

MILLER GROVE INDEPENDENT SCHOOL DISTRICT
7819 FM 275 South, Cumby, Texas 75433 Phone: 903-459-3288

This is NOT AN ORDER. It is an invitation to bid or propose.
Request for Competitive Sealed Proposals (RCSP) Parking Lot Project #2

This is a Request for Competitive Sealed Proposals as defined in Texas Government Code Chapter 2269. Follow instructions in the document below.

Any submissions of information or documents to Miller Grove ISD (District) pursuant to this RCSP is deemed public information by the District unless the District is noticed by the enclosed form and the vendor has followed the process outlined on the form. Failure to follow the process outlined in the enclosed forms may cause your proposal to be rejected as nonconforming. **District reserves the right to reject any or all bids or proposals and to waive any informality.** Any reference within the following pages of this document to bid, Request for Proposal (RFP), Competitive Sealed Proposal (CSP) could be technically inaccurate but should be construed to mean and are used interchangeably as the designated legal method of procurement listed at the top of this page. **It is the responsibility of the vendor to monitor the Miller Grove ISD's website as provided herein for any addenda to the RCSP. Failure to follow any posted addenda may render your proposal non-responsive.**

You are representing to MILLER GROVE ISD that you are authorized to submit this proposal by signing below.

Proposal submitted: (Circle one) YES NO BID

Company Name: _____

Address _____

City _____ STATE _____ ZIP _____

Signature of authorized representative _____ Date _____

Printed name _____ Email _____

Phone () _____ Fax () _____

Vendors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Bidder certifies that the company complies with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in Department of Labor Regulations.

Request for Competitive Sealed Proposals (RCSP)
for
Miller Grove ISD Parking Lot Project
Summer 2017

Engineers:
Dynamic Engineering Consultants PLLC
200 S. Hillcrest Drive
Sulphur Springs, TX 75482
James W. Burnett, PE
Project Engineer
Office: 903-382-3444
Mobile: 903-513-3773
Fax: 972-408-0888
jwburnett@dynamic-engineering.net
www.dynamic-engineering.net

REQUEST FOR COMPETITIVE SEALED PROPOSALS

Proposals for the construction of the MILLER GROVE ISD PARKING LOT, will be received by the Owner in the Board Room of the MILLER GROVE Independent School District Administration Building located at 7819 FM 275 South, Cumby, Texas 75433 Phone: 903-459-3288, until 2:00 p.m. local time on August 8, 2017. Proposals received after this time will not be accepted.

Proposals shall be addressed to the President of the Board of Trustees at the above address, and will be opened and read aloud at the time and place mentioned above.

Drawings and specifications may be examined at the office of Miller Grove Independent School District Administration Building at address above. Copies of these documents may be obtained from school district offices or downloaded from school district website. See attached for Paving Plan and Grading Plan. There are 3 sheets in the Grading Plan and 2 sheets in the paving plan. Specifications are on the drawings. The prints will cost \$25.00 and will include a CD with the attached electronic files. Drawings can be picked up at the office of the engineer located at 200 South Hillcrest Drive in Sulphur Springs TX 75482.

Proposal Security in the amount of five percent (5%) of the proposal sum must accompany each proposal. Surety must be approved by the U.S. Treasury Department and authorized to do business in the State of Texas.

The Board of Trustees of the Miller Grove Independent School District reserves the right to reject any or all proposals and to waive any formalities or irregularities and to make the award of the contract in the best interest of the school district. By submitting a proposal, each proposer

agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any proposal; waiver of any requirements under the proposal documents; or the contract documents; acceptance or rejection of any proposals; and award of the Contract.

Within 5 days after the opening of the sealed proposals, the District shall evaluate and rank each proposal submitted in relation to the selection criteria set forth below. The District shall select the proposal that offers the best value to the District based on the selection criteria and on the ranking evaluation; price alone shall not be determinative.

The District shall use the following criteria applying the weighting indicated for each criterion for the selection of the proposal that offers the best interest and value to the District:

- Cost – 40 points
- Qualifications - 20 points
- Reputation - 20 points
- Experience - 20 points

Each proposer shall submit, with the proposal form, a completed and up-to-date AIA Form A305 Contractors Qualification Statement that responds to the evaluation criteria listed above.

All changes to the RCSP will be by posted addendum. It is the responsibility of the proposer to check the website <http://www.mgisd.net/> for any addenda or check with the engineer at the address above.

