

**FORT BEND INDEPENDENT  
SCHOOL DISTRICT**



**Design and Construction Department**

**GENERAL CONDITIONS OF THE  
CONSTRUCTION CONTRACT**

**Effective January 1, 2012**



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## SECTION 1      DEFINITIONS, RULES, AND REGULATIONS

- 1.1      THE PROJECT The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part. The Project is identified by name, location, and project number in the Owner-Contractor Agreement.
- 1.2      THE WORK The term Work includes all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.
- 1.3      THE OWNER The Owner is the person or organization identified as such in the Owner-Contractor Agreement. The term Owner means the Design and Construction Department of Fort Bend Independent School District and their authorized representatives.
- 1.4      THE ARCHITECT The Architect is the person or organization responsible for the design of the Project and the preparation of the Drawings and Specifications on behalf of the Owner. Throughout the Contract Documents, the term "Engineer" shall be substituted for "Architect" when the primary design professional is an Engineer. The term Architect means the Architect or his authorized representatives. The Architect shall be licensed to practice in the State of Texas.
- 1.5      THE CONTRACTOR The Contractor is the person or organization identified as such in the Owner-Contractor Agreement. The term Contractor means the Contractor or his authorized representatives. The Contractor shall possess appropriate licenses from State of Texas and business license from the local authorities.
- 1.6      SUBCONTRACTOR A Subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the Work. The term Subcontractor means a Subcontractor or his authorized representatives.
- 1.7      SUB-SUBCONTRACTOR A Sub-subcontractor is a person or an organization who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor means a Sub-subcontractor or his authorized representatives.
- 1.8      WRITTEN NOTICE Written notice shall be deemed to have been duly served when delivered in person to the individual or member of the firm or to an officer of the organization for whom it was intended, or when sent by mail to the last known business address, or when sent by e-mail or facsimile. Minutes of construction progress meetings and/or Requests for Information do not constitute written notice.
- 1.9      CALENDAR DAYS All references to a 'day' or to 'days' in the Contract Documents shall be understood to mean calendar days unless specifically indicated otherwise. A Calendar Day shall be understood to be any day of the year, including weekends and holidays.

- 1.10 THE CONTRACT All of the Contract Documents form the Contract. The Contract Documents consist of all of the following, when applicable:
- A. Owner-Contractor Agreement and any amendments or change orders thereto
  - B. Supplemental General Conditions, if applicable
  - C. General Conditions of the Contract
  - D. Addenda/Clarifications to Specifications
  - E. Addenda/Clarifications to Drawings
  - F. Specifications
  - G. Drawings

1.11 SUBMITTALS AND SHOP DRAWINGS

- 1.11.1 Submittals and shop drawings are drawings, diagrams, illustrations, performance charts, brochures, samples, manufacturer's data and safety sheets (MSDS) and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor, which illustrate some portion of the Work.
- 1.11.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment, finishes, or workmanship, and to establish standards by which the Work will be judged.

1.12 RULES AND REGULATIONS

- 1.12.1 The Contractor shall comply with the Texas Government Code (which pertains primarily to discrimination against employees and applicants because of race, creed, color, national origin, sex, or age). A violation of any provision contained in the Texas Government Code shall constitute a material breach of the Contract.

- 1.13 BUILDING OFFICIAL The Building Official is the person with the Authority having Jurisdiction (AHJ) in charge of issuing permits, inspecting and issuing Certificate of Occupancy for the contracted work. Any changes to the Work that could be construed to have a potential code impact shall be reviewed and approved by the Building Official.

1.14 ALLOWANCE OR OWNER'S CONTINGENCY

Allowance or Owner's contingency included in the Construction contract is for the exclusive use of the Owner to address unforeseen conditions or extras through the course of the construction phase. Upon review of proposed expenses for any additional construction work by Architect and Owner, authorization will be provided to undertake such work from funds set aside in the allowance/Owner contingency. Such changes in work are subject to Section 2.7.6 of the General Conditions. Any unused allowance shall be deducted from the construction contract via a deductive change order at the end of construction phase.

## **SECTION 2 THE CONTRACT DOCUMENTS**

### **2.1 INTENT AND INTERPRETATION**

2.1.1 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. In the event that the terms, provisions, conditions, specifications, or requirements contained in one contract document should conflict with those contained in another contract document, then such conflict shall be resolved in accordance with the following order of precedence:

- A. Owner-Contractor Agreement and any amendments or change orders thereto
- B. Supplemental General Conditions, if applicable
- C. General Conditions of the Contract
- D. Change Orders
- E. Addenda to Specifications
- F. Addenda to Drawings
- G. Specifications
- H. Drawings

2.1.2 In the event of an inconsistency between or within any of the Contract Documents, the better quality or greater quantity of work shall be provided, at no additional cost to the Owner.

2.1.3 Specifications shall take precedence over notes on drawings. Large scale drawings shall take precedence over smaller scale drawings.

2.1.4 The Contract Documents are intended to include and require all items which are necessary for the proper execution and completion of the Work.

2.1.5 Interpretations of the Drawings and Specifications and their intent, which are necessary to the proper execution and completion of the Work will be made by the Architect. Words which have well known technical or trade meanings are to be interpreted in accordance with such recognized meanings.

2.1.6 The organization of the Specifications into divisions and sections, and the arrangement of the Drawings, shall not be construed to establish controls or limitations on the Contractor with regard to dividing the Work among Subcontractors, or in establishing the extent of work to be performed by any specific trade.

### **2.2 EXISTING CONDITIONS**

2.2.1 Prior to bidding, it is the Contractor's responsibility to ascertain any existing conditions that may affect the cost of the Work which could have been discovered by reasonable examination of the site.

2.2.2 No additional costs shall be allowed to the Contractor for existing conditions which could have been discovered by reasonable examination of the site prior to bidding.

2.2.3 Existing improvements visible at the job site, for which no specific disposition is made in the Contract Documents, but which could reasonably be assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed off by the Contractor, at no additional cost to the Owner, after written notification is given to the Owner.

2.2.4 The geotechnical report issued with the Contract Documents is provided for the Contractor's information and is not a Contract Document. The Owner does not guarantee the accuracy or completeness of the report and shall not be *ultimately* liable for any additional work or cost arising out of conclusions reached by the Contractor based upon the geotechnical report.

### 2.3 REQUESTS FOR INFORMATION

2.3.1 The Contractor shall, upon discovering any discrepancy, conflict, or inconsistency in the Contract Documents, immediately submit a Request for Information (RFI) to the Architect. The Architect, upon receipt of any such request, will promptly investigate the circumstances and give appropriate instructions to the Contractor, but will take such action only after consultation with the Owner as applicable. Until such written instructions are given, any work done by the Contractor, either directly or indirectly relating to such discrepancy, conflict, or inconsistency will be at his own risk, and he shall bear all costs arising there from. The Contractor shall maintain a sequential log of all RFI's.

2.3.2 No work shall be performed by the Contractor without adequate drawings or specifications, or that is in conflict with or contrary to the Contract Documents. The Contractor shall immediately report to the Owner and the Architect any discrepancy, conflict, or inconsistency that he may discover, in the Contract Documents. If the Contractor performs any work contrary to the Contract Documents, he shall be solely responsible and shall bear all costs attributable thereto.

2.3.3 Requests for Information shall be limited to one specific issue or group of related issues and shall not address multiple issues. The Architect will review and respond to RFI's within 10 days from the date that the RFI is received by the Architect. RFI's shall be issued by the Contractor to the Architect in a reasonable and orderly sequence such that they are not unreasonably grouped together and then delivered to the Architect.

### 2.4 SUBMITTALS AND SHOP DRAWINGS

2.4.1 The Contractor shall review, stamp with his approval, and submit to the Architect with reasonable promptness and in an orderly sequence so as to cause no delay in the Work, or in the work of any Subcontractor, all submittals and/or shop drawings required by the Contract Documents or subsequently required by the Architect.

2.4.2 The Contractor's submittals shall provide specific written notice of any deviation from the requirements of the Contract Documents. Failure to specifically identify such deviations shall be adequate grounds for withdrawing or voiding approval of the submittal. The Contractor shall be responsible for all costs or delays associated with purchase and installation of any work that deviates from the requirements of the Contract Documents.



- 2.4.3 The Contractor shall issue all major submittals to the Architect in a reasonable and orderly sequence.
- 2.4.4 Submittals shall be properly identified as specified. By approving and issuing submittals, the Contractor thereby represents that he has determined and has verified all field measurements, field construction criteria, materials, catalog numbers and similar data, and that he has checked and coordinated each submittal with the requirements of the Contract Documents.
- 2.4.5 The Architect will review submittals within 14 days from the date that they are received for conformance with the Contract Documents. The review of a separate item shall not indicate approval of an assembly in which the item functions.
- 2.4.6 When a specific manufacturer and model of equipment is scheduled on the drawings and/or in the specifications, and a second or third acceptable manufacturer is also listed in the specifications, it shall be the responsibility of the Contractor to confirm with the equipment supplier and equipment manufacturer, prior to bidding, that the alternative manufacturer is providing pricing for equipment that is equipped with features and capabilities that are equal to the scheduled and specified item of equipment. The acceptability of an equipment submittal shall be subject to the equipment supplier and manufacturer providing evidence satisfactory to the Owner and the Architect that the submitted equipment is, in fact, equal to the scheduled and specified equipment.
- 2.4.7 The review and approval of submittals by the Architect shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents, nor shall review by the Architect relieve the Contractor from responsibility for errors or omissions in the submittals.
- 2.4.8 The Contractor shall correct submittals as required by the Architect and shall resubmit the required number of corrected copies of submittals until the Architect indicates that no further re-submittals are required. The Contractor shall identify in writing all revisions made, in addition to identifying the corrections requested by the Architect on previous submittals.
- 2.4.9 The number of submittals provided and approved shall include one set for use by the Owner.
- 2.4.10 No work requiring submittals or shop drawings shall commence until the associated submittals have been reviewed and approved by the Architect.
- 2.4.11 The Contractor shall submit drawings, data and samples to the Architect at least twenty (20) days prior to the date the Contractor needs the reviewed submittals returned. When colors are to be selected by the Architect, submit all color samples with adequate time to allow the Architect to prepare a complete selection schedule, present to Owner for approval and transmit to the Contractor.

