts owing will be payable to Owner within 30 days after demand by Owner.

B. Acceleration of the Work: In addition to any other rights and remedies available to Owner under the Contract Documents or available at law or equity, in the event the Work has been delayed due to unexcused delay by Contractor, or otherwise due to the fault of Contractor, its subcontractors, or anyone providing Work under this Contract, Owner may direct that the Work be accelerated by means of overtime, additional crews, additional shifts and/or resequencing of the Work in order to bring it back on schedule and/or to maintain it there as described in Section 13.2

8. Article 8. PAYMENTS AND COMPLETION

8.1 PROGRESS PAYMENTS

A. Promptly following execution of the Contract by Owner and the Contractor, the Contractor shall submit a Schedule of Values to the Architect/Engineer for approval, consisting of a breakdown of the Contract Amount, itemizing material and labor for the various classifications of the Work and the costs allocated thereto, which shall be aligned with the subcontractor and supplier contract values reported on the HUB Utilization Report ("HUR"), prepared in such form and supported by such data to substantiate its accuracy, as the Owner may require. The breakdown will be used as a basis for reviewing the Contractor's Application for Payment. The descriptions of Work classifications and the level of detail of Work activities reported on the Schedule of Values shall align with such terminology and level of detail in the Construction Schedule to allow review of both documents in consideration of progress payments.

The Contractor's Application for Payment must be submitted on the AISD Application for Payment Form provided by Owner with two (2) signed original counterparts. A Time Extension Request form shall be submitted with each Application for Payment whether or not an extension of time is requested. If an extension of time is requested, Contractor must state in the Time Extension Request the number of days requested and the cause for delay. In addition, Contractor shall submit with each Application for Payment a HUB Utilization Report ("HUR") confirming payment amounts to HUB firms.

B. Upon submission by the Contractor of its Application for Payment accompanied by written invoices, and such other documentation as Owner or Architect/Engineer may require to substantiate the payment requested and Work performed, as well as any other documentation required to be submitted by the Owner (included by not limited to lien waivers and releases), Owner shall make payments not less frequently than monthly as the Work progresses, based upon percentage of the completion of the Work as determined from the Application for Payment submitted by the Contractor, approved by the Architect/Engineer and approved by a Contracting Officer. The Contractor shall not submit the first Application for Payment sooner than thirty days after commencement of the Work. No payment shall be made to the Contractor until all post-proposal or post-bid information, as applicable, has been submitted, approved and performance of Work begun. Payments will be made in accordance with the following provisions:

1. for Contract amounts of $400,000 or more, payments will be made to the Contractor by the Owner within fifteen days from the date the Application for Payment is approved by the Architect/Engineer and Contracting Officer (if the Estimate is undisputed and in proper order). Payment will be made in the amount of ninety-five percent (95%) of the value of all labor and materials fixed in proper position and all materials and equipment properly stored on the premises or other locations for which the Owner has expressed written approval.

2. for Contract amounts less than $400,000, payments will be made to the Contractor by the Owner within fifteen days from the date the Application for Payment is approved by the Architect/Engineer and Contracting Officer (if the Estimate is undisputed and in proper order). Payment will be made in the amount of ninety percent (90%) of the value of all labor and materials fixed in proper position and all materials and equipment properly stored on the premises or other locations for which the Owner has expressly approved in writing, subject to the following provisions: (a) 10% of each Estimate shall be retained until the Work is 50% complete based on the percentage that the value of all labor and materials fixed in proper position bears to the total value of the Work under the Contract; (b) after the Work is over 50% complete, Owner may, at its sole discretion, reduce the amount of retainage to 5%, provided that the Contractor is not in default, the Contract is bonded, the Work is on current schedule and there is no controversy regarding the acceptability of the

workmanship and materials or products, and provided further that the Architect/Engineer determines that the Work is in conformance with the Contract Documents. If any of these conditions do not continue, Owner may, at its sole discretion, reinstate the full 10% retainage until such time as the above conditions are met, in addition to any other rights and remedies it may have under the Contract.

C. When the Project is Substantially Complete, the retained amount may, at the Owner's discretion, be reduced to only that amount necessary to assure full performance of the Contract.

D. Owner shall not be bound to make Partial Payments if Performance and Payment Bonds are not required under the Contract. Owner shall have the right to make payment only on Final Completion of the Work.

E. All amounts withheld by Owner as retainage and which are payable to the Contractor after Owner has deducted out liquidated damages and/or any other amounts to which Owner is entitled under the terms of the Contract, are payable to the Contractor with the final payment.

F. All material and work covered by Partial Payments made shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which Payments shall have been made, or the restoration of any damaged work or as a waiver of the right of Owner to require strict fulfillment of all of the terms of the Contract. Payments to the Contractor shall not be construed to release the Contractor or its sureties from any obligation under this Contract.

G. Upon receipt of each payment from Owner, Contractor shall, in accordance with Section 2251.022 of the Texas Government Code, make appropriate payments due to its subcontractors not later than the 10th day after the date Contractor receives each such payment from Owner, and Contractor shall require each subcontractor receiving payment from Contractor to make appropriate payments due to the subcontractor's respective subcontractors and suppliers not later than the 10th day after the date such subcontractor receives each such payment from Contractor in accordance with Section 2251.023 of the Texas Government Code. Pursuant to Section 2251.028 of the Texas Government Code, Contractor and each subcontractor shall pay interest as a payment is overdue. Interest shall be paid as set forth in Section 2251.025 of the Texas Government Code. If at any time Contractor or any subcontractor has questions concerning the process for payments by Owner under the Contract, such questions can be directed to the AISD Executive Director of Construction Management (or his/her designee) at 512-414-1715.

8.2 PAYMENTS WITHHELD OR NULLIFIED

A. The Architect/Engineer or Owner may withhold or nullify any progress payment or final payment in whole or in part, to the extent necessary in the Architect/Engineer's

or Owner's reasonable opinion to protect the Owner from loss for which the Contractor is responsible, including loss because of:

1. defective Work not remedied;

2. third party claims threatened, filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

3. failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;

4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;

5. damage to the property of Owner, a third party, or another 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. failure to carry out the Work in accordance with the Contract Documents; or

8. failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including updated versions of Contractor's Construction Schedule, current Time Extension Request, and HUB Utilization Report ("HUR") confirming payment amounts to HUB firms.

B. If the above reasons for withholding payment are removed, and any defaults cured in a timely manner and prior to Owner exercising other rights or remedies, and no other condition of default or reason for withholding, offsetting or nullifying payment exists, then payment will be made for amounts previously withheld. To the greatest extent permitted by applicable law, Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to, or which it withholds in good faith in reliance on, any provision of the Contract Documents, and no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld. In determining whether amounts claimed for payment by Contractor, or any subcontractor, are in dispute, Owner shall have the right to consider amounts withheld under this provision, due to Contractor fault or in an attempt to protect the public from loss or overpayment of public funds, to be amounts in dispute. Nothing in this Section or in the Contract Documents shall limit or reduce any right of the Owner to offset amounts owed to Contractor by amounts Contractor owes to Owner, or to exercise any other rights or remedies provided by law or equity.

C. In accordance with Section 2251.021 of the Texas Government Code, undisputed payments not paid by Owner to Contractor are overdue on the 31st day after the later of (1) the date Owner receives the goods under the Contract Documents; (2) the date the performance of the service under the Contract Documents is completed; or (3) the date the Owner receives an invoice for the goods or services. Provided, however, if the Board of Trustees of Owner meets only once a month, such undisputed payments not paid by Owner to Contractor are overdue on the 46th day after the later event described in (1) – (3) of the preceding sentence. A payment begins to accrue interest on the date the payment becomes overdue at the rate of interest set forth in Section 2251.025 of the Texas Government Code.

8.3 SUBSTANTIAL COMPLETION

A. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect/Engineer for review and approval a comprehensive list of items to be completed or corrected and a schedule for completion ("Contractor's List") which is acceptable to the Owner. The Contractor shall proceed promptly to complete and correct items on the Contractor's List, including any items added to the Contractor's List by the Architect/Engineer during the Architect/Engineer's review or the period thereafter prior to final acceptance of the Work (the Contractor's List and any items added by Architect/Engineer prior to final acceptance of the Work are collectively called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's List, the Architect/Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If, upon such inspection, the Architect/Engineer determines that the Work or a designated portion thereof is not substantially complete, Contractor shall be charged with the cost to Owner of any and all additional inspections deemed necessary by the Architect/Engineer or Owner to determine that the Work or a designated portion thereof is substantially complete. When the Work or designated portion thereof is determined by Owner to be substantially complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall (i) establish the date of Substantial Completion, (ii) establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, (iii) fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate, and (iv) specify each item on such punch list for which the warranties required by the Contract Documents shall commence on the date Owner and Architect/Engineer determine that Contractor has finally completed such punch list item in full and strict conformity to the Contract Documents. If no time period for completion of the punch list is fixed in such Certificate of Substantial Completion, the Work, including all items on the punch list, must be completed within sixty (60) days after Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless as otherwise provided in Section 3.11.A hereof. The Certificate of Substantial Completion shall be submitted

to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

B. Upon Substantial Completion, Section 5 of the "Certification of Compliance" form [TEA §61.101(d)] must be executed by the Contractor and returned to the Architect/Engineer, who will forward same to Owner.