Successful Proposers must furnish acceptable (100%) Performance and Payment Bonds from an approved Surety Company, authorized to do business in the State of Texas, within five (5) days following presentation of the contract. THE BID, PAYMENT AND PERFORMANCE BONDS MUST COMPLY WITH SECTION 7.19.1, TEXAS INSURANCE CODE.

Insurance

The successful offeror, at his/her own expense, shall provide and maintain insurance, including workers' compensation insurance, with fiscally sound firms (at least an AM Best rating of A-) authorized to do business in Texas as follows. Successful offeror may be required to provide a copy of insurance coverage to Miller Grove ISD. Insurance certificates must contain a provision, or offeror's signature on this CSP certifies, that coverage afforded under the policies will not be cancelled until at least thirty (30) days prior written notice has been given Miller Grove ISD. Insurance coverage must remain in effect for the duration of this contract or project or for such other longer periods as Miller Grove ISD may require. In some cases, the district may be required to be named as an additional insured on the vendor's insurance coverage. If the district is to be named as an additional insured on the vendor's insurance coverage, the certificate indicating this should be provided within ten (10) calendar days from date of award. If the district requires a certificate of insurance, the CSP number and title should be noted in the "Description of Operations/Locations/Vehicles/Special Items" block of the certificate and the "Certificate Holder" block of the certificate should read, "Miller Grove ISD, Attn: Steve Johnson, Supt., 7819 FM 275 South, Cumby, Texas 75433"

Additional information concerning insurance requirements, including the required minimum limits of liability and types of required coverage, will be included in the contracts or awards resulting from this procurement process.

The insurance requirements, as stated in the contract(s) resulting from this procurement process, will also apply to any sub-contractor(s) in the event that any work is sublet. The contractor is responsible to

ensure that the sub-contractor(s) meets the minimum insurance requirement limits as required by Miller Grove ISD.

Required Notice of Workers' Compensation Insurance Coverage

Section 406.096, Texas Labor Code, and the rules of the Texas Workers' Compensation Commission, require workers' compensation insurance coverage for all persons providing services on a building or construction project for a governmental entity.

Bonds

Furnish the following bonds and certificates:

1. Performance Bond

2. Payment Bond

3. Certificate of Insurance

B. Bonds shall comply with requirements of all State laws.

C. Attorneys-in-fact who sign bonds must file with each bond a certified and effective dated copy of their Power of Attorney.

D. The Performance Bond shall include the repair and correction of any defects due to faulty materials or workmanship that appears within one year from date of Substantial Completion.

E. The Surety Company furnishing the above bonds must appear on the U.S. Treasury Department's most current list (Circular 570) and be approved to furnish bonds in the State in which the Work is located.

COMPETITIVE SEALED PROPOSALS EVALUATION CRITERIA
MILLER GROVE ISD PARKING LOT

Project Budget: \$120,000 approximately

1.0 COST

- A. Base Proposal Price
- B. Alternate Pricing
- C. Unit Prices
- D. Does the proposal fall within the proposed budget, or if not, what is the ranking by amount of this proposal to all other proposals?
- E. Are the fees for any additions/reductions of scope clearly defined?
- F. Does the firm understand all of the project scope?

2.0 QUALIFICATIONS

- A. Does the firm have the financial strength to provide the requested services?
- B. Does the firm appear to have the capability to meet the District's schedule objectives?

3.0 REPUTATION

- A. Has the firm worked for the District in the past? If so, was that work satisfactory to the District?
- B. Have any of the key personnel worked in the District in the past?
- C. Is the firm accessible for warranty management? Is warranty work completed on time?
- D. Does the firm pay subs on time?
- F. What is the reputation of the firm regarding demand of construction quality, history of value engineering processes and its cost effectiveness in relationship to quality.
- G. Does the firm stay on schedule during past performance?

4.0 EXPERIENCE

- A. How substantial is the firm's recent experience in the construction of all projects of comparable size and complexity?
- B. How substantial is the firm's recent experience in construction of K-12 educational facilities?
- C. Is the firm knowledgeable and experienced in the current Northeast Texas construction market?

PROPOSAL FORM

MILLER GROVE ISD PARKING LOT

PROPOSAL OF: _____
(Name) (Date)

TO: President of the Board of Trustees Miller Grove Independent School District

Dear Miller Grove ISD Board of Trustees:

Having examined the drawings, project manual, and related documents and having inspected the site of proposed Work, I (we) agree to furnish all labor, materials, and to perform all work described in the specifications and shown on the drawings for the sums of:

BASE PROPOSAL: For complete construction of plans as specified for the sum of:

\$ _____
_____ Dollars.