## 2.5 SUBSTITUTIONS

- 2.5.1 All bids and the Work shall be based on the products specified. The characteristics of the specified products have been utilized in the design of the Project and in the preparation of the Drawings and Specifications, and as such establish minimum standards of function, dimension, appearance, and quality necessary for the Project. Equivalent products of other manufacturers may be acceptable, if, in the judgment of the Owner and the Architect, they meet the standards of the Contract Documents.
- 2.5.2 The Contractor shall submit any requests for substitutions in writing to the Owner and the Architect within the time specified in Section 2.5.3. Submittals and shop drawings do not constitute a request for substitution. Products not specified or accepted in writing as equivalent to those specified shall not be installed. The Contractor shall be responsible for all costs associated with removal and replacement should the Contractor proceed with installation of any substituted product without specifically identifying the substitution and obtaining written approval of the substituted product.
- 2.5.3 Requests for substitutions must be submitted to the Owner and the Architect within 30 days after the Notice to Proceed date. Thereafter, substitutions will be considered only in cases of documented product unavailability or other conditions beyond the control and without the fault of the Contractor, or in special circumstances when allowed by the Owner and the Architect.
- 2.5.4 The burden of proof of substituted product equality rests with the Contractor. Final approval of all substituted products shall be contingent on acceptance of the associated submittals and/or shop drawings, compliance with the Contract Documents, acceptable credit to Owner (when applicable) and acceptable installation. Approval to utilize a substituted product does not relieve the Contractor or supplier of his responsibility to meet the requirements of the Contract Documents.

## 2.6 AS-BUILT DRAWINGS

- 2.6.1 The Contractor shall provide and maintain at the Project site one copy of all Contract Documents, in good order and marked to show clearly all changes and as-built conditions. The Contractor and his Subcontractors shall indicate daily on these documents all as-built conditions and revisions due to substitutions, field changes and Change Orders. The location of all concealed piping, conduit, fixtures, pull-boxes, and similar installations, shall be clearly identified on these documents. Upon completion or termination of the Project, this set of documents shall be delivered to the Architect for utilization in preparation of the record drawings.
- 2.6.2 Progress payments may be reduced or withheld by the Owner in the event that as-built drawings are not kept current.

## 2.7 CHANGES IN THE WORK

- 2.7.1 A Change Order is an amendment to the Owner-Contractor Agreement and is a written order to the Contractor signed by the Owner and the Contractor, issued after the execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time.

- 2.7.2 The Architect and the Owner (in conjunction with the Architect) have the authority to order minor changes in the Work which do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be binding on the Contractor.
- 2.7.3 The Contractor shall not proceed with changes to the Work without an allowance authorization or an approved Change Order. If the Contractor proceeds with changes to the Work without proper written approval, he does so at his own risk.
- 2.7.4 Should any event or circumstance occur that the Contractor believes may constitute a change in the Work entitling the Contractor to an adjustment to the Contract Sum or the Contract Time, the Contractor shall issue written notice and issue a request for a change order to the Owner within 7 days of the discovery of such event or circumstance. Such written notice shall be issued by the Contractor for any event or circumstance that the Contractor knows, or should have known, to have a potential impact on the Project. The request shall describe in detail the related causes and any potential impact to the Project. The Contractor shall also identify any anticipated adjustment to the Contract Sum and/or to the Contract Time as a result of such impact. Failure to submit such written notice and a change order request within the time stipulated and with the information required by this Section (Section 2.7) shall constitute a waiver by the Contractor of his right to a change order on the basis of this event or issue.
- 2.7.5 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:
- A. By unit prices stated in the Contract Documents or as subsequently agreed upon.
  - B. By a lump sum proposal, which is mutually accepted, properly itemized, and includes the following:
    - 1. Labor, including benefits, payroll taxes, and workers compensation insurance.
    - 2. Materials entering permanently into the Work, including applicable sales tax.
    - 3. Costs for equipment utilized to perform the Change Order work.
  - C. By a not-to-exceed maximum cost, which is based on the actual cost of time and materials, properly itemized and verified, and includes the following:
    - 1. Labor, including benefits, payroll taxes, and workers compensation insurance.
    - 2. Materials entering permanently into the Work, including applicable sales tax.
    - 3. Costs for equipment utilized to perform the Change Order work.
- 2.7.6 The costs for changes in the Work may be increased to include a fixed mark-up for Subcontractor overhead and profit, General Contractor overhead and profit on Subcontractor work, and overhead and profit on work done by the General Contractor's own forces. This fixed mark-up shall not exceed the amounts stipulated below for a change to be authorized under project allowance, a single Change Order item, or for any group of related items, and shall be full compensation for the cost of supervision (to include the Project Manager, Project Coordinator, Superintendent, and all other field and office personnel), field office and home office overhead, profit, tools, insurance and bonding, and all other costs or expenses associated with completing the change in the Work. No other costs or expenses, including, but not limited to, direct daily job

costs, general conditions, and/or extended overhead will be paid for time extensions incorporated into a Change Order unless otherwise agreed to in writing by the Owner.

Allowance authorization/ Change Order Item

<u>Amount (Prior to Mark-Up)</u>	<u>Mark-Up</u>
Portion from \$0 to \$50,000	15%
Portion over \$50,000	10%

- 2.7.7 Execution of a Change Order shall be considered complete adjustment of the Contract Sum and the Contract Time and represents complete and final resolution of all matters related to, or arising out of, the Change Order. The Contractor may not reserve the right to make further claims with regard to any executed Change Order. Any attempt by the Contractor to reserve such a right shall be considered invalid and unenforceable.
- 2.7.8 All requests for changes in the Work shall be submitted to the Owner and the Architect in sufficient detail to allow a complete analysis of all costs. The Contractor shall, upon request by the Owner or the Architect, submit invoices for materials and equipment utilized in Change Order work. Labor rates, including fringe benefits, shall be in conformance with the applicable prevailing wage rates for this Project.
- 2.7.9 The Contractor shall, upon request by the Owner or the Architect, submit detailed rationale and justification for labor rates utilized in Change Order work.
- 2.7.10 The Contractor and the Owner mutually agree that the Owner shall have the right to issue one or more Change Orders at or near the end of the Project, requiring work to be performed after the expiration of the Contract Time, without negating or affecting the Owner's right to assess any liquidated damages that the Owner may be entitled to on already delinquent work. The scope of such Change Orders shall be limited to work that is deemed by the Owner to be incidental in nature and necessary to allow for proper completion of the Project.

2.8 CONSTRUCTION CHANGE DIRECTIVES

- 2.8.1 A Construction Change Directive is a written directive to the Contractor, signed by the Owner and the Architect, which shall serve as formal and binding direction for the Contractor to proceed with a change in the Work. The directive may be implemented when deemed necessary as an interim action until a Change Order can be formally assessed and executed. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the directed changes.
- 2.8.2 The Owner, without invalidating the Contract, may order changes in the Work utilizing a Construction Change Directive with the Contract Sum and/or the Contract Time being adjusted as deemed appropriate. The Contractor shall comply with the provisions of Paragraph 2.7.4 in the event that the Contractor believes that a Construction Change Directive has a potential impact on the Contract Time or the Contract Sum.

2.9 CONTRACTOR'S USE OF CONTRACT DOCUMENTS

- 2.9.1 Copies of the Contract Documents which are reasonably necessary for the proper execution, progress, and satisfactory completion of the Work shall be provided to the Contractor by the Owner. Copies so furnished are not to be used by the Contractor on any other project.

SECTION 3 THE CONTRACT

3.1 GENERAL

- 3.1.1 The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.
- 3.1.2 The Contract shall not be binding on either the Owner or the Contractor until the Owner-Contractor Agreement and the Performance and Payment Bonds have been properly executed and submitted, and the Owner-Contractor Agreement has been approved and signed by the President of Board of Trustees or by the District's designated representative.
- 3.1.3 Execution of the Owner-Contractor Agreement shall constitute the Contractor's representation that he has carefully examined the contents of all Contract Documents, that he has read and understands the same, and specifically agrees to be bound thereby. Additionally, execution of the Owner-Contractor Agreement by the Contractor shall represent that he has inspected the site, familiarized himself with all local conditions, laws, and regulations under which the Work is to be performed and has correlated this knowledge with the requirements of the Contract Documents.
- 3.1.4 The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and the Contractor; between the Owner and a Subcontractor; or, between any persons or entities other than the Owner and the Contractor. The Architect shall, however, have authority to act on behalf of the Owner, to the extent provided in the Contract Documents.
- 3.1.5 The laws of the State of Texas and the applicable rules and regulations of its departments, agencies, and institutions shall govern the Project and the Work. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein, and the Contract shall be read and enforced as though it were included therein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be physically amended to make such insertion or correction.
- 3.1.6 The Contract Sum is the sum stated in the Owner-Contractor Agreement and is the total dollar amount payable by the Owner to the Contractor for the complete and approved performance of the Work in strict conformance with the Contract Documents.

### 3.2 CONTRACT TIME

- 3.2.1 The Contract Time is the period of time, in calendar days, allotted in the Contract Documents for the completion of the Work. A Calendar Day shall be understood to be any day of the year, including weekends and holidays.
- 3.2.2 The date of commencement of the Work is the date established in the Notice to Proceed letter issued by the Owner. Upon receipt of payment and performance bonds, and insurance certificates the District shall issue a Notice to Proceed (NTP).
- 3.2.3 The Contractor shall begin the Work on the starting date established in the Notice to Proceed letter. He shall perform the Work expeditiously with adequate forces and shall complete the Work within the Contract Time.
- 3.2.4 Unless otherwise agreed upon, normal working days are considered to be Monday through Friday, excluding District holidays, between the hours of 7:00 a.m. and 4:00 p.m. If the Contractor desires to work on any weekend day, District holiday, or during any other hours of the day he shall request and obtain the Owner's written approval at least 5 days in advance of the requested deviation.
- 3.2.5 It is expressly understood and agreed that the Contract Time is a reasonable and acceptable time for completion of the Work considering the requirements of the Contract Documents, the type and scope of the Project, and the usual industrial and labor conditions prevailing in the locality of the Project.
- 3.2.6 It is expressly understood and agreed that the Contract Time includes adequate time to allow for usual weather delays considering the climatic conditions in the area of the Project. No adjustments to the Contract Time will be allowed on the account of usual weather. The Contractor shall include adequate float or other allowance in his construction schedule to accommodate weather conditions that may be associated with weather dependent work. An extension to the Contract Time will be considered only in a case where an abnormal or unusual weather delay has directly affected the critical path identified in the approved construction schedule. Such request for time extension must include documents containing historic data from National Weather Service.
- 3.2.7 The Contractor's bid and the Contract Sum are based on the Contract Time specified in the Contract Documents and shall not be based on an early completion schedule. No additional compensation shall be granted to the Contractor for delays to an early completion schedule and any such claim by the Contractor is hereby waived.

### 3.3 CONTRACT TIME EXTENSIONS

- 3.3.1 An extension in Contract Time for a delay will be allowed only in the case that a full normal working day is lost. Delays will not be allowed for lost partial days or for lost non-working days.
- 3.3.2 All requests by the Contractor for extensions of the Contract Time due to delays to the Work shall be made in writing to the Owner and the Architect within 7 calendar days after the start of the delay. Each request shall describe in detail the event or events

causing the delay, any related causes, and any impact to the Work and the Project. Failure to submit such requests within the stipulated time and with the information required by this paragraph shall constitute a waiver by the Contractor of his right to an extension of the Contract Time based upon this event or issue.