8.4 FINAL ACCEPTANCE AND PAYMENT

A. The Contractor shall notify the Architect/Engineer when the Work, including the punch list, is complete, and the Architect/Engineer will arrange a final inspection with the Contractor and the Owner. If, upon inspection, the Architect/Engineer or Owner determines that the Work, including the punch list, is not complete, Contractor shall be charged with the cost to Owner of any and all additional inspections deemed necessary by the Architect/Engineer or Owner to determine that the Work, including the punch list, is complete. If Contractor fails to complete the Work, including the punch list, within the time period for completion of the punch list fixed by the Architect/Engineer in the Certificate of Substantial Completion or within sixty (60) days after Substantial Completion, whichever is later, Owner may charge Contractor with the reasonable cost to Owner of additional Architect/Engineer services (including Project site visits) deemed necessary pending Contractor's completion of the Work, unless such services relate only to new Work authorized by Change Order following the date of Substantial Completion. Upon completion of the Work, including the punch list, in full and strict conformity to the Contract Documents, final acceptance of the Work by a Contracting Officer, and Contractor's satisfaction of its obligations for final payment, Owner shall pay the unpaid balance of the Contract Amount less any sum that may be necessary to settle any claim Owner may have against the Contractor or that may be necessary to settle any outstanding obligations of the Contractor or of its subcontractors arising out of or incidental to the performance of the Contract or which is otherwise withheld pursuant to the terms of the Contract Documents. Neither the Certificate of Substantial Completion, nor final acceptance payment, nor any other provisions in the Contract Documents, shall relieve the Contractor of its obligations under the Contract Documents or under any warranty.

B. Prior to final payment and as a condition thereto, Contractor shall furnish Owner with all warranties, instructions, lien releases, documents and other submittals required by the Contract Documents, or otherwise required by Architect/Engineer or Owner, a notarized Certificate of Satisfaction of Bills, stating that all bills and claims for labor, materials, equipment and otherwise, connected with the Work for which the Owner or the Owner's property might be responsible or encumbered, shall have been satisfied, or will be fully satisfied out of the final payment within 30 days of Contractor's receipt of such payment. Contractor shall also furnish a release of all claims against Owner, in form satisfactory to Owner, whether of Contractor, subcontractors or of others, arising under and by virtue of the Contract. In addition, the Contractor shall deliver to Owner all As-Built Drawings and three Owner's Manuals containing all Contractor and subcontractor names, addresses and phone numbers; all warranties and plumbing,

electrical, and communication equipment/fixture product data; all special equipment product data; and all parts lists and operating, maintenance, and service manuals. In the event there are any (1) subcontractors, suppliers or other third-party claims against Contractor which will not be satisfied by Contractor after final payment is made, or (2) any claims which are not currently subject to dispute resolution procedures set out in the Contract but which Contractor does not deem to have been settled, the Contractor shall notify Owner in writing no later than the time of final Application for Payment. Owner shall have the rights with regard to such claims provided for in the Contract Documents. If Contractor does not expressly notify Owner of any and all specific claims against Owner which are not already pending and subject to negotiation or other claim resolution procedure as provided by this Contract, and which Contractor deems unsettled, then Contractor waives all such claims by Contractor's acceptance of final payment.

C. Owner shall not be obligated to make any progress payment or the final payment if the Surety objects to such payment or refuses to consent to such payment, or withdraws its consent to such payment. If requested by the Surety, or if Owner determines that it is advisable to do so, Owner shall have the right to make payments jointly to Contractor and Surety, or to Contractor and any subcontractor, supplier, or other person claiming payment for labor or materials. In the event of a dispute between Contractor and/or the Surety or persons performing labor or supplying materials, or to a third party claimant, as to whom payment of amounts held by Owner should be made, Owner shall have the right to interplead the funds held by it in the registry of a court of competent jurisdiction, and to withhold from the amounts held by Owner all attorney's fees and other costs incurred by Owner in connection with such dispute.

D. The Contractor shall arrange for a reasonable amount of instruction for the Owner's employees and representatives to insure proper operation of all equipment furnished. The Contractor and, in particular, the Fire Protection, Plumbing, Heating, Ventilating and Air Conditioning, Building Automation and Automatic Temperature Control Systems, Electrical, and Electronic Security subcontractors shall not assume that the Owner's employees possess special expertise or have had any previous experience whatsoever in the operation and maintenance of sophisticated mechanical, electrical and electronic equipment. It is the intent of this Subparagraph to require the Contractor and the applicable subcontractors to furnish as much detailed instruction as is necessary to educate reasonably intelligent personnel in the proper use of equipment. The Manufacturer's representative shall provide this instruction for each item of equipment. In some cases, this may require several visits to the Project by those responsible for the instruction. Further, the Contractor shall establish an operating and maintenance training program for the Project for the Owner's employees as herein more particularly provided in the Contract Documents. Such training program shall include instruction courses with respect to all of the school facilities and building systems comprising the Project.

E. Acceptance of final payment by the Contractor shall constitute a waiver of claims by the Contractor against Owner except those previously made in writing and identified by Contractor as unsettled at the time of final Application for Payment. Final payment is considered to have taken place when Contractor or any of its representatives negotiates Owner's final payment check, whether labeled final or not, for cash, or deposits the check in any financial institution. The provisions of this Article shall not be altered, reduced or diminished by any notation, statement or reservation written on the check by Contractor in connection with its endorsement. Such notification, statement, or reservation shall be deemed an invalid attempt by Contractor to amend the provisions of this Contract without the Owner's written consent.

9. Article 9. PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY PRECAUTIONS AND PROGRAMS

A. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. It shall be the duty and responsibility of the Contractor and all of its subcontractors to be familiar with and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 *et seq*., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all applicable provisions of OSHA. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property to protect them from damage, injury or loss and shall erect and maintain all necessary safeguards for such safety and protection.

B. Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them or their facilities, and shall cooperate with them in the protection, removal, relocation and replacement of their facilities and/or utilities.

C. Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in connection with laws and regulations.

D. Contractor shall be responsible for initiating and holding regular safety meetings at least once per week.

E. On or before the 10th day of each calendar month, Contractor shall submit to Owner a monthly report in a form provided by Owner stating the total man-hours worked at the Project site by Contractor and all subcontractors each day during the immediately preceding calendar month. For purposes of completing this monthly man-hour report, Contractor's daily observation at the Project site of the number of workers and hours worked is sufficient.

F. With respect to each injury on the Project site, Contractor shall furnish to Owner a copy of Contractor's first report of injury report within one (1) business day after Contractor's filing of such report with its insurance company, but in no event later than the sixth (6^{th}) day after the date of such injury. In addition, Contractor shall notify the AISD/TASB Safety Department by telephone at 512-791-7662 immediately upon the occurrence of an injury at the Project site.

9.2 EMERGENCY FACILITIES

A. Contractor shall maintain at all times free access to fire lanes and emergency and utility control facilities such as fire hydrants, fire alarm boxes, utility valves, manholes, junction boxes, etc.

9.3 SAFETY OF PERSONS AND PROPERTY

A. The Contractor shall take all reasonable precautions for safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

1. Students, faculty, employees and visitors at any school where construction or renovation activities are being conducted and neighboring property owners;

2. Persons performing Work on the Project site and other persons who may be affected thereby;

3. The Work and all materials and equipment to be incorporated therein, whether in storage or off site, under care, custody or control of Contractor or any of its subcontractors; and

4. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, fences, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.

B. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, policies of the Owner's Board of Trustees and lawful orders of any public authority having jurisdiction for safety of persons or property or to protect them from damage, injury or loss.

C. For all excavation of trenches (as that term is defined in the regulations under the United States Occupational Safety and Health Act, 29 CFR Section 1926.650), as shown in the Solicitation Documents or Contract Documents, Contractor shall comply in all respects with the detailed plans and specifications set out in applicable OSHA regulations, and all other applicable laws. Specific Trenching Requirements, of the regulations of the Occupational Safety and Health Administration. Contractor shall assume full responsibility for compliance with the Occupational Safety and Health Administration regulations pertaining to trench safety systems. Contractor will be responsible for completion of additional detailed plans and specifications for trench

safety to the extent that such detailed plans and specifications are necessary to supplement the provisions of these General Conditions.

D. Neither explosives nor blasting shall be permitted on the Project, except with the approval of the Owner upon recommendation of the Architect/Engineer.

E. Contractor shall designate in writing a qualified and experienced safety representative (the "Safety Representative") at the Project site whose duties and responsibilities shall include safety training; identifying and mitigating hazardous conditions and unsafe work practices; and developing, maintaining and supervising the implementation of safe work practices and safety programs as deemed necessary and appropriate for the Project. The Safety Representative shall exercise due diligence in the execution of all Project related safety duties. The Safety Representative shall report directly to an officer of the Contractor, not to Contractor's on site Project Manager or Superintendent. Upon request of Owner, Contractor shall provide certifications or other acceptable documentation of the Safety Representative's qualifications. The following requirements will be effective as of March 1, 2016:

1. The Safety Representative shall present to Owner certification of completion for both the Safety Representative and Superintendent of the OSHA 30-hour Construction Industry Training Outreach Program described at: http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html

2. The Safety Representative shall verify that all construction workers (defined as persons covered by a prevailing wage determination) on the Project site, whether employed by the Contractor or subcontractors, have completed the OSHA 10-hour Construction Industry Training Outreach Program described at: http://www.osha.gov/dte/outreach/construction_generalindustry/construction.html. The Safety Representative must receive a certificate of training completion before allowing a worker on site and shall submit a copy of such certificate to the Owner in the form of a submittal.

3. The Safety Representative shall ensure that workers, including those designated competent persons, have completed all applicable OSHA specific or other training needed to perform their job assignments. Training topics applicable to the scope of the current Project may include, but are not limited to, scaffolds, fall protection, cranes, excavations, electrical safety, tools, concrete and masonry construction, steel erection, operation of motor vehicles and mechanized equipment.

4. The Safety Representative shall ensure that all required OSHA and Workers' Compensation notices to workers are posted in English and Spanish at one or more conspicuous locations on the work site.

9.4 SCHOOL SAFETY REQUIREMENTS

A. When Work is to be performed at a Project site in which school activities are being conducted, Contractor shall take special care, and shall require its subcontractors, and all persons performing Work at the site to take special care, to protect the safety and welfare of the students, teachers, employees, and visitors at the school, and to perform the Work with as little disruption to the learning environment and school activities as possible.

B. When Work is to be performed at a Project site where school activities are being conducted, it is expressly understood and agreed that Contractor's and any subcontractor's employees and other persons performing Work at the Project site shall not engage in any inappropriate interaction of any nature whatsoever with students, teachers, employees and visitors at the school, including talking, touching, staring, or in any way contributing to a hostile or offensive environment. It is further expressly understood and agreed that there is to be no fraternization between Contractor's and any subcontractor's employees, and other persons performing Work at the site, and students, teachers, employees and visitors at the school. There shall be zero tolerance for violations of these provisions.