NOTE: Amounts shall be shown in both words and figures. In case of discrepancy, the amount shown in words shall govern.

The undersigned agrees, if this proposal is accepted, to commence work on or before a date to be established in the written "Notice-to-Proceed" of the Owner and to attain Substantial Completion not later than sixty (60) calendar days after contract is executed, subject to extensions of time as described in Article 8.3 of the General Conditions.

The undersigned further agrees that, from the compensation otherwise to be paid, the Owner may retain the sum of \$500.00 for each calendar day after the Contract Completion date that the Work remains incomplete, including any alternate proposals elected by the Owner, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the Undersigned to complete the Work at the time stipulated in the Contract. This sum is not to be construed in any sense a penalty.

I (we) acknowledge receipt of the following addenda:

Addendum No. 1 Dated _____ Addendum No. 4 Dated _____
Addendum No. 2 Dated _____ Addendum No. 5 Dated _____
Addendum No. 3 Dated _____ Addendum No. 6 Dated _____

Upon receipt of notice of acceptance of this proposal within thirty days after the opening of proposals, I (we) agree to execute formal contract forms and acceptable surety bonds and required insurance certificates within 5 days of receipt of the Contract.

MILLER GROVE ISD PARKING LOT

Should I (we) fail to execute and deliver the contract along with satisfactory surety bonds and insurance certification within the time set forth, the Proposal Security, attached hereto without endorsement, in the sum of:

\$ _____

_____ Dollars.

shall become the property of Miller Grove Independent School District as liquidated damages for the delay caused and the additional work required.

Respectfully submitted, (Signature)

By (Please Print or Type)

Title

Contractor

Business Address

Telephone Number FAX Number

Circle to indicate whether - Individual, Partnership, or Corporation

ATTEST:

Secretary

NON-COLLUSION AFFIDAVIT
MILLER GROVE ISD PARKING LOT PROJECT

By submission of this bid or proposal, the undersigned certifies that:

- A. The bid or proposal has been independently arrived at without collusion with any other bidder or with any other competitor;
- B. This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, to any other bidder or competitor or potential competitor, prior to the opening of the bids, or proposals for this project;
- C. No attempt has been or will be made to induce any other person, partnership or corporation to submit or not submit a bid or proposal;
- D. The undersigned certifies that he is fully informed regarding the accuracy of the statements contained in this certification, and that the penalties herein are applicable to the bidder as well as to any person signing in his behalf.

Authorized Agent (Print Name)

Date

Signature

Company Name

Company Address

City

State

Zip

FELONY CONVICTION NOTICE
MILLER GROVE ISD PARKING LOT PROJECT

FOR RESPONSE TO TIPS SOLICITATION

Statutory citation covering notification of criminal history of contractor is found in the Texas Education Code #44.034. Following is an example of a felony conviction notice:

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

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

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION

Complete only one of the three below: A or B or C.