- 3.3.3 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the Architect, or by any employee of either, by any separate contractor employed by the Owner, or by circumstances that are agreed to be beyond the control and without the fault of the Contractor and his Subcontractors and suppliers, the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine.
- 3.3.4 The Contractor shall not claim or be entitled to any compensation or damages from the Owner because of delay caused by the Owner, the Architect, or any person working for either of them, and any entitlement therefore is hereby waived. The Contractor agrees that his sole remedy shall be an extension of time to complete the Work as provided in the Contract Documents, except that the Owner agrees to compensate the Contractor for any damages resulting from any affirmative, willful act in bad faith performed by the Owner or his employees which unreasonably interferes with the Contractor's ability to complete the Work within the Contract Time.
- 3.3.5 Should the Contractor request and be allowed cumulative time extensions which cause the Contract Time to end on a non-working day (on a weekend day or a holiday), the non-working day(s) will be added to the Contract Time such that the Contract Time ends on a working day.
- 3.3.6 Extensions to the Contract Time will only be allowed for delays that affect the critical path for completion of the entire Work as identified in the approved construction schedule.
- 3.3.7 Extensions to the Contract Time will not be allowed for delays which could have been avoided by the exercise of care, prudence, foresight, and/or diligence by the Contractor, or for delays resulting from correction of work rejected as defective or as failing to conform to the Contract Documents.

#### 3.4 SUBSTANTIAL COMPLETION

- 3.4.1 Substantial Completion is the stage in the progress of the Work, or a designated portion thereof, when construction is sufficiently complete in accordance with the Contract Documents, so that the Owner can occupy and/or utilize the Work (or portion thereof) for its intended use. The Work will not be considered substantially complete if any of the following conditions exist:
  - A. Incomplete or defective work remains (including work identified in the final punch list) which, in the opinion of the Owner, would prevent or interfere with occupancy and/or full use of the facility.
  - B. The Project's mechanical systems have not been tested, balanced, and accepted as being fully complete (including commissioning when applicable).
  - C. The Project's electrical and life safety systems have not been tested and accepted

as being fully complete (including commissioning when applicable).

- D. Applicable State Inspections including following but not limited to: Texas Department of Licensing and Regulation Accessibility Inspection, State Elevator, State Boiler, Texas Department of Transportation etc.,
- E. A Certificate of Occupancy has not been issued by the Building Official (either a Temporary/Conditional or a Final/Unconditional Certificate of Occupancy).
- F. Major HVAC and Electrical Equipment operation and demonstration to Owner's representatives have not been held.
- G. Final clean-up is not complete.

3.4.2 The following procedure shall be used in establishing Substantial Completion of the Work, unless otherwise agreed to in writing:

- A. When the Contractor determines that the Work, or a portion thereof, which the Owner agrees to accept separately, is substantially complete, the Contractor shall submit written notice thereof to the Owner and the Architect, and shall include a punch list of all items which remain to be completed or corrected. Failure to include any items on the list does not alter the Contractor's responsibility to complete all work in accordance with the Contract Documents.
- B. Inspections for Substantial Completion may be requested by the Contractor only after the status of completion has been reviewed and assessed by the Owner and the Architect. Upon such review the Owner and/or the Architect will issue a list of any observed deficiencies that affect the issuance of a Certificate of Substantial Completion.
- C. If the Owner and the Architect, on the basis of an on-site inspection, agree that the Work is substantially complete, the Owner /Architect may provide the Contractor with a list of additional corrective items which shall be added to the Contractor's and the Building Official's list of deficiencies.
- D. If the Owner and the Architect, on the basis of an on-site inspection, determine that the Work is not substantially complete, the Architect will notify the Contractor in writing, and will provide a list of observed deficiencies. The Contractor shall remedy the deficiencies and submit another written request for Substantial Completion.
- E. When the Owner and the Architect determine that the Work is substantially complete, the Owner will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion, state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, and insurance, and fix the time within which the Contractor shall complete the punch list items that are attached to the Certificate of Substantial Completion.
- F. The Certificate of Substantial Completion, when signed by the Owner and the Contractor, shall serve to document the Contractor's acceptance of the responsibilities assigned to him in such Certificate.

3.4.3 No payment, nor any use or occupancy of the Project, or any portion thereof, by the Owner, shall constitute acceptance of any work that is not completed in accordance with the Contract Documents, nor shall it relieve the Contractor of full responsibility



for correcting defective work or materials found at any time prior to completion of the entire Project or during the warranty period.

### 3.5 FINAL COMPLETION

3.5.1 When the Contractor considers the Work fully completed, he shall submit written notice to the Owner and the Architect confirming all of the following:

- A. The Work has been fully completed in accordance with the Contract Documents and is ready for final inspection.
- B. All punch list items have been corrected or completed.
- C. All equipment and systems have been tested, adjusted, and balanced and are fully operational.
- D. All training required by the Contract Documents has been provided.
- E. All operation and maintenance manuals, as-built drawings and all other close-out documents have been submitted in accordance with the Contract Documents and have been accepted as being complete.
- F. All surety releases and consents required by the Contract Documents have been submitted to the Owner.

3.5.2 The Owner and Architect will perform a final inspection of the Work. If the Work is found to be incomplete or defective, the Architect shall notify the Contractor in writing and provide with a list of observed deficiencies. The Owner may withhold such payment as deemed appropriate to ensure the correction of the deficiencies. Should the Contractor fail to promptly correct the deficiencies noted in the final punch list, the Owner may, upon 7 day written notice to the Contractor, hire another contractor to correct such deficiencies, notify the Contractor's Surety, and/or otherwise complete or correct the listed deficiencies, at the Contractor's expense.

3.5.3 When the Work and all requirements of the Contract Documents are fully and satisfactorily completed, the Owner will pay to the Contractor a final payment consisting of the remaining unpaid balance of the Contract Sum due the Contractor. The acceptance of the final payment by the Contractor shall constitute a full and final release and waiver of all Contractor claims and rights of claim against the Owner relating or pertaining to the Work.

### 3.6 WARRANTY REQUIREMENTS

3.6.1 The Contractor and his Surety shall unconditionally guarantee all workmanship and materials incorporated in the Work to be and remain free of defects.

3.6.2 When the Work, or a portion thereof, is accepted as being substantially complete, the warranty period will commence on the date of the Certificate of Substantial Completion for the completed portion of the Work.

3.6.3 For a period of one year following commencement of the warranty period, and for such longer periods as specified in the Contract Documents, the Contractor shall promptly remedy any defects in the Work, and pay for any damage to other work resulting there

from. The Owner shall promptly notify the Contractor in writing of any observed defects. The Contractor shall ensure that the corrective work is completed within 7 days of such notice and is completed in an expeditious and timely manner.

- 3.6.4 The obligations of the Contractor herein shall be in addition to and not in limitation of any obligation imposed by law, or any common law warranty periods.
- 3.6.5 Through the one year correction period described in 3.6.3 above (approximately 1, 3, 6, 9 and 12 months after the date of the Certificate of Substantial Completion, on a date scheduled by the Owner) the Contractor and all requested Subcontractors shall attend a warranty inspection. The Contractor shall take immediate action to remedy, at no cost to the Owner, all warranty items identified during the warranty inspection.

### 3.7 LIQUIDATED DAMAGES

- 3.7.1 It is hereby mutually understood and agreed, by and between the Contractor and the Owner, that the Contract Time, as specified in the Contract, is an essential condition of the Contract. It is further mutually understood and agreed that both the Work and the Contract Time shall commence on the starting date established in the Notice to Proceed letter.
- 3.7.2 The Contractor agrees that all work shall be executed regularly, diligently, and without interruption at a rate of progress that will ensure completion of the Work within the Contract Time.
- 3.7.3 If the Contractor shall neglect, fail, or refuse to achieve Substantial Completion of the Work within the Contract Time, then the Contractor and his Surety *do* hereby agree, as part of the consideration for the Contract, to pay to the Owner, not as a penalty, but as liquidated damages, the amount of money specified in the Owner-Contractor Agreement for each and every excess calendar day that is required to achieve Substantial Completion of the Work. The specified liquidated damages shall be the Owner's sole and exclusive remedy for delays in substantial completion.
- 3.7.4 The Contractor and the Owner mutually agree that in the event of a delay the actual damages to be suffered by the Owner are difficult to determine and accurately quantify. Accordingly, the Contractor, his Surety, and the Owner agree that the amount specified in the Owner-Contractor Agreement for liquidated damages is the appropriate and best estimate of the damages that would actually be incurred by the Owner should the Work not be completed within the Contract Time.
- 3.7.5 Should the remaining balance of the Contract Sum be insufficient to cover the specified liquidated damages, then the Owner shall have the right to recover any remaining sum from the Contractor, from his Surety, or from both.
- 3.7.6 Liquidated damages shall cease to be assessed on the date that Substantial Completion is achieved provided the Contractor completes all punch list work within the time limit stipulated in the Certificate of Substantial Completion. If the Contractor does not complete all of the punch list work within the time limit stipulated in the Certificate of Substantial Completion, the Owner may assess an additional daily liquidated damage rate as set forth in the Owner-Contractor Agreement.

### 3.8 CLAIMS FOR DAMAGES

- 3.8.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents, or others for whose acts he is legally liable, notice shall be provided in writing to such other party within 7 (seven) days after the first knowledge of such injury or damage.
- 3.8.2 Any costs to the Owner caused by defective or ill-timed work performed by the Contractor shall be paid by the Contractor.