C. The possession or use of tobacco products, alcoholic beverages, illegal drugs, and firearms or weapons on Owner's property is prohibited at all times, twenty-four hours a day. There shall be zero tolerance for violations of this provision.

D. Contractor, subcontractors, and all other persons performing Work in connection with the Project shall strictly observe (i) all school bus safety laws and other written requirements, (ii) speed limits in the vicinity of the Project site, including, without limitation, school speed limits, and (iii) any posted speed limits on the Project site established by Owner. Contractor shall require strict compliance with this provision.

E. Contractor, subcontractors and all other persons performing Work at the Project site shall use only such access to the site and facilities as are designated by Owner, and shall comply with all other rules and requirements established by Owner for use or occupancy of the Project site.

F. Owner shall have the right to require the immediate removal from the Project site of any person performing Work who violates the provisions of this Section 9.4, and to prohibit such person from being allowed to perform Work at the Project site in the future.

G. A Contractor who fails to enforce compliance with the provisions of this Section 9.4, or who suffers or allows an employee, subcontractor or other person performing Work at the Project site to violate any of these provisions, shall be in breach of this Contract.

H. Contractor shall prominently post at the job site these requirements and any other rules or regulations required by law or established by Owner for the safety and protection of students, teachers, school employees and visitors or for the performance of Work at the Project site. Such rules or requirements shall constitute a part of the requirements under the Contract Documents for the performance of the Work, and the Contractor's failure to observe or enforce these requirements shall constitute a default under the Contract.

9.5 LOCATION AND PROTECTION OF UTILITIES

A. Notwithstanding any other provisions of the Contract, the Contractor shall be solely responsible for location and protection of any and all public lines and utility customer service lines in the Work area. Locations of utilities shown on plans are approximate only and do not necessarily indicate all utilities that may be encountered during construction or their exact location. Failure of a utility to be indicated or an incorrect location on information provided to Contractor by Owner or Architect/Engineer does not relieve the Contractor of responsibility to determine the locations of all lines and utilities and protect utility lines as provided herein. The Contractor shall notify "One Call" (1-800-344-8377), and exercise due care to locate and to mark, uncover or otherwise protect all such lines within the limits of construction and any of the Contractor's work or storage areas. Upon request, the Owner shall provide such information as known about the location and grade of water, sewer, gas, telephone, electric and other utilities in the work area, but such information shall not relieve the Contractor's obligation hereunder, which shall be primary and not delegable.

9.6 ASBESTOS

A. Contractor will not commence Work until Contractor has received from Owner information identifying the location(s) of asbestos containing materials within the areas of the Work at the Project site.

B. In the event the Contractor encounters on the site material reasonably believed to be asbestos which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner and Architect/Engineer in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos and has not been rendered harmless. The Work in the affected area shall be resumed, by written agreement of the Owner and Contractor, in the absence of asbestos or when it has been rendered harmless.

C. The Contractor shall comply with all applicable provisions and requirements of federal, state and local laws and regulations on removal and/or encapsulation of asbestos in public schools, including 15 USCA sections 2641 *et seq*.; 40 CFR part 763; TEX. REV. CIV. STAT. art. 4477-3a; and 25 TEX. ADMIN. CODE § 295.31 *et seq*. as the same may be modified or amended from time to time or superseded by other laws.

D. Remediation or removal of asbestos-containing materials shall only be conducted in accordance with all applicable laws, and performed by a licensed or certified asbestos abatement contractor. Such person must maintain insurance, including environmental liability insurance, in accordance with the requirements set forth herein.

E. Contractor shall not knowingly install asbestos or asbestos containing materials into the Work.

9.7 HAZARDOUS SUBSTANCES

A. Prior to commencement of the Work, Owner will provide all reports in its possession or control relating to the environmental condition of the Project site and Contractor shall be responsible for determining whether any environmental condition impacts the Contractor's Work, and for promptly notifying Owner and Architect/Engineer of any such impact. Contractor shall notify Owner and Architect/Engineer in writing as soon as possible, but in no event later than 5 days after Contractor becomes aware that hazardous materials, or suspected hazardous materials are located on the Project site or in connection with the Work and that such materials may impact the Contractor's Work. Contractor shall not disturb asbestos-containing materials or any environmental condition, unless such Work is within the scope of services to be performed by Contractor, and is performed in accordance with applicable law by duly licensed or certified professionals.

B. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect/Engineer in writing. In the event the Contractor encounters on the site material that Contractor knows, or reasonably believes to be a hazardous substance which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect/Engineer in writing.

C. The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume. If Work is delayed by hazardous materials that were not known to be present at the Project site, the Contract Time and/or Contract Amount shall be equitably adjusted by Change Order in accordance with the provisions of the Contract, provided the hazardous material or substance or clean-up requirements were not caused by Contractor or any subcontractor or supplier, or person for whom Contractor is liable and notice of the conditions was timely given to Owner as provided herein.

D. Contractor agrees that it shall not transport to, use, generate, dispose of or install at the Project site any hazardous substance (as defined herein), except in accordance with applicable Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws. In the event the Contractor engages in any of the activities prohibited in this Section, to the fullest extent permitted by law, the Contractor hereby indemnifies, defends and holds harmless Owner and all of its officers, trustees, directors, agents and employees from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Section. These obligations are in addition to any other indemnification obligations provided by the Contract Documents and shall survive termination of the Contract or completion of Contractor's obligations under the Contract as to events occurring prior to such termination or completion.

E. For purposes of this Contract, the term "hazardous substance" or "hazardous materials" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixtures, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, by-law or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including without limitation The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), The Marine Protection Research and Sanctuaries Act ("MPRSA"), the Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes, including all state and local counterparts of such laws (all such laws, rules and regulations, as amended from time to time, being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Section 9.7 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws, for all services rendered after the effective date of any such amendments.

9.8 CONTRACTOR'S SAFETY PROGRAM MANUAL

A. Prior to commencement of any Work on the Project site, Contractor shall deliver to Owner for review a copy of Contractor's written safety program manual ("Safety Program Manual"). The Safety Program Manual must describe in detail Contractor's entire safety program and the specific responsibilities of those involved, and shall include, without limitation, table of contents, safety rules/policies/procedures, references to all OSHA requirements and other applicable Federal, State and local safety laws, rules and regulations, Hazard Communication Program (but do not include Material Safety Data Sheets), method of providing safety training for all of Contractor's jobsite employees, subcontractor safety and requirements/enforcement.

Prior to the commencement of any Work on the Project site, the Safety Program Manual must have been received and reviewed by Owner.

9.9 CONTRACTOR'S SAFETY PLAN

A. Prior to commencement of any Work on the Project site, Contractor shall deliver to Owner for review a written safety plan for the Project ("Safety Plan") that will provide a safe environment for all workers, and which complies with, but is not limited to, the following guidelines. The Contractor is responsible for reviewing the specific requirements of the Contract, analyzing the planned methods of operation, and incorporating any additional specific or unique safety requirements in the written plan. The Contractor is solely responsible for ensuring that all applicable safety regulations are addressed as part of the Safety Plan. Prior to the commencement of any Work on the Project site (i) the Safety Plan must have been received and reviewed by Owner, and (ii) the Safety Plan must be in place and fully operational.

B. General Provisions -- The Safety Plan shall include, but not be limited to, the following elements:

1. evacuation plans as may be required;

2. emergency response procedures;

3. identification of the Contractor's safety representative and all other designated individuals responsible for administering the Safety Plan;

4. safety provisions developed by the Contractor for its normal operation of construction activities or any specific provisions being employed for special construction activities; and

5. all other provisions necessary to properly protect all workers, the school population, and the Owner's employees and representatives carrying out their normal activities and duties at the Project site.

9.10 EMERGENCIES

A. In an emergency affecting safety of persons or property, where Contractor does not have time to contact the Owner's Project Manager or Architect/Engineer, or where such persons cannot be reached, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation and/or extension of time claimed by the Contractor on account of its response to an emergency that is not due to Contractor fault or negligence of Contractor or persons performing the Work on Contractor's behalf shall be determined by Architect/Engineer and Owner as provided under the provisions of this Contract regarding Change Orders.

9.11 OFFSITE WORK

A. The Contractor and its subcontractors shall utilize appropriate safety measures in performing such offsite work in public ways and sidewalks including, without limitation, obtaining and establishing adequate traffic barriers and installing appropriate signage, having sufficient trained personnel to direct vehicular and pedestrian traffic and hiring police as required to properly and safely conduct such Work. Such measures shall be designed so as to allow the Contractor and its subcontractors to properly carry out the required work in public ways and sidewalks while minimizing safety problems and disruption to the public using such public ways and sidewalks, all in compliance with applicable laws and regulations.

Article 10. INSURANCE AND BONDS

10.1 REQUIRED INSURANCE COVERAGE

A. Contractor shall provide insurance coverages and comply with the terms described in Subsections 10.1 through 10.6 (and 10.7 and/or 10.8 if applicable) for all Work required by the Contract through the end of the warranty period (with the exception of Builders' Risk). Contractor shall also maintain any extended coverage required herein for insurance coverage authorized to be provided on a claims made basis.

B. Contractor shall require each subcontractor to provide the insurance coverage described in Subsection 10.4 in accordance with the provisions of Subsections 10.1 and 10.2, and to provide the certificate of coverage for worker's compensation insurance described in Subsection 10.4. Subcontractors performing environmental remediation or abatement or transportation of hazardous materials must provide the insurance required in Subsections 10.3 through 10.7 (except that Builders' Risk shall not be required if not available for the services performed by such subcontractor) and must comply with Subsections 10.1 and 10.2. Subcontractors performing professional services as described in Subsection 10.8 must comply with the insurance coverage required by such subsection and with Subsections 10.1 and 10.2. All required insurance must be provided through the end of the warranty period (with the exception of Builders' Risk). Subcontractors must maintain such other insurance as Contractor may require. If Subcontractor is insured under a policy on a claims made basis, Contractor shall require such coverage to remain in effect for at least three (3) years.