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

Official: _____
Print Authorized Company Official's Name

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

Signature of Authorized Company Official for A: _____

OR

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

Signature of Authorized Company Official for B: _____

OR

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

Name of Felon(s): _____

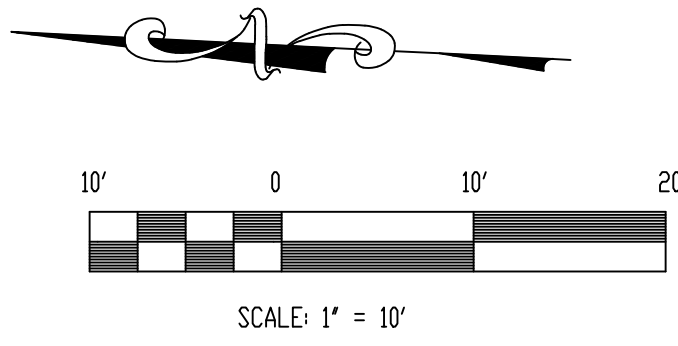
Details of Conviction(s): _____

You may attach another sheet

Signature of Authorized Company Official for C: _____

MGISD Parking lot grading plan 6-13-17.dwg

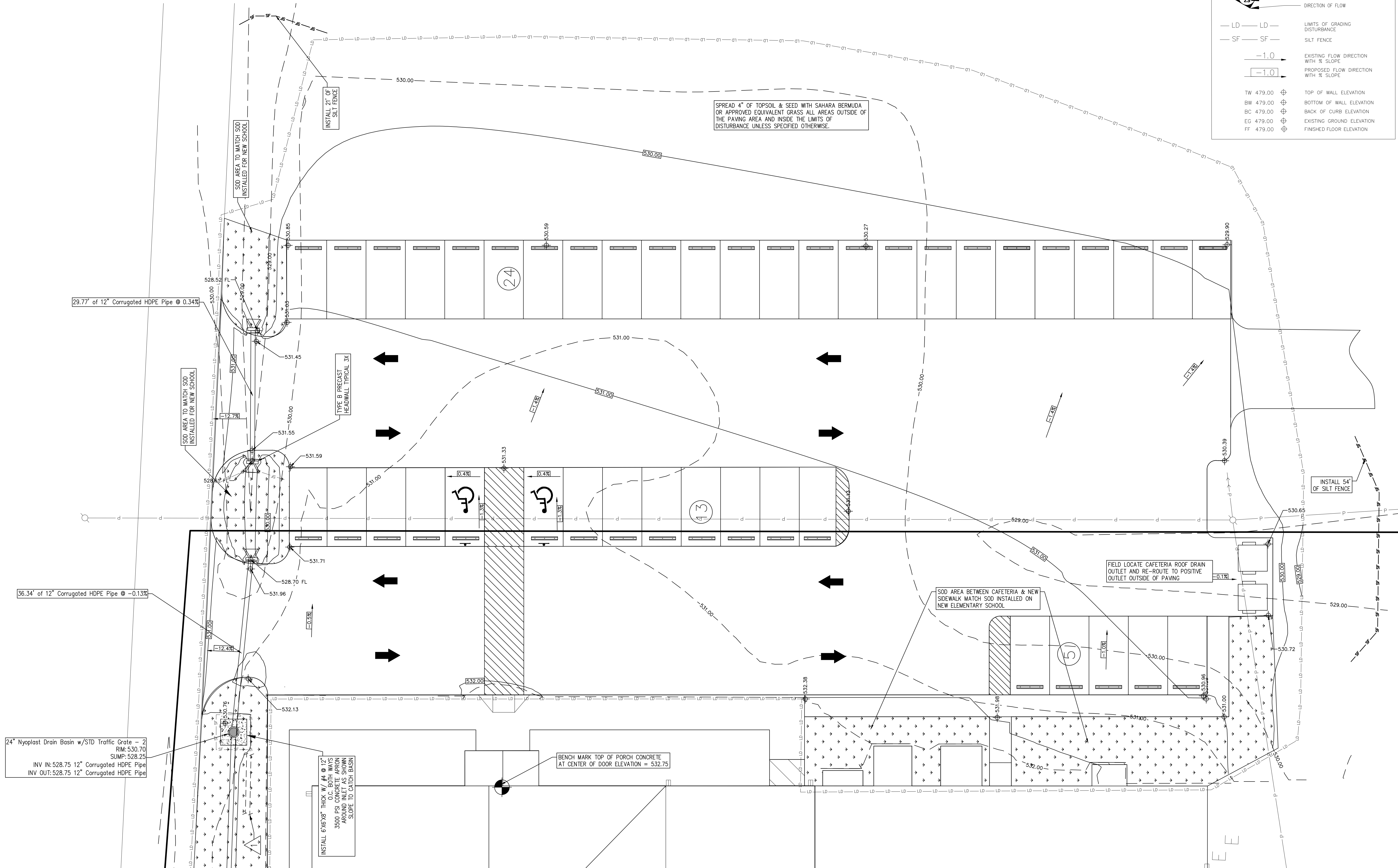
6/13/2017



NOTES

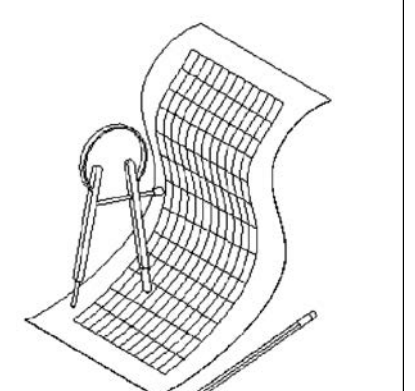
1. REMOVE / ABANDON EXIST CMP PIPE AS REQUIRED TO INSTALL NEW DRAINAGE SYSTEM
2. PROPOSED 12" HDPE PIPE SHALL MEET THE SPECIFICATIONS OF ADS/HANCORE DUAL WALL OR APPROVED EQUIVALENT