### 3.9 DISPUTE RESOLUTION

- 3.9.1 A controversy or claim arising out of or related to the Contract Documents or the Work shall be subject to all provisions of this Section 3.9 (Dispute Resolution) as a condition precedent to the institution of legal or equitable proceedings by either party. These provisions do not apply, however, if the Owner has given notice of default to the Contractor or the Surety under the terms of the Contract Documents or the Performance Bond. If the Owner discovers construction defects after final payment, the Owner has the right to file an immediate judicial action. When the Contractor accepts final payment pursuant to Section 7.3 he waives all rights under this Section (3.9), including the filing of judicial action.
- 3.9.2 Unless otherwise agreed to in writing, the Contractor shall continue the Work and maintain the construction schedule of the Work during any dispute resolution proceedings. If the Contractor continues to perform in accordance with the Contract Documents, the Owner shall continue to make payments in accordance with the Contract Documents. If, however, the Contractor wishes to make a Claim for an increase in the Contract Sum, Contractor must provide written notice of such claim as required herein before proceeding to execute the Work. If the Contractor has received a Construction Change Directive signed by the Owner and Architect, Contractor shall proceed with such Work pending resolution of any disputed increases in the contract sum.
- 3.9.3 In the event that a claim, dispute, or controversy arises between the parties that is related to the Contract Documents or the Work, the party asserting the claim, dispute, or controversy must provide written notice of such claim, dispute or controversy to the other party within 90 days of the occurrence or event giving rise to the claim, or within 90 days after the claimant first recognizes the condition giving rise to the claim. The written notice shall set forth with specificity the nature of the claim or controversy, the relief sought, any other pertinent matters relating thereto, and shall comply with Section 1.8 (Written Notice) of these General Conditions. Notice from the Contractor to the Owner shall be addressed to the Architect, with a copy to the Owner's Director of Design and Construction Department. The notice and time requirements set forth herein shall not apply to warranty claims or construction defect claims that the Owner may have against the Contractor.
- 3.9.4 Claims by the Contractor against the Owner for an increase in the Contract Sum or an increase in the Contract Time shall be decided initially by the Architect, in the form of a written recommendation. An initial recommendation by the Architect shall be required

as a condition precedent to mediation or litigation of all claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the claim has been made to the Architect with no recommendation having been rendered by the Architect.

- 3.9.5 The Architect will review claims and within 10 days of the receipt of the claim take one of the following actions: (1) request additional supporting data from the Contractor, or (2) make a written recommendation to the Owner, with a copy to the Contractor. In evaluating claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in making a written recommendation. If, in evaluating claims or making recommendations, the Architect determines it necessary to engage the assistance of any outside person or entity to make inspections, uncover the Work or render opinions, then the costs of such outside services shall be provided upfront to the Owner and Contractor. If the claimant wishes to proceed with a decision on the claim, then the cost of such additional outside services shall be charged to the party against whom the claim is decided in the Architect's written recommendation.
- 3.9.6 If the Architect requests a party to provide a response to a claim or to furnish additional supporting data, such party shall respond within 10 days after receipt of such request and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished.
- 3.9.7 Following receipt of the Architect's written recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to an adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached, either party may request mediation, which may only be conducted by mutual agreement of the parties, or may institute legal proceedings.

### 3.10 TERMINATION BY THE CONTRACTOR

- 3.10.1 The Contractor may, upon 7 days written notice, terminate the Contract after the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, of a Subcontractor, or their employees or agents; or due to issuance of a court order or other order from a public authority having jurisdiction.
- 3.10.2 If the Contractor terminates the Contract under the terms of the previous paragraph, he may recover from the Owner payment for work completed and approved, including reasonable overhead, profit, and termination costs. The Contractor will not be entitled to overhead and profit on any unperformed work.

### 3.11 TERMINATION BY THE OWNER

- 3.11.1 If any one of the following occurs, then the Owner may, without prejudice to any other right or remedy, and after giving the Contractor and his Surety 7 days written notice and opportunity to cure, terminate the employment of the Contractor.
- A. The Contractor is adjudged bankrupt.
  - B. The Contractor makes a general assignment for the benefit of his creditors.
  - C. A receiver is appointed on account of the Contractor's insolvency.

- D. The Contractor persistently or repeatedly refuses or fails to supply an adequate number of properly skilled workmen, proper supervision, or proper materials.
- E. The Contractor fails to make prompt payment to Subcontractors or to materials suppliers for materials or labor.
- F. The Contractor disregards any law, ordinance, rule, regulation, or order of any public authority having jurisdiction.
- G. The Contractor otherwise breaches the Contract.

3.11.2 Upon termination by the Owner, the Owner may take possession of the site and of all materials, equipment, tools and machinery thereon owned by the Contractor and may finish the Work utilizing whatever means and methods the Owner deems appropriate.

A. Should the Owner terminate the Contract for any of the aforementioned reasons, the Contractor shall not be entitled to receive any further payment until the entire Work is fully complete and the actual amount due to the Contractor if any can be properly determined.

B. Upon such termination, the Contractor shall not be entitled to any further payments until the project is finally completed and an accounting is made. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for any additional professional services, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor and his Surety shall promptly pay the difference to the Owner.

3.11.3 The Owner expressly reserves the right to terminate the Contract at any time due to a national emergency, court injunction, or for any reason determined to be in the best interest of the constituents of Fort Bend County and Fort Bend Independent School District, by giving the Contractor and his Surety 7 days written notice. The Contractor shall be paid for work completed and approved, including reasonable overhead and profit on completed work, and termination costs. The Contractor will not be entitled to overhead or profit on any unperformed work.

### 3.12 SEPARATE CONTRACTS

3.12.1 The Owner reserves the right to award other separate contracts in connection with other portions of the Project. The Owner shall require such separate contractors to provide insurance as required by the Contract and shall comply with all safety regulations, laws and comply with General Contractor's Safety Policies.

3.12.2 The Contractor shall afford the Owner's separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly interface and coordinate his work and theirs.

3.12.3 If any part of the Contractor's work depends on the proper execution of the work of any separate contractor, the Contractor shall inspect and promptly report to the Owner and the Architect any discrepancies or defects in such other work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the separate contractor's work

as fit and proper to receive his work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's work.

- 3.12.4 The Contractor shall do all cutting, fitting, and patching of the Work that may be required to accommodate and incorporate the work of any separate contractor, as shown upon or as reasonably implied by the Contract Documents. The Contractor shall not endanger or alter the work of any separate contractor.
- 3.12.5 Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon written notice, settle with the separate contractor. If any separate contractor asserts any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify, hold harmless, and defend the Owner against any such claim.
- 3.12.6 If a dispute arises between the Contractor and a separate contractor as to their responsibility for any costs or damages to the Project, the Owner may assign and charge such costs or damages to the Contractor and/or the separate contractor as the Owner, in his sole discretion, determines to be appropriate.

### 3.13 ASSIGNMENT

- 3.13.1 The Contractor binds himself and each of his partners, successors, assigns and legal representatives to the Owner and to the Owner's partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents. He shall not assign or sublet the Contract, in whole or in part, without the written consent of the Owner, nor shall the Contractor assign any monies due or to become due to him hereunder, without the prior written consent of the Owner.

### 3.14 SEVERABILITY

- 3.14.1 The Contract and the various provisions thereof are severable. Should any part, clause, provisions or terms be declared invalid, ineffective or unenforceable, the remaining provisions shall remain in full legal force and effect.

### 3.15 INDEMNIFICATION

- 3.15.1 To the fullest extent permitted by law, the Contractor shall indemnify, and hold harmless the Owner, the Architect, the Architect's consultants, and the agents and employees of any of them from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.
- 3.15.2 The Owner and the Contractor shall each indemnify the other for any losses to the

extent caused by the indemnifying party.

- 3.15.3 In any and all claims against the Owner or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts.
- 3.15.4 Obligations of the Contractor hereunder shall not extend to the liability of the Architect, his agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or the giving of or the failure to give directions or instructions by the Architect, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.
- 3.15.5 Obligations of the Contractor hereunder shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist pertaining to a party or person described herein. This indemnification obligation shall not be diminished or limited in any way by the limits of insurance required in this Contract or otherwise available to the Contractor or Subcontractors.
- 3.15.6 All indemnification obligations of the Contractor shall survive final payment.

## **SECTION 4 THE OWNER**

### **4.1 OWNER'S RESPONSIBILITIES**

- 4.1.1 The Owner will provide general administration of the Contract, including performance of the functions described in this Section (Section 4). Such general administration shall not relieve the Contractor of complete responsibility for the means and methods of construction and performance of the Work in accordance with the Contract Documents.
- 4.1.2 The Owner shall furnish site surveys describing the topography and physical characteristics, legal limits, and utility locations for the Project site. The Owner shall also furnish the Geotechnical report if applicable for the project.
- 4.1.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for easements and utility connection fees for permanent structures or for permanent changes in existing facilities. All fees related to the inspection of the Work by as required City, County, State and Federal Government is the responsibility of the Contractor. The Owner will contract and pay for all 3<sup>rd</sup> Party Materials Testing as required by Texas law. The Owner will also contract and pay for all HVAC Test and Balance activities as required.
- 4.1.4 Information or services under the Owner's control shall be furnished by the Owner within a reasonable time to avoid delays in the orderly progress of the Work.
- 4.1.5 Prior to the start of construction, the Owner shall obtain all land and rights-of-way necessary for the carrying out and completion of the Work.
- 4.1.6 In case of termination of the employment of the Architect, the Owner shall appoint a replacement whose status under the Contract Documents shall be that of the former Architect.
- 4.1.7 The Owner will issue the Notice to Proceed and Certificate of Substantial Completion.
- 4.1.8 The foregoing are in addition to other duties, responsibilities, and rights of the Owner enumerated throughout the Contract Documents.

### **4.2 OWNER'S AUTHORITY**

- 4.2.1 The Owner and his representatives shall have access to the Work at all times. The Contractor shall provide proper equipment and facilities for such access and inspection. If any work is required to be tested or approved, the Contractor shall give the Owner timely notice of its readiness for inspection. Neither the observations of the Owner or the Architect in the administration of the Contract, nor any inspections, tests, or approvals shall relieve the Contractor from his obligation to perform the Work in accordance with the Contract Documents.
- 4.2.2 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after 7 days written notice to the Contractor, and without prejudice to any other remedy



he may have, make good such deficiencies. In such case, the Owner may deduct from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the additional professional services made necessary by such default, neglect, or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall immediately pay the difference to the Owner.

4.2.3 Should the Owner or the Architect determine that the Contractor has proceeded with work that does not comply with the Contract Documents, the Contractor shall be required to correct such work at the Contractor's own expense.

4.2.4 The Owner will not be responsible for the acts or omissions of the Contractor or any Subcontractor, or any of their agents or employees, or any other persons performing any of the Work.

4.2.5 If the Contractor fails to correct work which is not in accordance with the requirements of the Contract Documents or fails to carry out work in accordance with the Contract Documents, the Owner, by written notice, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Contractor shall not be entitled to any compensation or to any additional time for such work stoppage.

#### 4.3 INSPECTION BY THE OWNER

4.3.1 Any required 3<sup>rd</sup> Party Inspection company retained by the Owner has authority to require compliance with the Contract Documents. The Architect will render interpretations of the Drawings and Specifications as may be necessary to assist the Inspector with proper assessment of non-complying work.

4.3.2 The 3<sup>rd</sup> Party Inspection company retained by the Owner may direct the Contractor to stop any unsafe work, any non-complying work, and/or any work that presents a life-safety concern. The Contractor shall not be entitled to any compensation or to any additional time for such work stoppage.

4.3.3 Once the Contractor is advised of non-complying work, proceeding with that work or with any related work shall be at the Contractor's risk and at the Contractor's expense.