C. The required insurance must be provided prior to the commencement of services or Work under the Contract, and must be provided at all times throughout the term of the Contract, as herein provided.

D. Contractor shall require each subcontractor to maintain commercially reasonable insurance coverage in connection with the Project as well as the insurance specifically required herein.

E. The Contractor's and any subcontractor's failure to comply with any of these provisions constitutes a breach of contract by the Contractor which entitles Owner to pursue the rights and remedies set forth in the Contract Documents if the Contractor does not remedy the breach within ten days after receipt of notice of breach from Owner.

10.2 GENERAL REQUIREMENTS

A. Contractor shall carry insurance in the types and amounts specified herein, which shall include coverage for items owned by Owner in the care, custody and control of Contractor prior to and during construction and warranty period.

B. Contractor must complete and forward to Owner a certificate or certificates of insurance on forms approved or deemed approved by the Texas Department of Insurance under Chapter 1811 of the Texas Insurance Code and provided or approved by Owner ("Certificate of Insurance," whether one or more) and all required endorsements before the Contract is executed, as verification of all coverage required below. Contractor and subcontractors shall not commence Work until the required insurance is obtained and until such insurance has been reviewed and approved by Owner. Maintenance of insurance by the Contractor and approval of insurance by Owner shall not relieve or decrease the liability of Contractor hereunder and shall not be construed to be a limitation of liability on the part of Contractor. Contractor must also complete and forward a Certificate of Insurance to Owner whenever a previously identified policy period has expired as verification of continuing coverage. Contractor must provide the Certificate of Insurance to Owner showing the extended or replacement coverage prior to the date for expiration of the policy or policies shown on the Certificate of Insurance held by Owner.

C. Contractor's and subcontractor's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of A VII or better unless otherwise approved by the Owner. If an insurance company becomes insolvent or goes into receivership or liquidation, the Contractor or subcontractor affected shall provide the required insurance coverage from an alternate insurer that meets the requirements of this Contract.

D. All endorsements naming the Owner as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate the Owner as: Austin Independent School District, 1111 West 6th Street, Austin, Texas 78703 Attn: Executive Director, Department of Construction Management. Insurance policies not specifically required by the Contract Documents, but agreed to the parties in writing, shall name the Owner as additional insured.

E. If insurance policies are not written for amounts specified below, Contractor or subcontractor shall carry Umbrella or Excess Liability Insurance for any differences

in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

F. Owner shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

G. Owner reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as Contractor.

H. Contractor and subcontractors shall not cause any required insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract Documents.

I. Contractor and subcontractors shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

J. Contractor shall provide Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

K. If Owner owned property is being transported or stored off-site by Contractor, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect Owner's property.

L. The insurance coverages required under this Contract are required minimums and are not intended to limit the responsibility or liability of Contractor, or to prevent Contractor from maintaining greater coverage, or from requiring greater coverage from its subcontractors, should Contractor so choose.

M. Contractor and each subcontractor shall use a Certificate of Insurance form provided or approved by Owner.

N. If the Owner is damaged by the failure or neglect of the Contractor or a subcontractor to purchase or maintain insurance as required by the Contract Documents, then the Contractor shall bear all costs attributable to or resulting from such failure, and shall be liable to Owner for any loss or liability that Owner sustains as a result of such failure or neglect. This obligation shall survive termination or completion of the Contract as to any failure or neglect to obtain or maintain insurance during the period required by the Contract Documents.

10.3 BUSINESS AUTOMOBILE LIABILITY INSURANCE.

A. Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of Owner:

1. Waiver of Subrogation endorsement in favor of Owner;

2. 30 day Notice of Cancellation endorsement; and

3. Additional Insured endorsement naming Owner as an additional insured.

B. Provide coverage with a minimum combined single limit of $1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $500,000 bodily injury per person, $1,000,000 bodily injury per accident and at least $250,000 property damage liability each accident.

10.4 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

A. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code). Contractor shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner for every person providing services on the Project as acceptable proof of coverage. The Owner's Certificate of Insurance No. 104 must be presented as evidence of coverage for Contractor. Workers' Compensation Insurance coverage written by the Texas Mutual Insurance Company (f/k/a Texas Workers Compensation Insurance Fund) is acceptable to Owner. Contractor's policy shall apply to the State of Texas and include these endorsements in favor of Owner:

1. Waiver of Subrogation in favor of Owner; and

2. 30 day Notice of Cancellation.

B. The minimum policy limits for Employers' Liability Insurance coverage shall be $500,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $500,000 bodily injury by disease each employee.

C. Definitions:

1. Certificate of coverage ("certificate") - 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 person's or entity's employees providing services on a project, for the duration of the project.

2. Duration of the Project - includes the time from the beginning of the Work on the Project until the Project has been finally completed and accepted by Owner and any warranty period has terminated.

3. Persons providing services on the Project ("subcontractor" in §406.096 of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and 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 which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to the Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

D. Workers' Compensation policies shall include waivers of subrogation as against Owner, its officers, trustees and employees.

E. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

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

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

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

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

2. no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

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

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

K. 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. The required posting is set out below in Article 18.

L. 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 the Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;

2. provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

3. provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

4. obtain from each other person with whom it contracts, and provide to the Contractor: (a) a certificate of coverage, prior to the other person beginning work on the Project; and (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown the current certificate of coverage ends during the duration of the Project;

5. retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

6. notify Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and

7. contractually require each person with whom it contracts to perform as required by items 1–6 of this Subsection 10.4.L, with the certificates of coverage to be provided to the person for whom they are providing services.

M. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to 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.

N. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles Owner to pursue the rights and remedies set forth herein (including the right to declare the Contract void) if the Contractor does not remedy the breach within ten days after receipt of notice of breach from Owner.

10.5 COMMERCIAL GENERAL LIABILITY INSURANCE.

A. The Policy shall contain the following provisions:

1. Contractual liability coverage for liability assumed under the Contract and all contracts relative to the Project.

2. Products/Completed Operations coverage for the duration of the warranty period.

3. Contractors/Subcontractors Work coverage.

4. Aggregate limits of insurance per project endorsement.

5. Additional Insured Endorsement naming Owner as an additional insured. Such coverage shall provide for Owner to be covered against claims arising out of construction operations and completed operations without further restriction and such coverage shall be endorsed to be primary and non-contributory insurance coverage to Owner.

6. 30 day notice of cancellation, nonrenewal or substantial modification in favor of Owner.

7. Waiver of Transfer of Recovery Against Others in favor of Owner.

B. Provide coverage with a minimum combined bodily injury and property damage per occurrence limit of $2,000,000, and a general aggregate limit of $4,000,000,

products/completed operations aggregate limit of $4,000,000, and Personal and Advertising Injury limit of $2,000,000. The policy shall be amended so that the completed operations/products aggregate shall apply on a per project basis.

10.6 BUILDERS' RISK INSURANCE

A. Contractor shall maintain Builders' Risk Insurance or Installation Insurance on an all risk physical loss form in the Contract Amount. Owner shall be a loss payee on the policy. If off-site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored. At Owner's election, such coverage shall continue in effect until the Work is accepted by Owner even if the Project is occupied and put to its intended use prior to such acceptance.

10.7 HAZARDOUS MATERIALS INSURANCE

A. For projects which include lead abatement instead of asbestos abatement, substitute "lead" for "asbestos" in the following paragraphs. For projects which include lead and asbestos abatement, change the word "asbestos" in the following paragraphs to read "lead and asbestos."

B. For Work which involves asbestos or any hazardous materials or pollution defined as asbestos, Contractor or subcontractor responsible for the Work shall comply with the following insurance requirements in addition to those specified above:

1. Provide an asbestos abatement endorsement to the Commercial General Liability policy with minimum bodily injury and property damage limits of $1,000,000 per occurrence and products/completed operations coverage with a separate aggregate of $1,000,000. This policy shall not exclude asbestos or any hazardous materials or pollution defined as asbestos, and shall provide "occurrence" coverage without a sunset clause. The policy shall provide 30 day Notice of Cancellation and Waiver of Subrogation endorsements in favor of Owner.

2. Contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage as required by law and the Contract Documents. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a $5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a $1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of $1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The

endorsement shall, at a minimum, provide a $1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

3. Contractor shall submit complete copies of the policy providing pollution liability coverage to Owner.

10.8 PROFESSIONAL LIABILITY INSURANCE

A. For Work or services which require professional engineering or professional survey services to meet the requirements of the Contract, including but not limited to trench safety systems, traffic control plans, and construction surveying, abatement plans, the Contractor or subcontractors responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of $1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to all professional services provided in due course of the Work of this Contract.

B. The policy shall include a 30 day Notice of Cancellation endorsement in favor of Owner and shall be occurrence based. If the policy is claims made, the retroactive date shall coincide with the date of this Contract. The Certificate of Insurance shall state that this coverage is claims made and shall give the retroactive date. Coverage shall be continuous or contain an extended reporting period for not less than 12 months beyond the expiration of the warranty period.

10.9 BONDS

A. Prior to commencement of Work hereunder, Contractor will (if the Contract amount exceeds $25,000.00) provide a Performance Bond and a Payment Bond, each in the penal amount of 100% of the Contract Amount, conditioned that Contractor will faithfully perform all Contractor's undertakings in this Contract and will fully pay all persons furnishing labor and material in the prosecution of the Work provided for in this Contract. Such Performance Bond and Payment Bond shall be on forms supplied by Owner, issued by a corporate Surety licensed to do business in Texas that is listed on the U.S. Treasury list of approved sureties as provided in Subsection 10.9 B. If any surety upon any bond becomes insolvent, is in receivership, is unable to perform its obligations, or otherwise ceases to do business in this State, the Contractor shall promptly furnish Owner with substitute bonds or equivalent security satisfactory to Owner to protect the interests of Owner and of persons furnishing labor and materials in the prosecution of the Work.