4.3.4 The Contractor shall provide the 3<sup>rd</sup> Party Inspection company with a minimum 48 hour written notice of all desired inspections.

4.3.5 The Contractor will be charged for extra inspection services when any work requiring inspection is performed during time periods other than the normal workday (i.e., during nights, weekends, and holidays). The charges shall be based on the current rate of pay for the company conducting the inspection, including any applicable travel and per diem expenses. Charges for extra inspection services outside of normal working hours will be processed as deductive changes to the Contract Sum. The necessity for extra inspection services outside of normal working hours will be determined by the Owner.

4.3.6 The Owner and his authorized representatives shall be permitted to inspect the Work and materials, of the Contractor and Subcontractors. Such inspection by the Owner or

his authorized representatives shall not be considered a warranty as to the fitness or acceptability of the Work and materials, and shall not relieve the Contractor or his Subcontractors of their obligations or duties required by the Contract Documents.

## **SECTION 5 THE CONTRACTOR**

### **5.1 GENERAL**

- 5.1.1 The Contractor shall carefully study and compare all parts of the Contract Documents with each other and with all information furnished by the Owner and shall immediately report any discrepancies, conflicts, or inconsistencies that he discovers in writing to the Owner and the Architect. The Contractor shall not be liable to the Owner and/or the Architect for any damages resulting from discrepancies, conflicts, or inconsistencies in the Contract Documents unless the Contractor recognized, or should have recognized such discrepancies, conflicts, or inconsistencies and failed to report them to the Owner and the Architect.
- 5.1.2 No mobilization shall commence and no work shall be performed until all required bonds and insurance certificates have been provided to the Owner.
- 5.1.3 If the Contractor performs any work knowing that it involves a recognized discrepancy, conflict, or inconsistency in the Contract Documents, without specific notice to the Owner and the Architect, the Contractor shall assume all responsibility for such performance including but not limited to, any and all costs for correction.
- 5.1.4 The Contractor shall submit cost proposals, progress schedules, reports, estimates, records, and other data as the Owner or Architect may request concerning work performed, or to be performed under the Contract.

### **5.2 CONTRACTOR'S RESPONSIBILITIES**

- 5.2.1 The Contractor shall perform the Work in a timely and workmanlike manner and in strict conformance with the Contract Documents.
- 5.2.2 The Contractor shall prepare and submit daily reports to the Owner and the Architect within seven days of the reported day. Reports shall include workers on site, work performed, weather conditions, material and equipment deliveries, outstanding issues, and pending RFI's.
- 5.2.3 The Contractor shall supervise and direct all portions of the Work. He shall be solely responsible for all construction procedures, methods, techniques, sequences, and safety, and for coordinating all portions of the Work to comply with the Contract Documents. He shall be responsible for the acts and omissions of his employees and Subcontractors, their agents and employees, and all other persons performing any of the Work.
- 5.2.4 The Contractor and each Subcontractor if appropriate shall have and maintain a State of Texas Contractor's license in good standing for the entire duration of the Contract Time.

- 5.2.5 The Contractor shall at all times enforce good discipline and order among his employees and Subcontractors and shall, at his own cost, provide the security necessary to adequately protect the Work.
- 5.2.6 The Contractor shall at all times, and at his own cost, safely guard and protect the Owner's property, the Work, and all property adjacent to the Project, from damage, injury, or loss in connection with the Project and shall replace or make good any such damage, injury, or loss. The Contractor shall be responsible for the protection of adjacent property and the maintenance of passageways, guard fences, and other protective facilities.
- 5.2.7 The Contractor shall give all notices and shall comply with all laws, ordinances, rules, orders, and regulations of all public authorities, relating to the performance of the Work.
- 5.2.8 In the event of a temporary suspension of work, and/or during inclement weather, the Contractor shall protect, and shall cause his Subcontractors to protect his and their work and materials against damage, injury, or loss. If any work or materials become damaged, injured, or lost due to any cause, such work and materials shall be removed and replaced at the expense of the Contractor.

### 5.3 SUPERINTENDENT

- 5.3.1 The Contractor shall employ a competent full-time superintendent and necessary assistants who shall be in attendance at the Project site throughout the progress of the Work. The superintendent and assistants shall be satisfactory to the Owner, and shall not be changed except with the written consent of the Owner. The superintendent shall represent the Contractor and have full authority to act on his behalf.

### 5.4 LABOR AND MATERIALS

- 5.4.1 Unless otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all labor, materials, tools, equipment, water, light, power, heat, transportation, supervision, temporary construction services, procedures, and facilities of every nature required to properly execute and complete the Work in accordance with the Contract Documents. All materials shall be installed in strict compliance with the Contract Documents and the recommendations of the manufacturer.
- 5.4.2 In any case where the manufacturer's installation instructions conflict with the Contract Documents the Contractor shall bring such conflict to the attention of the Owner and the Architect prior to installing the associated materials or equipment, such that the Owner and the Architect may provide direction for an appropriate resolution to the identified conflict. Should the Contractor proceed with installing any materials or equipment in a manner contrary to the manufacturer's instructions without first notifying the Owner and the Architect, the Contractor shall remove and reinstall the materials or equipment in accordance with the manufacturer's instructions at no cost to the Owner.

- 5.4.3 The Contractor shall not employ or contract with any firm or organization that is unfit or unskilled in the work to be performed. The Contractor shall not discriminate or allow discrimination against any employee or applicant for employment because of sex, race, color, creed, or national origin. The Contractor shall comply with and shall require his Subcontractors to comply with all applicable provisions of State of Texas rules and regulations.
- 5.4.4 As required by State of Texas, the Contractor shall ensure that all employees on the Project are paid in accordance with the Prevailing Wage Rates as published in the Contract Documents and as adopted by FBISD Board of Trustees. The Contractor shall forfeit, by deductive Change Order, the applicable amounts should the Contractor fail to comply with any of the applicable prevailing wage rate requirements.
- 5.4.5 All work performed after regular working hours, on weekends or legal holidays, shall be performed without additional expense to the Owner.
- 5.4.6 Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the Contractor shall furnish evidence, satisfactory to the Owner, as to the type and quality of all materials and equipment.
- 5.4.7 No materials or equipment for the Work shall be purchased by the Contractor, nor shall he permit any Subcontractor to purchase materials or equipment, that are subject to any chattel mortgage, or are under a conditional sale contract or other security agreement by which any right, title, or interest is retained by the seller.
- 5.4.8 All materials and equipment used in the Work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of the Contractor. Such certificates shall be executed by qualified firms acceptable to the Owner, shall include all information required by the Contract Documents, and shall clearly refer specifically to the relevant materials and/or equipment.

## 5.5 TEMPORARY UTILITIES, HEATING, AND COOLING

- 5.5.1 The Contractor shall be solely responsible for providing all necessary temporary utilities. The Contractor shall pay all costs related thereto, including, but not limited to, applications, fees, permits, engineering, and any other costs as may be required to acquire temporary utilities. The Owner will not be responsible for any delays or costs related to obtaining temporary utilities. Unless otherwise agreed to by the parties in writing, the Contractor shall be solely responsible for all necessary dry and wet utilities until the project is deemed substantially complete. The Contractor shall coordinate transfer of utilities in Owner's name immediately upon substantial completion. The Owner shall be responsible for such temporary utilities for any renovation work to be undertaken inside of an existing building or school.

5.5.2 Temporary utilities may be connected to the Owner's existing metered utilities only with the Owner's and utility company's written authorization. The Owner may request connection to the Owner's existing utilities to be separately metered to allow for proper allocation of utility costs, unless another arrangement is specifically agreed to and authorized by the Owner in writing. Temporary meters shall be removed upon completion of the Work.

5.5.3 The Contractor shall be solely responsible for providing temporary heating, cooling, and/or ventilation as required to prevent degradation or damage to the Work. The permanent heating, cooling, and air handling systems shall not be utilized for the purpose of temporary heating, cooling, or ventilation until the Owner approves of such use in writing. In no case shall the permanent heating, cooling, or air handling systems be operated until they are complete, including formal start-up, check-out, and testing and balancing. Utilization of any of the permanent heating, cooling, or air handling systems prior to Substantial Completion shall not impact the specified warranty for such equipment which shall begin on the date of Substantial Completion in accordance with Section 3.4 of these General Conditions.

## 5.6 EMERGENCIES

5.6.1 In case of an emergency which threatens loss or damage to property, personal injury, or life safety, the Contractor shall immediately take all feasible actions to prevent or mitigate such loss, damage, injury or death, without awaiting instructions from the Owner or the Architect. The Contractor shall notify the Owner and the Architect in writing of such emergency at the first feasible opportunity.

5.6.2 The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided herein for claims.

5.6.3 The Contractor shall maintain a current emergency telephone number list at the job site. The list shall include telephone numbers for the Contractor's superintendent and for other responsible Contractor representatives that can be contacted after normal working hours in the event of an emergency. This list shall be prominently posted both inside and outside of the Contractor's field office.

## 5.7 CONSTRUCTION SCHEDULE

5.7.1 Within 14 days after issuance of the Notice to Proceed or an Intent to Award letter, whichever is issued first, and prior to submitting any progress payment application, the Contractor shall submit a construction schedule to the Owner and the Architect for review. The schedule shall not exceed the Contract Time, shall be revised at appropriate intervals as required by the progress and conditions of the Work, and shall provide for performance and completion of the Project in accordance with the Contract Documents.

5.7.2 The construction schedule shall be organized to show progress for each trade and operation. As a minimum, the schedule shall show the order in which the Contractor proposes to perform the Work, with the proposed starting and completion dates, and with available float for each activity of the Work. Activities which constitute critical

path portions of the Work shall be clearly identified as such. The schedule shall include line items for submittal preparation, submittal review, re-submittal preparation, re-submittal review, and procurement, fabrication, and delivery of materials and equipment. The schedule shall allow for reasonable and orderly issuance of all required submittals to the Architect. The schedule shall be promptly updated as necessary to reflect the work required to implement each change order and/or change in the Work.

- 5.7.3 The construction schedule shall include scheduling line items required for HVAC, Electrical and other Systems commissioning as applicable to the project.
- 5.7.4 For projects with a Contract Sum of \$10,000,000 or greater, the Contractor shall utilize Primavera Software (P6 Version 7.0 or later) to create and manage the construction schedule. Submitted schedules and associated data shall be provided in both hard copy and electronic file format. Upon written request by the Owner, the Contractor shall provide prompt responses to any questions regarding reasons or causes for changes to the construction schedule.
- 5.7.5 For projects with a Contract Sum of \$10,000,000 or greater, the Contractor shall coordinate and attend a Schedule Coordination Meeting. The meeting shall include appropriate representatives from the Contractor and the Owner and shall include review and discussion of all scheduling requirements and/or concerns. The Schedule Coordination Meeting shall take place as soon as possible after the Notice to Proceed is issued.
- 5.7.6 The Contractor shall submit a current/updated construction schedule with each Progress Payment Application. Failure by the Contractor to provide a current construction schedule shall be justification for the Owner to withhold approval or reduce the amount of the payment due the Contractor.
- 5.7.7 In the event of any failure to adhere to the construction schedule the Contractor shall, within 7 days of written notice from the Owner, provide a recovery schedule for review by the Owner and the Architect. The recovery schedule shall identify how the Contractor proposes, at his sole expense, to overcome the associated delays and complete the Work within the Contract Time. Such notice from the Owner shall not constitute either actual or implied direction for the Contractor to accelerate the Work.

## 5.8 CONSTRUCTION PROGRESS MEETINGS

- 5.8.1 The Contractor shall attend a weekly coordination meeting at the Project site, to be attended by the Contractor's Project Manager and Superintendent, the Architect, the Owner's designated representatives, and appropriate Subcontractors. Such meetings may be scheduled at less frequent intervals, if agreed upon in writing by the Owner and the Contractor. The Contractor shall furnish a three (3) week look ahead at each progress meeting.
- 5.8.2 The Architect will conduct the job-site construction progress meetings and will prepare and distribute typed meeting minutes for each such meeting. The Owner's project representative may conduct the meetings in the absence of the Architect.

5.9 PROGRESS PHOTOGRAPHS

5.9.1 The Contractor shall take not less than twelve progress photographs of the Work each month at a minimum resolution of 640 by 480 pixels. The photographs shall be taken with the intent of providing a clear and complete depiction of overall Project progress. Each photograph is to be clearly marked with the time, date, location/view and other details sufficient to identify the subject. Camera view/locations shall be coordinated with and approved by the Owner or the Architect. Progress photos shall be stored on a digital video disk (DVD disk) and issued to the Owner along with each progress payment application.

5.10 TAXES, PERMITS, FEES, AND NOTICES

5.10.1 The Owner qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provision of Article 20.04(f) of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rental and lease of materials, supplies and equipment used or consumed in performance of the Contract shall be exempted by issuing to suppliers an exemption certificate in lieu of tax. Failure by the Contractor or Subcontractors to take advantage of the Owner's exemption and to obtain such exemption certificate shall make the Contractor responsible for paying taxes incurred on materials furnished on the Project without additional cost to or reimbursement by the Owner

5.10.2 The Contractor shall secure and pay for all construction-related building permits, fees, and licenses necessary for the proper execution and completion of the Work, including, but not limited to, dust control permits, storm water mitigation permits, and utility inspection fees.

5.10.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the Work and of the *District*. If the Contractor discovers that any of the Contract Documents are at variance therewith, he shall immediately notify the Owner and the Architect in writing. If the Contractor performs any work which he knows or should have known to be contrary to such laws, ordinances, rules, and regulations, or orders, without such written notice and written instruction from the Owner or Architect, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

5.11 PROJECT SIGN

5.11.1 Upon commencing the Work the Contractor shall erect one painted project sign, 4 feet by 8 feet, in the format directed by the Owner. This sign shall be the only Contractor sign displayed on the Project site. Alternately, the Owner may choose to provide existing bond/project signs as deemed appropriate. The Contractor is responsible for any permit fees associated with project sign.

5.12 ACCESS ROADS

5.12.1 The Contractor shall use designated access roads as directed by the Owner, and the Contractor shall keep these roads passable at all times. The Contractor shall be entirely responsible for any damage to roads, trees, shrubs, gates, fences, grass, curbs, gutters,

and driveways due to construction usage. All damaged portions shall be restored by the Contractor, at his own cost, to the same condition as existed before the commencement of the Work.

- 5.12.2 Dirt roads shall be periodically sprinkled with water when dust conditions create an on site or off site hazard or nuisance to workmen, neighboring properties, or the public in general as per the requirements of Authority of having Jurisdiction. The Contractor shall secure and pay for any dust control permits required by State or local jurisdictions.

#### 5.13 CONTRACTOR'S FIELD OFFICE

- 5.13.1 For new schools and ancillary buildings, the Contractor shall provide on the site a temporary field office for his own use (and for use by the Owner, Architect and others as required or appropriate). If required, the placement of such field office shall be placed per the Construction staging plan included in the contract documents. The Contractor's field office shall be adequate and appropriate for the project size and type:

- A. A minimum of 120 square feet of floor area and as appropriate to facilitate the required job site meetings.
- B. Outside door with security lock.
- C. Minimum of four duplex electrical receptacles.
- D. Adequate light fixtures and lamps (as necessary to provide a minimum of 50 foot-candles at the desktop and plan table).
- E. Telephone line (land or wireless).
- F. Heating, ventilation, and air conditioning provisions as necessary to maintain an indoor temperature of 72°F.
- G. Plan rack.
- H. Plan table (3 feet x 6 feet minimum size).
- I. Four-drawer file cabinet.
- J. First aid kit.
- K. Computer data/network connection (with high speed Internet access).
- L. Conference table and chairs as necessary to accommodate the required construction progress meetings.
- M. Multi-function printer (with print, copy, and scan capabilities).
- N. Bottled water dispenser (with refill service for the duration of the project).
- O. Additional hard hats for use by the Owner, Architect, and Campus Administration.
- P. Weather proof surface access to trailer from parking area

- 5.13.2 The Contractor shall pay the cost of all utilities, including telephone and janitorial service, as required for the maintenance of the Contractor's field office until the completion of the Project.

- 5.13.3 The Contractor's field office shall remain the property of the Contractor, and shall be completely removed at the completion of the Project.

#### 5.14 OWNER'S FIELD OFFICE

- 5.14.1 For new schools and ancillary buildings, the Contractor may be required to provide on the site a temporary field office for the sole use of the Owner. If required, the



placement of such field office shall be placed per the Construction staging plan included in the contract documents. The Owner's field office shall contain as a minimum:

- A. A minimum of 120 square feet of floor area.
- B. Outside door with security lock.
- C. Minimum of four duplex electrical receptacles.
- D. Adequate light fixtures and lamps (as necessary to provide a minimum of 50 foot-candles at the desktop and plan table).
- E. Telephone line (in areas with poor cell phone coverage).
- F. Heating, ventilation, and air conditioning provisions as necessary to maintain an indoor temperature of 72°F.
- G. Plan rack.
- H. Plan table (3 feet x 6 feet minimum size).
- I. Four-drawer file cabinet.
- J. First aid kit.
- K. Computer data/network connection (with Internet access).
- L. Flat top double pedestal desk with drawers and cushioned chair.
- M. Multi-function printer (with print, copy, and scan capabilities).
- N. Bottled water dispenser (with refill service for the duration of the project).

5.14.2 The Contractor shall pay the cost of all utilities, including telephone and janitorial service, as required for the maintenance of the Owner's field office until the completion of the Project.

5.14.3 The Owner's field office shall remain the property of the Contractor, and shall be completely removed at the completion of the Project.

#### 5.15 TOILET FACILITIES

5.15.1 The Contractor shall provide and maintain in a clean and sanitary condition in a weatherproof building satisfactory toilet accommodations for all workmen and for use by the Owner's representatives. Minimum toilet accommodations shall consist of a frost-proof chemical toilet or water closet with urinal. Temporary or portable toilet accommodations shall be completely removed upon completion of the Project.

#### 5.16 CONSTRUCTION SURVEYS

5.16.1 Unless otherwise expressly provided for in the Contract Documents, the Contractor shall furnish and pay for all construction surveys necessary for execution of the Work or required by the Contract Documents. The Contractor shall furnish and pay any required elevation certificates as required by the Authority Having Jurisdiction.

#### 5.17 ARCHAEOLOGICAL FINDINGS

5.17.1 Any historic, prehistoric, archeological evidence, or artifacts discovered on the site shall remain undisturbed and shall be reported immediately to the Owner in writing. Any such findings are the property of the Owner, and shall be processed in accordance with State Laws.

## 5.18 SUBSURFACE CONDITIONS

- 5.18.1 Should the Contractor encounter subsurface or hidden conditions at the site materially differing from those indicated in the Contract Documents, he shall immediately give written notice to the Owner and the Architect of such conditions before they are disturbed. The Architect will investigate the conditions, and if he finds that they materially differ, he will, after consultation with the Owner, make such changes in the Contract Documents as he may deem necessary. Any increase or decrease in cost resulting from such changes will be adjusted by Change Order.
- 5.18.2 The Contractor shall perform all work in strict conformance with the current 'Call Before You Dig' program applicable at the location of the Project.

## 5.19 PATENTS AND ROYALTIES

- 5.19.1 To the fullest extent permitted by law, the Contractor shall defend and hold harmless the Owner and his officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of claimed infringement of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Work, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents. If the Contractor uses any design, device, or materials covered by letters, patent, or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device, or material. It is mutually agreed and understood, that the Contract Sum includes all royalties or costs arising from the use of any such design, device, or materials in the performance of the Work.

## 5.20 MATERIALS TESTING

- 5.20.1 Testing of construction materials as required by contract documents shall be carried out by the Owner unless otherwise required in the Contract Documents. The Owner shall select the testing laboratory or inspection agency to carry out this work. The purpose of such testing is to verify conformity of materials and/or equipment with the Contract Documents. Where tests indicate conformity, costs of testing will be paid by the Owner; where tests indicate non-conformance, costs of re-testing will be paid by the Contractor directly to testing laboratory or to Owner via a deductive Change Order.
- 5.20.2 If special inspection or testing requirements are established by any of the Contract Documents, performance of and payment for such inspection or testing shall be as specifically stated therein. If the manner of payment is not specified or if there is no mention of such inspection or testing in the Contract Documents, but such inspection is judged necessary by the Owner, then the Owner shall pay the cost thereof. The Contractor shall cooperate toward minimizing the cost of such inspection and testing.
- 5.20.3 All testing and inspection carried out by the Owner is for the benefit of the Owner and not the Contractor. Lack of performance or failure on the part of any testing laboratory or inspection agency retained by the Owner shall not relieve the Contractor of his responsibility to complete the Work in accordance with the Contract Documents.

## 5.21 OPERATION AND MAINTENANCE MANUALS

5.21.1 Thirty (30) days prior to substantial completion of the Project, the Contractor shall submit to the Architect, a sample of each Operation and Maintenance Manual for equipment and/or materials incorporated into the Work. Upon approval by the Architect, the Contractor shall furnish to the Owner, two (2) bound and indexed copies of the approved Operation and Maintenance Manuals and a Compact Disc (CD) containing PDF files of such Manuals. Operation and Maintenance Manuals shall be incorporated into three-ring binders with a typed index and tabbing as necessary for identification of all appropriate sections. CD files shall be organized in folders and files named similar to that of the organization of the three ring binders.