B. All bonds furnished by Contractor must comply with Chapter 2253, Texas Government Code, including the requirement that such bonds must be executed by a corporate surety licensed to do business in Texas in accordance with Article 7.19-1,

Texas Insurance Code. Such bonds shall be on forms supplied or approved by Owner. Surety shall be listed as an approved surety by the U. S. Treasury Department, if the bond amount is $400,000 or more or as required by Owner in accordance with applicable law. If any surety on any bond becomes insolvent or is unable to perform its obligations thereunder, the Contractor shall immediately furnish replacement bonds or equivalent security acceptable to Owner to protect the interests of Owner and persons furnishing labor and materials to the Project.

10.10 ADDITIONAL BOND REQUIREMENTS IF CONTRACT AMOUNT IS NOT ESTABLISHED WHEN CONTRACT IS SIGNED

A. If a fixed Contract Amount or Guaranteed Maximum Price has not been determined at the time the Contract is signed by the Contractor, the penal sums of the Performance and Payment Bonds delivered to Owner must each be in an amount equal to the Estimated Project Budget, as specified for each project in the Owner's Solicitation Documents. The Contractor shall deliver the bonds to Owner not later than the 5th day after the date the Contractor executes the Contract, unless Owner expressly agrees in writing to accept from the Contractor a bid bond, proposal bond or other financial security acceptable to Owner to ensure that the Contractor will furnish the required Performance and Payment Bonds at the time the Contract Amount or Guaranteed Maximum Price is established.

B. If Owner agrees to accept a bid bond, proposal bond or other financial security in lieu of Payment and Performance bonds in connection with Contractor's execution of the Contract, then Contractor must provide Payment and Performance Bonds at the same time Contractor executes and delivers to Owner an amendment to the Contract furnished by Owner establishing a Guaranteed Maximum Price for, as applicable, (i) the first phase of the Work described in such amendment, if the Project will be performed in two or more phases, or (ii) the final Guaranteed Maximum Price for the Work described in such amendment, if the Project is not phased. The Payment and Performance Bonds must each be in the amount of 100% of the Contract Amount or Guaranteed Maximum Price as established in such amendment, or the Estimated Project Construction Budget, as specified in the Agreement, whichever is greater. If Payment and Performance Bonds are provided by Contractor before the final Guaranteed Maximum Price is established, Contractor will, as necessary, provide Owner with endorsements or replacement bonds so that the penal amount of each Bond is equal to 100% of the final Guaranteed Maximum Price, within 5 days after the final Guaranteed Maximum Price is agreed to by Owner and Contractor, as evidenced by the execution of an amendment to the Contract establishing the final Guaranteed Maximum Price.

10.11 WAIVER OF SUBROGATION

A. Contractor and Owner waive all rights of recovery against the other party and such party's employees, officers, agents and Board members, for damages resulting from fire, or other causes of loss, but only to the extent the damages are covered by

insurance proceeds actually received and applied to the payment of such damages, from insurance coverage required to be maintained under this Contract or other insurance coverage which is available to respond to such loss. Nothing in this provision will be deemed to waive any party's right to insurance proceeds.

11. Article 11. INSPECTIONS, TESTS AND CORRECTION OF WORK

11.1 TIMES AND PLACES

A. Except as otherwise provided in this Contract, inspection and test by Owner of material and workmanship required by this Contract shall be made at reasonable times and at the site of the Work, unless the Owner upon consultation with the Architect/Engineer determines that such inspection or test of material which is to be incorporated in the Work shall be made at the place of production, manufacture, or shipment of such.

11.2 CONTINUING RESPONSIBILITY

A. Except as otherwise specified by the Owner upon advice of the Architect/Engineer at the time of determining to make an inspection or test, no inspection or test shall relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of Owner after acceptance of the completed Work.

11.3 INSPECTIONS AND TESTING

A. All inspections and tests which may be required by the building codes and ordinances of the city where the Project site is located, or if in no city, the closest city, will be performed in conformance with applicable law, at Contractor's expense (except as otherwise provided by applicable law), whether or not the Project site is within the corporate limits of that city.

B. By law, Owner is required to provide or contract separately with a third party to provide for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the Work by Owner. Contractor shall not include costs for these services in the Cost of the Work.

11.4 REJECTED MATERIAL OR WORK

A. The Contractor shall, without charge, promptly replace any material or correct any workmanship found by Owner or Architect/Engineer not to conform to the Contract requirements, unless in the public interest Owner consents to accept such material or workmanship with an appropriate adjustment in Contract Amount. The Contractor shall promptly segregate and remove rejected material from the premises.

B. The Contractor will be charged with the additional cost of any test or inspection of the replaced material or corrected workmanship.

C. If the Contractor does not promptly replace rejected material or correct rejected workmanship, it shall be a material default under the Contract and Owner may (1) notwithstanding any provision of Section 13.3.A to the contrary, by contract or otherwise, immediately commence to replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) pursue its rights and remedies under the Contract in accordance with Article 13.

11.5 COOPERATION

A. The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Architect/Engineer. All inspections and tests by Owner shall be performed promptly. Special, full-size, and performance tests shall be performed as described in this Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

11.6 COVERED WORK

A. Should it be considered necessary or advisable by Owner at any time before acceptance of the entire Work to make an examination of Work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such Work shall have been covered without the approval of the Architect/Engineer, or if such Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor, subcontractors or anyone furnishing labor or materials under this Contract, Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract Amount to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the Work has been delayed thereby, Contractor shall, in addition, be granted a suitable extension of time.

Article 12. MISCELLANEOUS PROVISIONS

12.1 THIRD PARTIES

A. All provisions of this Contract shall be binding upon and inure to the benefit of Owner, Contractor and their respective successors and assigns, but Contractor shall not assign this Contract in whole or in part, nor assign any monies due or to become due hereunder, without in each case the prior written consent of Owner. No provision of this Contract shall inure to the benefit of any third party that is neither an approved assignee nor a successor of Owner or of the Contractor.

12.2 BANKRUPTCY

A. It is recognized that (i) if any order for relief is entered on behalf of or against the Contractor pursuant to Title 11 of the United States Code, (ii) if any other similar order is entered under any other debtor relief laws, (iii) if the Contractor makes a general assignment for the benefit of its creditors, or (iv) if a receiver is appointed for the benefit of creditors, or (v) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate the Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, the Owner, in addition to other rights and remedies hereunder, shall be entitled to request the Contractor or its successor in interest to provide 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 after delivery of the request shall entitle the Owner to terminate the Contract or Contractor's right to perform thereunder, to make demand on the Surety to perform the Contractor's obligations, and to any other enforceable rights set forth in the Contract Documents.

B. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to make demand on the Surety or proceed with the Work with its own forces or with other contractors on a time and materials or other appropriate basis, the cost of which will be backcharged against the Contract Amount. If such costs and damages exceed the unpaid balance, the Contractor shall be obligated to pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect/Engineer, upon application, and this obligation for payment shall survive termination of the Contract. To the extent the costs of completing the Work, including compensation for additional professional services (including but not limited to attorney's fees) and expenses, exceed those costs which would have been payable to the Contractor to complete the work except for the Contractor's default, the Contractor will pay the difference to the Owner, subject to any rights of the Surety, if the Surety performs Contractor's obligations, and this obligation for payment shall survive termination or completion of the Contract Documents. Such costs incurred by the Owner will be determined by the Owner and confirmed by the Architect/Engineer.

C. Any provision in this Section 12.2 regarding the obligations of Contractor for the payment of amounts or the performance of obligations is subject to Contractor's rights under Federal law and nothing in this Section is intended to constitute an assertion of a debt in violation of any such rights.

12.3 NONWAIVER OF DEFAULT

A. Any failure by Owner at any time, or from time to time, to require strict compliance with or to enforce any of the terms or conditions of this Contract shall not constitute a waiver of any such terms or conditions nor shall it affect or impair Owner's ability to require strict compliance with such terms or conditions in the future, or the right of

Owner at any time to avail itself of such remedies as it may have for any breach or breaches of any such term or condition. An express waiver by Owner of any specific act of nonperformance or default shall not constitute a waiver of any subsequent acts of nonperformance or default.

12.4 SEVERABILITY

A. If any provision of the Contract shall be determined to be invalid, unlawful or unenforceable, this Contract shall be reformed to the greatest extent necessary to make the offending provision valid and enforceable, or if this offending provision cannot be modified so as to be valid and enforceable, this Contract shall be reformed so as to exclude the offending provision from this Contract if it can be done without destroying the benefit of the bargain between the parties. As so reformed, the Contract shall be binding upon and enforceable by both Owner and the Contractor. No additional consideration shall be due to either party by reason of any such reformation.

12.5 CONSTRUCTION

A. The Contract Documents shall not be construed more or less favorably between the parties by reason of authority or origin of language.

13. Article 13. TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 SUSPENSION OF THE WORK FOR OWNER'S CONVENIENCE

A. Owner or the Architect/Engineer may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of Owner.

B. If the performance of all or any part of the Work is suspended by Owner for its convenience, through no fault of Contractor and for reasons other than an event of Force Majeure, by an act of a Contracting Officer in the administration of this Contract, for a cumulative period of time of more than 60 days during the term of this Contract, then Contractor shall be entitled to an equitable adjustment to the Contract Time and/or for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by a suspension which is in excess of the 60 days herein provided, and the Contract modified in writing accordingly by Change Order.

C. However, no adjustment shall be made under this clause for any suspension to the extent (1) that performance would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.

13.2 RESPONSIBILITY FOR COMPLETION

A. The Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts, overtime operation and Sundays and holidays, as may be necessary to insure the progress of the Work in accordance with the approved Construction Schedule and the completion of the Work within the Contract Time. If Work falls behind the currently updated and approved Construction Schedule and it becomes apparent from the current schedule that the Work will not be completed within the Contract Time, the Contractor agrees that the Contractor will take some or all of the following actions as deemed necessary by the Owner to substantially eliminate the backlog of work and complete the Project within the Contract Time:

1. Increase manpower in such quantities and crafts as will substantially eliminate, in the opinion of the Owner, the backlog of work;

2. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination or the foregoing sufficient to substantially eliminate, in the opinion of the Owner, the backlog of work; and

3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. The Owner may require the Contractor to submit a recovery schedule demonstrating the Contractor's program and proposed plan to make up the lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the Owner and Architect/Engineer find the proposed plan not acceptable, they may require the Contractor to submit a new plan. If the actions taken by the Contractor or the second plan proposed are not satisfactory, the Owner may require the Contractor to take any or all of the actions set forth in Section 13.2.A to make up the lag in scheduled progress.