## 5.22 CORRECTION OF WORK

5.22.1 If any work is covered prior to either a specified or a requested inspection, the Contractor shall uncover the work for observation and if found to be defective or non-conforming shall replace the work at no cost to the Owner.

5.22.2 If any work has been covered which the Owner or the Architect has not specifically requested to observe prior to being covered, the Owner may request to see such work and it shall be uncovered by the Contractor. If the uncovered work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If the uncovered work is not in accordance with the Contract Documents, the Contractor shall pay such costs.

5.22.3 The Contractor shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether observed before or after the Certificate of Substantial Completion is issued, and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected work, including, but not limited to, the cost for additional professional services.

5.22.4 The Contractor shall bear all costs associated with making good all work of separate contractors destroyed or damaged by removal or correction.

5.22.5 If the Contractor does not remove defective or non-conforming work immediately upon written notice, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage immediately upon written notice, the Owner may sell such work at auction or at private sale to recover the related costs. If such proceeds do not cover all related costs incurred by the Owner the difference shall be charged to the Contractor and an appropriate Change Order shall be issued.

5.22.6 If the Contractor fails to correct defective or non-conforming work, the Owner may correct it at the Contractor's expense in accordance with the Contract Documents.

5.22.7 If the Owner prefers to accept non-conforming work, he may do so instead of requiring its removal or correction, in which case an appropriate reduction will be made to the Contract Sum, or, if the amount is determined after final payment, such amount shall be

paid to the Owner by the Contractor immediately upon written notice.

5.22.8 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to errors and/or omissions in the Contract Documents.

## 5.23 SUBCONTRACTORS

5.23.1 After submitting the required Subcontractor information to the Owner, the Contractor shall not contract with any other Subcontractor nor change Subcontractors without proper justification and without the prior written approval of the Owner.

5.23.2 Should the Contractor decide for any reason to substitute a subcontractor for work that he listed to be self-performed, the Contractor shall provide a written explanation of why the subcontractor was not utilized in the original bid and why the substitution is in the best interest of the District. The Owner reserves the right to either approve or deny such requests.

5.23.3 If the Owner has a reasonable objection to any Subcontractor, and requests in writing a change in Subcontractors, the Contractor shall submit an acceptable substitute, and the Contract Sum may be increased or decreased by any reasonable costs directly caused by such substitution.

5.23.4 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the General Conditions and the other Contract Documents. These provisions shall include, but shall not be limited to, the following:

A. Require that the Subcontractor's work be performed in accordance with the requirements of the Contract Documents and be guaranteed *to be corrected* for a period of one year after the date of Substantial Completion, or as may be required in the Contract Documents.

B. Require that the Subcontractor's work be performed in accordance with the Contractor's construction schedule to ensure completion within the Contract Time.

C. Require that all claims by the Subcontractor for additional costs or extensions of time with respect to subcontracted portions of the Work shall be submitted to the Contractor in the time and manner provided in the Contract Documents for like claims by the Contractor upon the Owner.

5.23.5 The Contractor shall pay each Subcontractor, within 10 calendar days after receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of each Subcontractor's work, in accordance with Texas law. The Contractor's failure to make timely payments to the Subcontractors shall be grounds for termination under Section 3.11.1. The Contractor shall also require that each Subcontractor make similar payments to each Sub-subcontractor, in accordance with Texas law.

- 5.23.6 The Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of the persons directly employed by him.
- 5.23.7 The Contractor shall be responsible for the proper distribution of all insurance recoveries resulting from an insured loss under the Contract.
- 5.23.8 The Owner may upon request, furnish to any Subcontractor or supplier, information regarding payments to the Contractor on account of work done by such Subcontractor or supplier.
- 5.23.9 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any monies to any Subcontractor, workman, or supplier, except as may otherwise be required by law.
- 5.24 JOB SAFETY
- 5.24.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- 5.24.2 All work shall be performed in strict accordance with the most current edition of the State of Texas Occupational Safety and Health Standards and OSHA Standards.
- 5.24.3 The Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:
- A. All employees on the Project and all other persons who may be affected thereby;
  - B. All of the Work, whether in storage on or off the site; and,
  - C. All property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.
- 5.24.4 The Contractor shall comply with all applicable laws, ordinances, rules, and regulations of any public authority having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss. The Contractor shall erect and maintain, as required by existing conditions and by the progress of the Work, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent properties.
- 5.24.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be supervision of a safety program and the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner.
- 5.24.6 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury, or loss.
- 5.24.7 The Contractor shall be responsible for the safe operation of all equipment, for utilizing

safe construction methods, and for any damage which may result from failure or from improper construction, maintenance, or operation.

5.24.8 The Contractor shall securely fence, barricade, cover, or otherwise adequately protect all excavations, holes, shafts, or other hazards to guard against danger to persons or animals and shall properly maintain such protection until the completion of the Project.

5.24.9 The Contractor shall immediately notify the Owner, and shall take immediate action to prevent damage, injury or loss, should any suspected hazardous materials be encountered during the course of work on the Project.

## 5.25 SITE MANAGEMENT AND CLEANUP PROCEDURES

5.25.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site. The Contractor shall at all times keep the site and the Work free from accumulation of waste materials and rubbish resulting from his operations.

5.25.2 The Contractor shall obtain any required dust control permit and shall implement a dust control program prior to beginning any activity at the project site. The Contractor's dust control program shall comply with all applicable state and local requirements. As a minimum, the Contractor shall periodically sprinkle the entire construction site with water as required to prevent blowing dust from becoming a hazard or nuisance to workmen, neighboring properties, or the public.

5.25.3 The Contractor shall develop and implement a stormwater pollution prevention plan (SWPPP) complying with the most current version of the federal Environmental Protection Agency Construction General Permit, or with applicable state or local stormwater pollution prevention requirements, whichever is more stringent.

5.25.4 Upon completion of the Work the Contractor shall remove all waste materials, rubbish, tools, construction equipment and machinery, and surplus materials from the Project site. The Contractor shall clean all surfaces and leave the Work in a finished, cleaned, washed, waxed, and polished condition. The aforementioned cleanup requirements are also specifically applicable to all mechanical equipment and to all mechanical equipment rooms.

## 5.26 ROOFING INSTALLATION AND PROTECTION

5.26.1 No work including staging or access to other portions of the Work shall be permitted on the finished membrane.

5.26.2 All roofing work shall commence at the furthest point from worker access and progress back towards the access point.

5.26.3 If staging, access, or work is required on the finished membrane, the Contractor shall provide protection along the access path and under the work extending 48" beyond the required work area. Protection shall consist of 3/4" plywood over a heavy canvas tarp

with sand bag ballasts as required to prevent the plywood from becoming airborne during strong winds.

#### 5.27 QUALITY ASSURANCE/QUALITY CONTROL

5.27.1 The Contractor shall develop and implement an appropriate quality assurance/quality control program for the Project. A detailed description of the program shall be furnished to the Owner and the Architect for review prior to submitting the first progress payment application.

### SECTION 6 THE ARCHITECT

#### 6.1 ARCHITECT'S RESPONSIBILITIES

6.1.1 The Architect will provide construction administration services for the duration of the Project. The Architect is the Owner's representative and will advise and consult with the Owner for the entire duration of the Project.

6.1.2 The Architect will be the interpreter of the Drawings and Specifications and will render interpretations as may be necessary for proper execution of the Work.

6.1.3 The Architect will review and respond to all Requests for Information issued by the Contractor within the time period stipulated in Section 2.3.

6.1.4 The Architect shall have complete access to the Work at all times.

6.1.5 The Architect will make periodic visits to the site to observe the progress and quality of the Work and to determine generally if the Work is proceeding in accordance with the Contract Documents.

6.1.6 The Architect will review all shop drawings, samples, and submittals required by the Contract Documents.

6.1.7 The Architect will not be responsible for the acts or omissions of the Contractor or any Subcontractor, or any of his or their agents or employees, or any other persons performing any of the Work.

6.1.8 Based upon site observations and the Contractor's progress payment applications, the Architect will review and make recommendations to the Owner, regarding the amounts claimed by the Contractor in each progress payment application.

6.1.9 The Architect will have authority to reject work which does not conform to the Contract Documents.

6.1.10 The Architect will prepare Allowance Expenditure Authorizations and Change Orders (on a format provided by the Owner) for review and approval by the Owner.

6.1.11 The Architect will have authority to order minor changes in the Work which do not

involve a change in the Contract Sum or the Contract Time.

- 6.1.12 The Architect shall attend and conduct all scheduled construction progress meetings at the Project site.
- 6.1.13 The Architect's decisions on matters relating to aesthetics will be final if consistent with the intent expressed in the Contract Documents.



## **SECTION 7      PAYMENT**

### **7.1      SCHEDULE OF VALUES**

7.1.1      Within 14 calendar days after the issuance of the Notice to Proceed, the Contractor shall submit to the Owner and the Architect a schedule of values of the various portions of the Work, aggregating to the total Contract Sum, divided to facilitate payments to Subcontractors, prepared in a form acceptable to the Owner, and supported by such data to substantiate its correctness as the Owner may require. General Contractor's general conditions, insurance, bond costs, allowances and contingencies shall be separately itemized. This schedule, when approved by the Owner and the Architect, shall be the basis for each Progress Payment Application.

### **7.2      PROGRESS PAYMENT APPLICATIONS**

7.2.1      The Contractor shall submit a Progress Payment Application not more than once each month in the form provided by the Owner. Each Progress Payment Application shall be accompanied by a current project schedule and a CD with photographs to reflect the current status of project. Each payment applicable shall be updated to reflect all allowance authorizations and/or change orders.

7.2.2      Each Progress Payment Application shall correctly set forth the value of all Work satisfactorily performed to date, less 5% of that amount as a retained percentage. In no event will the Contractor be paid more than the listed value of each properly completed portion of the Work, less the required retention, until the entire Work has been successfully completed.

7.2.3      If payment is requested for materials or equipment not yet incorporated in the Work, but delivered and properly stored at the site or at a bonded and insured facility previously approved by the Owner in writing, such payment shall be conditioned upon submission by the Contractor of documentation, satisfactory to the Owner as deemed necessary to protect the Owner's interest, including photographs and evidence of applicable insurance. The risk of loss for such materials or equipment shall remain with the Contractor until final completion and acceptance of the Work.

7.2.4      The Contractor guarantees that title to all work, materials, and equipment covered by a Progress Payment Application, whether incorporated into the Project or not, has passed to the Owner prior to issuing the Progress Payment Application, free and clear of all liens, claims, security interests, or encumbrances, and that no work, materials, or equipment covered by a Progress Payment Application has been acquired by the Contractor, or by any other person, subject to an agreement under which an interest therein, or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. This provision shall not be construed to relieve the Contractor of his sole responsibility for the care and protection of the Work, and to restore all damages thereto, nor shall serve as a waiver of the right of the Owner to require the fulfillment of all terms of the Contract Documents.