C. Failure of the Contractor to substantially comply with the requirements of this Section 13.2 may be considered grounds for a determination by the Owner, that the Contractor is failing to prosecute the Work with sufficient diligence to ensure its completion within the Contract Time as required by Section 3.1.A.

D. If Contractor's failure to meet the time periods provided in the approved Construction Schedule or other delay in the performance of the Work is due to Contractor's unexcused delay, the Contractor shall perform the services required by this Section 13.2 at no additional cost to Owner. If Owner determines that the failure or delay is due in part to Contractor's unexcused delay and in part to other causes which are not the fault of Contractor or for which Contractor is not responsible, the additional costs attributable to the acceleration of the Work required under this Section 13.2 shall be equitably allocated between Contractor and the Owner, provided however, that nothing in this provision is intended to waive or limit Owner's right to pursue claims against any third party for the additional cost of the Work allocated to Owner.

E. Any provision in the Contract Documents to the contrary notwithstanding, in the event Contractor would be entitled to an extension of time under the provisions of the Contract, Owner shall have the right, instead of awarding additional time, to require Contractor to accelerate the Work, as provided in this Section, and Owner shall pay Contractor for the reasonable additional costs incurred by Contractor that are attributable to such acceleration, as provided by Change Order.

13.3 EVENTS OF DEFAULT

A. Contractor will be in default under this Contract if Contractor fails to prosecute the Work diligently, in a timely manner and in accordance with the Contract Documents, or fails to timely comply with or perform any other obligation(s) under the terms of the Contract, and such default continues after Owner provides Contractor with written notice of default and opportunity to cure as herein provided. Unless a longer notice period is required by law, Owner shall give Contractor 10 days written notice and opportunity to cure. In the event of an emergency condition, where the Contractor's breach or the failure to cure the default presents an imminent threat to the safety of persons or property, Owner may exercise its rights and remedies under this Contract if Contractor does not cure the default within 3 days after notice of default is given, including the right to perform the curative work, and to charge Contractor for the costs incurred by Owner.

B. Owner will be in default under this Contract if Owner commits a default under the terms of this Contract, and fails to cure such default within ten days after written notice by Contract or within such longer time period as may be provided by law. Provided, however, that if the default is one that cannot be reasonably cured within such time period, Owner shall not be deemed in default if Owner commences the cure within the stated notice period, and diligently pursues the cure to completion The notice of default and time periods provided by this Section shall be in addition to any other notice and cure periods provided by the Contract Documents.

C. Any provision in this Contract to the contrary notwithstanding, upon a default by Contractor, Owner shall have, in addition to any rights or remedies provided by the Contract Documents, all rights and remedies available at law or equity. All such rights and remedies are cumulative, and not exclusive, and may be exercised by Owner independently, concurrently or successively.

D. Upon a default by Owner, Contractor will have the rights provided by law or equity, subject to the provisions of the Contract, including those set forth in Article 14.

E. In the event either party files suit in connection with the Contract Documents or the Project, the prevailing party shall be entitled to Court costs and reasonable attorney's fees.

13.4 TERMINATION FOR CONVENIENCE OF OWNER

A. The performance of Work under this Contract may be terminated by Owner in whole, or from time to time in part, whenever Owner shall determine that such termination is in the best interest of Owner. Any such termination shall be effected by delivery to the Contractor of a written notice of termination ("Notice of Termination") specifying the extent to which performance of Work under the Contract is terminated and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination, the Contractor shall cooperate fully with Owner in minimizing the cost to Owner of such termination and shall, as directed by a Contracting Officer, protect the Work accomplished and properties acquired for performance of the Work, terminate or cancel incomplete subcontracts and purchase orders, and dispose of surplus materials and other properties.

C. In the event of such a termination, the Contract Amount shall be equitably adjusted to a sum which shall fairly compensate the Contractor for all Work completed and for all costs incurred (net of salvage) in part performance of the incomplete portions of the Work and for all costs incurred in connection with the termination, but exclusive of profit on the incomplete portions of the Work. In no event shall such sum be less than the portion of the Contract Amount allotted to the completed portion of the Work.

D. No amount shall be allowed the Contractor hereunder unless, within ninety-one days after all compensable costs of Contractor shall have become liquidated and determinable, and not thereafter, Contractor shall submit in writing to the Executive Director of Construction Management Contractor's claim in the amount stated with such supporting particulars as the Executive Director of Construction Management may request.

13.5 TERMINATION FOR CONTRACTOR'S DEFAULT

A. If the Contractor is in default under this Contract, and the default has extended beyond the cure period provided in this Contract, then Owner may, by written notice to the Contractor and without notice to Contractor's Surety, terminate this Contract or terminate Contractor's right to proceed with the Work under the Contract. In such event Owner may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work such materials, equipment, machinery, tools, and supplies as may be on the site of the Work and necessary therefore. Owner may also make demand on the Surety to perform Contractor's obligations under the Contract. Whether or not the Contractor's right to proceed with the Work is terminated, Contractor and Contractor's Surety shall remain liable for any damage to Owner resulting from Contractor's refusal or failure to complete the Work within the specified time.

B. If Owner should so terminate the Contractor's right to proceed, or the Contract, the resulting damages recoverable by Owner will include liquidated damages for delay as may be specified in the Agreement or other Contract Documents until Substantial

Completion of the Work, together with any increased cost or expenses incurred by Owner in so completing the Work or curing the default.

C. If, after notice of termination of the Contract or Contractor's right to proceed under the provisions of this Section 13.5, it is determined for any reason that the Contractor was not in default under the provisions of the Contract, or that the delay was excusable under the provisions of Article 7 hereof, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to Article 13 concerning termination for the convenience of Owner.

14. Article 14. ADMINISTRATIVE PROCEDURE FOR CONTRACTOR CLAIMS

14.1 ADMINISTRATIVE PROCEDURE FOR RESOLUTION OF CLAIMS

A. No claim by the Contractor for additional time or for additional compensation (including damages) shall be allowed unless it is timely presented to Owner and Architect/Engineer in writing, together with appropriate detailed supporting documentation, as provided by the terms of the Contract Documents and the provisions of this Article 14.

B. Contractor must notify Owner and Architect/Engineer of its claim in writing (a) within 21 days (or such later period as may be required by law) after occurrence of the event giving rise to a claim or (b) within 21 days (or such later period as may be required by law) after the Contractor first recognizes, or should have recognized, the condition giving rise to the claim, whichever is later. Within 20 days of submitting a claim, Contractor must provide complete and detailed documentation concerning the nature and amount of the claim, to the extent that such information is reasonably available. Failure to comply with the requirements of this Subsection 14.01.B constitutes a waiver of Contractor's claim.

C. Any claim by the Contractor for additional time or for additional compensation shall be presented by Contractor to Owner first as a request for a Change order to adjust the Contract Time and/or Contract Amount as provided in Article 6, and shall be approved or rejected by the Executive Director of Construction Management.

D. If the Executive Director of Construction Management should reject a claim of the Contractor so presented, or if he should fail to approve it within sixty days after presentment by Contractor to the Executive Director of all required information and supporting documentation, the Contractor may appeal in writing to the Board of Trustees of AISD. The Decision of the Executive Director of Construction Management shall be final and binding unless the Contractor takes such an appeal within twenty days after the date of the decision by the Executive Director of Construction Management. Contractor shall comply with the terms of any written appeal procedure established by Owner.

E. If the Board of Trustees of AISD should reject the Contractor's claim, or if the Board of Trustees should reject the Contractor's claim within ninety days after it is timely filed with the Board as specified in Subsection 14.01.D, the Contractor's administrative remedy under this Contract shall be deemed to be exhausted.

F. No suit shall be brought by the Contractor upon this Contract, or for breach of this Contract, until the administrative remedy set forth herein shall have been exhausted, nor more than two years after exhaustion of the administrative remedy. In addition, the Contractor agrees to mediate any such claim with Owner, in good faith, prior to filing suit against Owner in connection with such matters.

G. During the pendency of any claim, the Contractor shall proceed diligently with the work as directed by the Executive Director of Construction Management.

H. This Contract shall be construed in accordance with the laws of the State of Texas, and venue for any case or controversy arising under or pursuant to this Contract or in connection therewith, shall lie in courts of competent jurisdiction in Travis County, Texas, and in the federal courts of Austin, Texas.

15. Article 15. PARTIAL USE OR OCCUPANCY

A. The Owner shall have the right to use and occupy spaces or systems and other portions of the Work prior to completion and acceptance of all the Work (including occupancy by a tenant, operator or anyone else occupying or using the Project with the Owner's consent, or to install furnishings and equipment). In addition, the Owner shall have the right to accept and operate Project systems in advance of Substantial Completion.

B. If the Owner desires to exercise its right of partial occupancy or use as provided herein, the Contractor shall cooperate with the Owner in making available for the Owner's use building services such as heating, ventilating, cooling, water, lighting, power, elevator and telephone for the proposed use and health, safety and comfort of the users or occupants of the space or spaces and other parties present on or entering or leaving the site. If the equipment required to furnish such services is not entirely completed at the time the Owner desires to use or occupy aforesaid space or spaces, the Contractor shall make every reasonable effort to complete the same as soon as possible so that the necessary equipment can be put into operation and use.

C. Mutually acceptable arrangements shall be made between the Owner and Contractor for procedures, terms, and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Owner prior to Substantial Completion. The Owner will assume the proportionate and reasonable responsibility for operation and cost of the systems, equipment and/or utilities required to provide such services.

D. The Owner's early occupancy or use of any portion of the Work as described in this Article 15 shall not constitute the Owner's acceptance of any Work, materials or

equipment which are not in conformity with the requirements of the Contract Documents, nor relieve the Contractor from its obligations to complete the Work, or its responsibility for loss or damage due to or arising out of defects in, or malfunctioning of systems, equipment, material or any element of the Work, or from any unfulfilled obligations or responsibilities under the Contract Documents.

E. The Contractor shall make no claim for delay or extension of the Contract Time or for damages of any kind arising directly or indirectly out of the exercise by the Owner of the rights reserved under this Article 15.

16. Article 16. TAXES

A. The Contract Amount shall be deemed to include all taxes payable in connection with the Work.

B. Owner is a tax exempt entity and Contractor shall take all steps required by applicable law to purchase materials, equipment and services free from sales and other taxes in accordance with law, including compliance with procedures established by the Texas Comptroller. If Contractor fails to obtain such tax exemption on any materials and equipment, Contractor shall notify Architect/Engineer and Owner shall not be obligated to pay the amount of such taxes as part of the Cost of the Work.

C. Unless otherwise provided by applicable law, the following items are exempt from tax in connection with this Contract:

1. The purchase of personal property, (including machinery or equipment and its accessories and repair and replacement parts) for use in the performance of a Contract for an improvement to realty if the personal property is incorporated into realty in the performance of the Contract;

2. The purchase of property, other than machinery or equipment and its accessories and repair and replacement parts, for use in the performance of a contract for an improvement to realty if the personal property is (a) necessary and essential for the performance of the contract and (b) completely consumed at the job site. Personal property is completely consumed if after being used once for its intended purpose, it is used up or destroyed. Personal property that is rented or leased for use in the performance of the Contract is not deemed to be completely consumed.

3. The purchase of a taxable service for use in the performance of a contract for an improvement to realty if the service is performed at the job site, and if (a) the Contract expressly requires the specific service to be performed or (b) the service is integral to the performance of the contract.

17. Article 17. NOTICE TO PARTIES

A. Unless otherwise provided in the Agreement, notice given under this Contract shall be in writing, and shall be deemed delivered upon deposit in the U. S. Mail (whether or not actually received) if addressed to the recipient at the address for notice set forth in the Contract Documents, and sent by registered or certified mail return receipt requested, postage prepaid, with copy sent concurrently by facsimile. Notice given in any other manner shall be deemed delivered if and when actually received. Contractor or Owner may change its address for notice by providing the other party with written notice of the change of address for notice given in the manner provided by Article 17. Such change of address shall be effective 14 days after delivery of the notice.

18. Article 18. NOTICES REQUIRED TO BE POSTED AT PROJECT SITE

18.01 JOB SITE POSTINGS

A. Contractor shall post at the Project site in both English and Spanish, in a conspicuous place, any notices required by law to be posted there, and any notices required by the Owner in writing to be posted there, including the Notice of Prevailing Wage Rates, Important Information Notice regarding Owner contact for wage disputes or questions, Contractor's Notice regarding pledge of Equal Opportunity Employment and the following notices:

1. Workers' Compensation Notice

This notice must:

(1) be posted in English, Spanish and any other language common to the employer's employee population;
(2) be displayed on each project site;
(3) state how a person may verify current coverage and report failure to provide coverage;
(4) be printed with a title in at least 30-point bold type and text in at least 19-point normal type; and
(5) contain the exact words as prescribed in Rule 110.110 (d)(7)

REQUIRED WORKERS' COMPENSATION COVERAGE

The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other services related to the project, regardless of the identity of their employer or status as an employee.

Call the Division of Workers' Compensation at 1-800-252-7031 or access the division's website at www.tdi.texas.gov/wc/indexwc.html to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage.

COBERTURA REQUERIDA DE COMPENSACIÓN PARA TRABAJADORES

La ley requiere que cada persona que trabaja en este lugar o que proporciona servicios relacionados con este proyecto de construcción debe estar cubierta por un seguro de compensación para trabajadores. Esto incluye a personas que proporcionan, transportan, o entregan equipo o materiales, o que proporcionan mano de obra, u otros servicios relacionados con este proyecto, sin importar la identidad del empleador o el estado como empleado.

Comuníquese con la División de Compensación para Trabajadores al teléfono 1-800-252-7031 or access the division's website at www.tdi.texas.gov/wc/indexwc.html para recibir información referente a los requerimientos legales de cobertura, para verificar si su empleador ha proporcionado la cobertura requerida, o para reportar a un empleador que no proporciona cobertura.

2. Notice of AISD School Safety Rules

AISD SCHOOL SAFETY RULES

(CONTRACTOR MUST POST AT PROJECT SITE WHERE SCHOOL ACTIVITIES ARE BEING CONDUCTED)

The following School Safety Rules must be followed at all times:

1. When Work is performed at a Project site in which school activities are being conducted, the Contractor, subcontractors and all persons working at the Project site must take special care to protect the safety and welfare of the students, teachers, employees, and visitors at the school.

2. Work must be performed with as little disruption to the learning environment and school activities as possible.

3. When Work is to be performed at a Project site where school activities are being conducted, it is expressly understood and agreed that Contractor's and any subcontractor's employees and other persons performing Work at the Project site shall not engage in any inappropriate interaction of any nature whatsoever with students, teachers, employees and visitors at the school, including talking, touching, staring, or in any way contributing to a hostile or offensive environment. It is further expressly understood and agreed that there is to be no fraternization between Contractor's and any subcontractor's employees, and other persons performing Work at the Project site, and students, teachers, employees and visitors at the school. There shall be zero tolerance for violations of these provisions.

4. The possession or use of tobacco products, alcoholic beverages, illegal drugs, and firearms or weapons on AISD property is prohibited at all times, twenty-four hours a day. There shall be zero tolerance for violations of this provision.

5. All persons performing work at the Project site must strictly observe:

- school bus safety laws and requirements
- speed limits in the vicinity of the Project site, including, school speed limits, and
- any posted speed limits on the Project site established by AISD.

6. All persons performing Work at the Project site must use only the access to the site and facilities as are designated by AISD, and must comply with all other rules and requirements established by AISD for use or occupancy of the Project site.

7. AISD has the right to require the immediate removal from the Project site of any person performing Work that violates these rules and to prohibit such person from being allowed to perform work at the Project site in the future.

REGLAS ESCOLARES DE SEGURIDAD DE AUSTIN ISD

(EL CONTRATISTA DEBE COLOCAR ESTA NOTIFICACIÓN EN UN LUGAR VISIBLE DEL SITIO DEL PROYECTO EN DONDE SE REALIZAN ACTIVIDADES ESCOLARES.)

Se deben seguir las siguientes Reglas Escolares de Seguridad en todo momento.

1. Cuando se realice algún trabajo en un sitio en el cual se llevan a cabo actividades escolares, el Contratista, los subcontratistas y todo el personal que labore en el sitio de trabajo deben tomar medidas especiales para proteger la seguridad y bienestar de los estudiantes, maestros, empleados y visitantes de la escuela.

2. El trabajo se debe realizar con la menor interrupción posible al ambiente de aprendizaje y a las actividades escolares.

3. Cuando el trabajo se hará en un sitio en donde se llevan a cabo actividades escolares, se entiende y se establece expresamente que los empleados de los contratistas y de los subcontratistas, además de otras personas realizando el trabajo en el sitio, no entablarán ninguna interacción inapropiada de naturaleza alguna con estudiantes, maestros, empleados y visitantes de la escuela, incluyendo hablar, tocar, ver fijamente o que de alguna manera contribuyan a un ambiente hostil u ofensivo. Asimismo se entiende expresamente y se está de acuerdo que no habrá relaciones amistosas y fraternales entre ninguno de los empleados de los contratistas y de los subcontratistas, ni entre ninguna otra persona que realiza el trabajo en el sitio, con estudiantes, maestros, empleados y visitantes a la escuela. Habrá cero tolerancia a la violación de estas provisiones.

4. Se prohíbe en todo momento la posesión o uso de productos de tabaco, bebidas alcohólicas, drogas ilegales y armas de fuego o de algún otro tipo, las 24 horas del día. Habrá cero tolerancia a la violación de esta provisión.

5. Todas las personas que realizan algún trabajo en el sitio deben acatar estrictamente lo siguiente:

   - las reglas y requisitos de seguridad de los autobuses escolares
   - la velocidad máxima en el área del sitio, incluyendo, los límites de velocidad escolar y
   - cualquier otro límite de velocidad establecido por Austin ISD en el sitio del proyecto

6. Todas las personas que realizan trabajos en el sitio del proyecto deben usar el acceso al sitio y a las instalaciones (demás edificios) según lo determine Austin ISD, y deberán apegarse a cualquier otra regla y requisito establecido por Austin ISD para el uso u ocupación del sitio del proyecto.

7. Austin ISD tiene el derecho de solicitar la remoción inmediata del sitio del proyecto de cualquier persona que realiza un trabajo y quien viola estas reglas, y de prohibir que a dicha persona se le permita realizar algún trabajo en el sitio del proyecto en el futuro.

19. Article 19. PREVAILING WAGE RATES

A. Contractor and each subcontractor are responsible for complying with the applicable provisions of Chapter 2258 of the Texas Government Code regarding the payment of prevailing wage rates. Contractor and each subcontractor must pay wages to persons performing labor in connection with this Contract in an amount that is not less than the prevailing wage rates, including fringe benefits, for such workers applicable to the Project (as used herein, the term "worker" or "workers" includes laborers and mechanics).

B. The prevailing wage rates applicable to the Project are set forth in the Notice of Prevailing Wage Rates for each of various classifications of construction workers. Pursuant to Chapter 2258 of the Texas Government Code, the Board of Trustees of AISD has ascertained and does specify that the general prevailing rate of per diem wages (for eight hours of work during regular working hours on a day not a Saturday or Sunday or holiday), in the locality in which the Work is to be performed is eight times the hourly base wage rate so listed for each respective craft or type of worker needed to execute the Contract and that the prevailing wage rate for legal holidays and overtime work (in excess of forty hours in such workweek) shall be not less than one and one-half times the hourly base wage rate.

C. The Contractor shall pay, as a penalty to Owner, sixty dollars ($60.00) for each worker employed for each calendar day or part of the day that such worker is paid less than the stipulated rate for any work done under this Contract by the Contractor or by any subcontractor under Contractor. Owner may withhold additional funds as appropriate when confronted with wage rate violations.