7.2.5      Within 7 days of receipt of each Progress Payment Application, the Owner and the Architect will either approve the Progress Payment Application, modify the Progress

Payment Application for such amount as is determined to be properly due, or reject the Progress Payment Application.

- 7.2.6 The Owner or the Architect may decline to approve any Progress Payment Application, or, because of subsequently discovered evidence or subsequent inspections, may nullify any part of a Progress Payment Application previously paid to such extent as may be necessary to protect the Owner from loss based on any of the following grounds:
- A. Defective work not remedied.
  - B. Claims filed or reasonable evidence indicating the probable filing of claims.
  - C. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Sum.
  - D. Damage to a separate contractor.
  - E. Reasonable indication that the Work will not be completed within the Contract Time.
  - F. Unsatisfactory execution of the Work by the Contractor.
  - G. Failure to maintain any insurance required by the Contract Documents.
  - H. Any other breach of the Contract.

When the grounds for declining or revising any part of a Progress Payment Application are removed payment shall be approved for the associated amount withheld.

- 7.2.7 If the Owner should fail to pay the Contractor within 30 calendar days after a Progress Payment Application is received for payment by the Owner, then the Contractor may, after ten (10) additional calendar days, give written notice to the Owner and stop the Work until payment is received.
- 7.2.8 No payment by the Owner shall constitute an acceptance of any work not in accordance with the Contract Documents, nor shall it relieve the Contractor of full responsibility for correcting defective work or materials found at any time prior to completion of the entire Work or during the warranty period.

### 7.3 FINAL PAYMENT

- 7.3.1 When the Owner has received satisfactory evidence that all claims and obligations of the Contractor have been paid, discharged, or waived, the Owner will make final payment to the Contractor of all monies retained on all properly completed and accepted work.
- 7.3.2 As a condition of requesting or receiving final payment, the Contractor shall submit all operation and maintenance manuals, as-built drawings, surety release, and other close-out documents as may be applicable under the Contract Documents.
- 7.3.3 Issuance of final payment shall constitute a waiver of all claims by the Owner except those arising from any of the following:
- A. Unsettled claims.

- B. Warranty issues.
- C. Faulty or defective work.
- D. Failure of the Work to comply with the requirements of the Contract Documents.
- E. Latent defects in the Work.

If any such claims remain unsatisfied after final payment is made, the Contractor shall refund to the Owner all monies the Owner may be compelled to pay in discharging such claims and any costs related thereto.

- 7.3.4 The acceptance by the Contractor of final payment shall constitute a full and complete release to the Owner of all claims by, and all liability to, the Contractor for all things done or furnished in connection with the Work.. No payment, final or otherwise, shall operate to release the Contractor from any obligations under the Contract.

## **SECTION 8 INSURANCE AND BONDING**

### **8.1 GENERAL REQUIREMENTS**

- 8.1.1 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall, at his sole expense, procure, maintain, and keep in force the amounts and types of insurance conforming to the minimum requirements set forth in the contract documents, unless otherwise agreed to by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. If the Contractor fails to comply with this Section, the Contractor shall be considered in default of the Contract. The Owner shall be named as additional insured on all liability policies required in this Section.
- 8.1.2 Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall, at the Contractor's sole expense, cause each Subcontractor and each Sub-subcontractor involved with the work of construction under the direction and control of the Contractor for this contract, to procure, maintain, and keep continuously in force, the amounts and types of insurance conforming to the minimum requirements set forth in the contract documents, unless otherwise agreed to beforehand by the Owner in writing. The required insurance coverage shall be procured before any work commences on the Project and shall be maintained continuously in force at all times. The required limits of insurance for Subcontractors shall be based on the value of their portion of the Work as listed in the Subcontractor's contract with the Contractor. If the Contractor fails to comply with this Section, the Contractor shall be considered to be in default of the Contract.
- 8.1.3 Unless specified herein or otherwise agreed to by the Owner, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force for three (3) years following Substantial Completion.
- 8.1.4 As evidence of compliance with the insurance required by Section 8 (Insurance and Bonding), the Contractor shall furnish the Owner with all certificates of insurance (ACORD form 25-S or equivalent form approved by the Owner) prior to the award of the contract. The Contractor shall maintain original copies of Subcontractor insurance certificates for the duration of the Project and throughout the warranty period. Such records shall be furnished to the Owner upon request. The certificates for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on the insurer's behalf. All certificates along with the required endorsements shall be received and approved by the Owner before any work commences. The Owner's project number and project description shall be noted on each certificate of insurance. Upon renewal of any of the listed policies the Owner shall be furnished with replacement certificates immediately.
- 8.1.5 The Owner reserves the right to require and obtain complete, certified copies of any insurance policies required by the Contract Documents at any time. Complete copies of policies shall be furnished by the Contractor and by any Subcontractor or Sub-subcontractor within 10 days after a written request is issued by the Owner. In lieu of a required certificate of insurance the Contractor may furnish an original binder signed

by an authorized representative of the insurer(s) for a maximum of 60 days from the date of inception of the associated policy(ies).

- 8.1.6 With respect only to the bonds required by Section 8.6 (Performance and Payment Bonds), the Contractor shall furnish the Owner with properly executed bonds on forms acceptable to the Owner and shall have affixed to each bond a certified copy of a current power of attorney of the attorney-in-fact who executed the bond on behalf of the Surety.
- 8.1.7 All insurance policies must be specifically endorsed to provide the Owner with 60 days written notice of cancellation, non-renewal or restriction of coverage. Until such time as the insurance is no longer required by the Owner, the Contractor shall provide the Owner with renewal or replacement evidence of insurance in the manner described herein no less than 30 days before the expiration or replacement of the required insurance.
- 8.1.8 All insurance policies shall contain a waiver of subrogation against the Owner, the Owner's officers, agents and employees, and the Architect, the Architect's officers, agents and employees, for losses arising from the Work.
- 8.1.9 Insurers or sureties shall have and maintain throughout the period for which coverage is required, an A.M. Best Company Rating of "A-" or better and an A.M. Best Company Financial Size Category of "VII" or better, unless specifically waived by the Owner.
- 8.1.10 Insurers or sureties providing the insurance or providing the bonds required by this Contract must be either:
  - A. Authorized by certificates of authority issued by the State of Texas Division of Insurance; or
  - B. With respect only to the coverage required by Section 8.2 (Workers Compensation), be authorized as a self-insurer under Texas School Law Bulletin.
- 8.1.11 The insurance provided by the Contractor and his Subcontractors pursuant to this Contract shall apply on a primary basis and any other insurance or self-insurance maintained by the Owner or an Owner's official, officer, agent or employee shall be in excess of and not contributing to the insurance provided by or on behalf of the Contractor. Coverage maintained by the Contractor or his Subcontractors shall apply first, before any other insurance, on a primary basis, and without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Owner. Such approval shall not relieve the Contractor from payment of any deductible or self-insured retention.
- 8.1.12 If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with any of the foregoing minimum requirements, as soon as the Contractor has knowledge of any such failure, the Contractor shall immediately notify the Owner and immediately replace such insurance or bond with an insurer or surety meeting the requirements.
- 8.1.13 Neither approval by the Owner nor failure to disapprove the insurance or bonds

furnished by the Contractor or his Subcontractors shall relieve the Contractor of the Contractor's full responsibility to provide the insurance and bonds required by this Contract. Further, compliance with the insurance and bond requirements of the Contract shall not limit the liability of the Contractor or his Subcontractors, employees or agents to the Owner or others, and shall be in addition to and not in lieu of any other remedy available to the Owner under this Contract or otherwise, including, but not limited to, the indemnity provisions stipulated in Subsection 3.15.

## 8.2 WORKERS COMPENSATION

8.2.1 The Contractor's workers compensation insurance shall comply with all statutory requirements of the State of Texas. The Contractor's insurance or authorized self-insurance shall cover the Contractor, and to the extent not otherwise insured, his Subcontractors of every tier for those sources of liability which would be covered by the standard Workers Compensation Policy as prescribed by Texas law and Employers Liability coverage without restrictive endorsements.

## 8.3 COMMERCIAL GENERAL LIABILITY

8.3.1 The Contractor shall carry Commercial General Liability as per Exhibit A of the Construction Contract.

## 8.4 COMMERCIAL AUTO LIABILITY

8.4.1 The Contractor's insurance shall cover the Contractor for bodily injury and property damage as afforded under a standard commercial auto liability policy, including coverage for liability contractually assumed. Coverage shall be provided for owned, non-owned, and hired autos used in connection with this Contract.

8.4.2 The minimum limits to be maintained by the Contractor (inclusive of any amounts provided by an umbrella or excess policy) shall be the amounts stated in the contract documents.

## 8.5 PROPERTY INSURANCE

8.5.1 If the Contract includes construction of or additions to buildings or structures, the Contractor shall provide all risk Builders Risk insurance. If the Contract includes both construction of or additions to buildings or structures and the installation of machinery or equipment, Builders Risk insurance shall include coverage during transit and during post-installation testing. If the Contract is solely for the purpose of installation of machinery or equipment in existing buildings or structures, the Contractor shall provide an all risk Installation Floater including coverage during transit and during post-installation testing.

8.5.2 For Builders Risk the amount of insurance is to be 100% of the completed value of such addition(s), building(s) or structure(s), and recovery shall be based on completed replacement value of the entire structure. In the case of a remodel or renovation project, the replacement value shall be deemed to be \$500,000.

- 8.5.3 The amount of insurance for an Installation Floater shall be 100% of the installed replacement cost value, and recovery shall be based on the installed replacement cost.
- 8.5.4 The Builders Risk Policy or the Installation Floater must not be subject to any limitation or exclusion of coverage because of occupancy of the building(s), addition(s) or structure(s) in the course of construction or the putting to use of the machinery or equipment. The policy must be endorsed to provide that, subject to the notice of cancellation requirement, coverage will continue to apply until the Certificate of Substantial Completion is issued by the Owner for the building(s), building addition(s) or structure(s), or the machinery or equipment.
- 8.5.5 The Owner and the Architect shall be named on the policy as additional insured.
- 8.6 PERFORMANCE AND PAYMENT BONDS
- 8.6.1 If applicable to the Services and this Agreement, Contractor shall secure payment and/or performance bonds in accordance with Section 2253.021 of the Texas Government Code upon executing the contract.
- 8.7 REQUIRED LIMITS OF INSURANCE
- 8.7.1 The Contractor shall carry required insurances as stated in Exhibit A of the Construction Contract.

**END OF DOCUMENT**