NOTICE OF PREVAILING WAGE RATES
AISD PROJECT NO.: _____

INFORMATION REGARDING PREVAILING WAGE RATES COMPLIANCE

1. Contractor and each subcontractor employed on the Project are responsible for complying with the Contract and the applicable provisions of Chapter 2258 of the Texas Government Code regarding the payment of prevailing wage rates.
2. **Contractor and each subcontractor employed on the Project are responsible for identifying any trade classifications and wage rates that are not listed on the prevailing wage rates and submit in writing upon execution of contract to the Executive Director of Construction Management Department at Austin Independent School District for approval and inclusion in the Project's prevailing wage rates.**
3. The Austin Independent School District shall assess, as a penalty, $60.00 for each worker employed on the Project for each calendar day or part of the day that the worker is paid less than the wage rates stipulated for the Project, and withhold additional funds as appropriate when confronted with wage and benefit violations.
4. The Austin Independent School District has the right to request random samples of Contractor and subcontractor payrolls without warning.
5. The Austin Independent School District has the right to conduct random interviews of workers across various trades at the Project site with no warning.
6. This Notice, including the attached prevailing wage rates for the Project as published by the United States Department of Labor in accordance with the Davis-Bacon Act, and its subsequent amendments, shall be posted on the Project site and shall remain in effect for the duration of the Contract.

PREVAILING WAGE RATES FOR THE PROJECT

The applicable prevailing wage rates for the Project are attached to this Notice.

The following shall be applicable to prevailing wage rates for the Project for apprentices and helpers:

- An apprentice may be charged at less than the journeyman wage stated in the applicable prevailing wage rates for the Project only if the apprentice is employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Department of Labor, or if the apprentice is employed within his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable prevailing wage rates.

- Helpers are not separately classified on the applicable prevailing wage rates for the Project. Thus, Contractors and subcontractors should assume that each worker will be classified under one of the existing job classifications on the attached. Contractors and subcontractors should not assume that any helper will be paid less than the journeyman wage for the most relevant job classification.

AVISO DE TARIFAS SALARIALES VIGENTES
NÚM. DEL PROYECTO DEL AISD _____

INFORMACIÓN SOBRE EL CUMPLIMIENTO CON LAS TARIFAS SALARIALES VIGENTES

1. El contratista y cada subcontratista trabajando en el Proyecto son responsables de cumplir con el Contrato y las estipulaciones aplicables del Capítulo 2258 del Código Gubernamental de Texas tocante al pago de las tarifas salariales vigentes.
2. El contratista y cada uno de los subcontratistas empleados en el Proyecto son responsables de identificar las clasificaciones de oficios y las tarifas salariales que no estén listadas y enviarlas por escrito al llevar a cabo el contrato, al Director Ejecutivo del Departamento de Administración de la Construcción del Distrito Escolar Independiente de Austin para su aprobación e inclusión en las tarifas salariales vigentes del proyecto.
3. El Distrito Escolar Independiente de Austin deberá imponer, como una multa, $60.00 por cada trabajador empleado en el Proyecto, por cada día o parte del día calendario donde al trabajador se le pague una cantidad menor que las tarifas salariales establecidas para el Proyecto, y se le retendrán fondos adicionales según corresponda cuando se encuentren violaciones de salarios y beneficios.
4. El Distrito Escolar Independiente de Austin tiene el derecho de solicitar al azar y sin previo aviso, muestras de nóminas de pago de Contratistas y subcontratistas.
5. El Distrito Escolar Independiente de Austin tiene el derecho de realizar al azar y sin previo aviso, entrevistas de trabajadores de varios oficios en el lugar del Proyecto.
6. Este Aviso, incluyendo las Tarifas Salariales Vigentes para el Proyecto según publicadas por el Departamento de Trabajo de los Estados Unidos bajo la Ley de Davis-Bacon, y sus enmiendas posteriores, deberán exhibirse en el lugar del Proyecto y permanecer vigentes el tiempo que dure el Contrato.

TARIFAS SALARIALES VIGENTES PARA EL PROYECTO

Las tarifas salariales vigentes pare el Proyecto se adjuntan a este Aviso.

Lo siguiente será aplicable a tarifas salariales prevalecientes del Proyecto para aprendices y ayudantes:

- Se puede cobrar por un aprendiz un salario más bajo que el salario de un empleado especialista, estipulado en las tarifas salariales prevalecientes para el proyecto, solo si se emplea a un aprendiz de acuerdo con un programa de aprendizaje fidedigno en el que esté inscrito individualmente y que el programa esté registrado en el Departamento de Trabajo de los EE. UU., Administración de Empleo y Capacitación, Oficina de Adiestramiento en aprendizaje, Empleador y Servicios Laborales, o en una Agencia reconocida por el Departamento del Trabajo, o bien si al aprendiz se le emplea dentro de sus primeros 90 días de empleo a prueba como aprendiz en esa clase de programa de aprendizaje. A todo aprendiz debe pagársele según una tarifa no menor que la especificada en el programa registrado para el nivel de progreso del aprendiz, expresado como porcentaje del salario por hora del empleado especialista, especificado en las tarifas salariales prevalecientes aplicables.

- Los ayudantes no se clasifican por separado en las tarifas salariales prevalecientes aplicables al proyecto. Por lo tanto, los contratistas y subcontratistas deben presuponer que cada trabajador estará clasificado dentro de una de las clasificaciones de empleo existentes en el adjunto. Los contratistas y subcontratistas no deben presuponer que a cualquier ayudante se le pagará menos que el salario de empleado especialista para la clasificación de empleo más relevante.

Exhibit "B"
Notice of Prevailing Wage Rates

"General Decision Number: TX20190271 07/19/2019

Superseded General Decision Number: TX20180323

State: Texas

Construction Type: Building

County: Travis County in Texas.

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

Note: Under Executive Order (EO) 13658, an hourly minimum wage of $10.60 for calendar year 2019 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, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least $10.60 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 calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate,if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/04/2019
1	01/18/2019
2	02/08/2019
3	07/19/2019

ASBE0087-014 01/01/2018

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation)	$ 22.72	10.02

BOIL0074-003 01/01/2017

	Rates	Fringes
BOILERMAKER	$ 28.00	22.35

CARP1266-002 04/01/2017

	Rates	Fringes
CARPENTER (Excludes Acoustical Ceiling Installation, Drywall Hanging, Form Work, and Metal Stud Installation)	$ 21.96	7.90

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* ELEC0520-005 05/27/2019

	Rates	Fringes
ELECTRICIAN		
Excludes Installation of Sound and Communication Systems	$ 28.03	11%+5.73
Low Voltage Wiring Only	$ 28.03	11%+5.73

ELEV0133-002 01/01/2019

	Rates	Fringes
ELEVATOR MECHANIC	$ 40.96	33.705

Footnote:

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, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

ENGI0450-002 04/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Cranes	$ 34.85	9.85

IRON0084-011 06/01/2018

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 23.77	7.12

PLUM0286-010 06/04/2018

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe Installation)	$ 29.50	12.82

SFTX0669-002 04/01/2017

	Rates	Fringes
SPRINKLER FITTER (Fire		

Sprinklers).....$ 29.03 15.84

SHEE0067-007 07/01/2018

	Rates	Fringes
SHEET METAL WORKER		
Excludes HVAC Duct Installation.....	$ 25.76	15.10
HVAC Duct Installation Only.	$ 25.76	15.10

SUTX2014-049 07/21/2014

	Rates	Fringes
BRICKLAYER.....	$ 20.07	0.00
CARPENTER (Acoustical Ceiling Installation Only).....	$ 14.00	0.00
CARPENTER (Form Work Only).....	$ 15.62	0.05
CEMENT MASON/CONCRETE FINISHER...	$ 15.71	0.00
DRYWALL FINISHER/TAPER.....	$ 17.06	4.43
DRYWALL HANGER AND METAL STUD INSTALLER.....	$ 17.47	3.45
ELECTRICAL INSTALLER (Sound and Communication Systems) (Excludes Wiring).....	$ 18.00	2.30
FLOOR LAYER: Carpet.....	$ 21.88	0.00
GLAZIER.....	$ 12.83	0.00
HVAC MECHANIC (HVAC Unit Installation Only).....	$ 23.78	6.89
IRONWORKER, REINFORCING.....	$ 12.27	0.00

IRONWORKER, STRUCTURAL.....$ 20.73 5.24

LABORER: Common or General.....$ 11.44 0.00

LABORER: Mason Tender - Brick...$ 12.22 0.00

LABORER: Mason Tender -
Cement/Concrete.....$ 11.85 0.00

LABORER: Pipelayer.....$ 12.45 0.00

LABORER: Roof Tearoff.....$ 11.28 0.00

OPERATOR:
Backhoe/Excavator/Trackhoe.....$ 19.43 3.49

OPERATOR: Bobcat/Skid
Steer/Skid Loader.....$ 13.00 0.00

OPERATOR: Bulldozer.....$ 14.00 0.00

OPERATOR: Drill.....$ 14.50 0.00

OPERATOR: Forklift.....$ 16.64 6.26

OPERATOR: Grader/Blade.....$ 19.30 0.00

OPERATOR: Loader.....$ 14.00 0.00

OPERATOR: Mechanic.....$ 18.75 5.12

OPERATOR: Paver (Asphalt,
Aggregate, and Concrete).....$ 16.03 0.00

OPERATOR: Roller.....$ 11.25 0.00

PAINTER (Brush, Roller and
Spray), Excludes Drywall
Finishing/Taping.....$ 18.76 6.35

PLUMBER, Excludes HVAC Pipe Installation.....$ 23.57 6.37

ROOFER.....$ 12.00 0.00

TILE FINISHER.....$ 11.32 0.00

TILE SETTER.....$ 16.35 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

WATERPROOFER.....$ 16.30 0.06

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

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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 www.dol.gov/whd/govcontracts.

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) (ii)).

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.

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 Regional Office for the area in which the survey was conducted because those Regional Offices have 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.

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END OF GENERAL DECISION"