3. NYOPLAST DRAIN BASINS SHALL BE INSTALLED PER MANUFACTURER RECOMMENDATIONS REFERENCE SHEET C1.1
4. RESPREAD 4" OF TOP SOIL IN ALL SOD AREAS. FINISH GRADE IS TO TOP OF SOD.
5. DENSITY TESTING IS REQUIRED FOR ALL FILL PLACEMENT BELOW PAVING.
6. CONCRETE CYLINDERS SHALL BE COLLECTED & STRENGTH TESTED FOR ALL PROPOSED PAVING.

LEGEND	
	PRE-CONSTRUCTION DRAINAGE DIVIDE
	POST-CONSTRUCTION DRAINAGE DIVIDE
	EXISTING CONTOUR LINES
	PROPOSED CONTOUR LINES
	AREA DESIGNATOR
	FLOW RATE Q (CFS)
	DIRECTION OF FLOW
	LIMITS OF GRADING DISTURBANCE
	SILT FENCE
	EXISTING FLOW DIRECTION WITH % SLOPE
	PROPOSED FLOW DIRECTION WITH % SLOPE
	TW 479.00 ⊕ TOP OF WALL ELEVATION
	BW 479.00 ⊕ BOTTOM OF WALL ELEVATION
	BC 479.00 ⊕ BACK OF CURB ELEVATION
	EG 479.00 ⊕ EXISTING GROUND ELEVATION
	FF 479.00 ⊕ FINISHED FLOOR ELEVATION



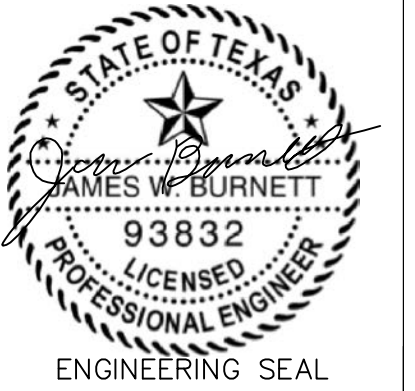
CONSTRUCTION 6/13/2017
 ISSUED FOR: DATE:

MILLER GROVE ISD
 ELEMENTARY ADDITION
 MILLER GROVE, TX



DYNAMIC
 Engineering
 Consultants
 PLLC

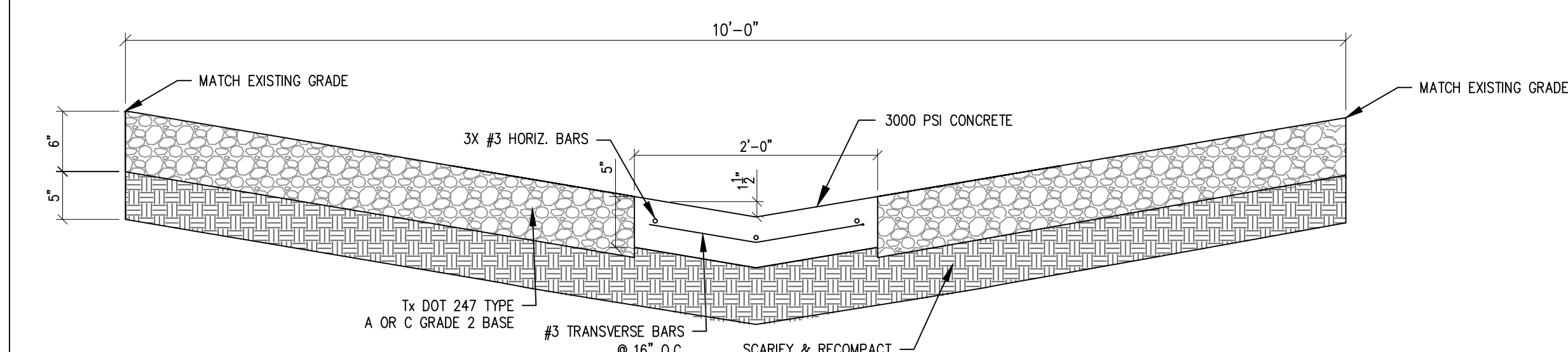
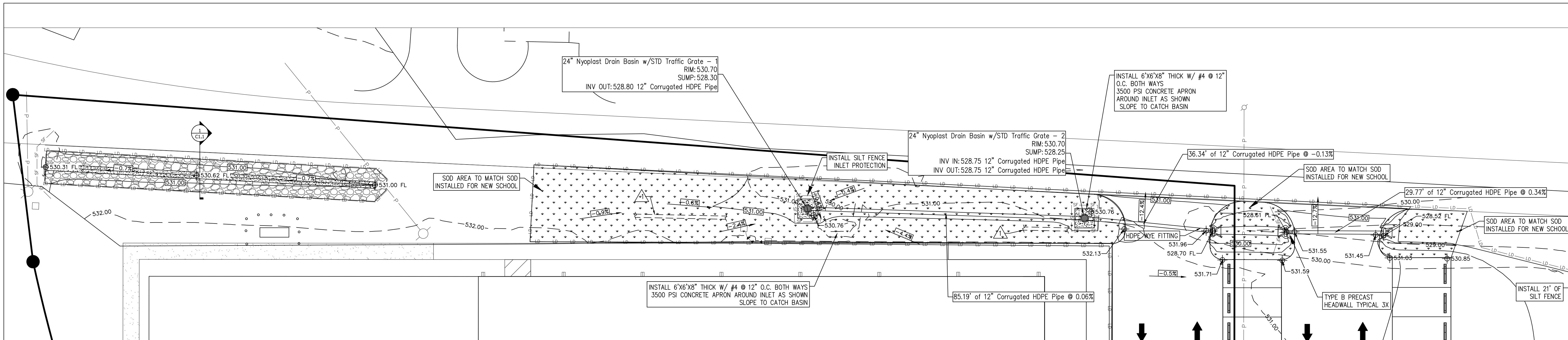
PROFESSIONAL
 ENGINEERING
 SERVICES
 200 S. HILLCREST DRIVE
 SULPHUR SPRINGS, TX
 75482
 TEL: 903-513-3773
 TEL: 903-382-3444
 E-MAIL: jwburnett@dynamic-engineering.net
 WEB: www.dynamic-engineering.net
 FIRM REGISTRATION # F-8215



NAME	DATE
DRAWN SR GREGORY	6/13/2017
CHECKED	
ENG APPR JW BURNETT	6/13/2017
Q.A.	

PROPRIETARY AND CONFIDENTIAL
 THE INFORMATION CONTAINED IN THIS
 DRAWING IS THE SOLE PROPERTY OF
 DYNAMIC ENGINEERING. ANY
 REPRODUCTION IN PART OR AS A WHOLE
 WITHOUT THE WRITTEN PERMISSION OF
 DYNAMIC ENGINEERING IS PROHIBITED.

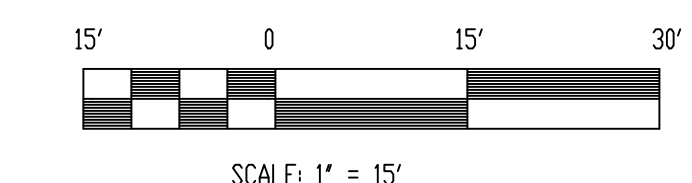
GRADING PLAN
 PROJECT # 6090
 SHEET NUMBER
C1.0



1 FLUME DETAIL
Scale: NONE

LEGEND

- PRE-CONSTRUCTION DRAINAGE DIVIDE
- POST-CONSTRUCTION DRAINAGE DIVIDE
- 479.00 --- EXISTING CONTOUR LINES
- 479.00 --- PROPOSED CONTOUR LINES
- AREA DESIGNATOR
- FLOW RATE Q (CFS)
- DIRECTION OF FLOW
- LD --- LIMITS OF GRADING DISTURBANCE
- SF --- SILT FENCE
- 1.0 --- EXISTING FLOW DIRECTION WITH % SLOPE
- 1.0 --- PROPOSED FLOW DIRECTION WITH % SLOPE
- TW 479.00 ⊕ TOP OF WALL ELEVATION
- BW 479.00 ⊕ BOTTOM OF WALL ELEVATION
- BC 479.00 ⊕ BACK OF CURB ELEVATION
- EC 479.00 ⊕ EXISTING GROUND ELEVATION
- FF 479.00 ⊕ FINISHED FLOOR ELEVATION



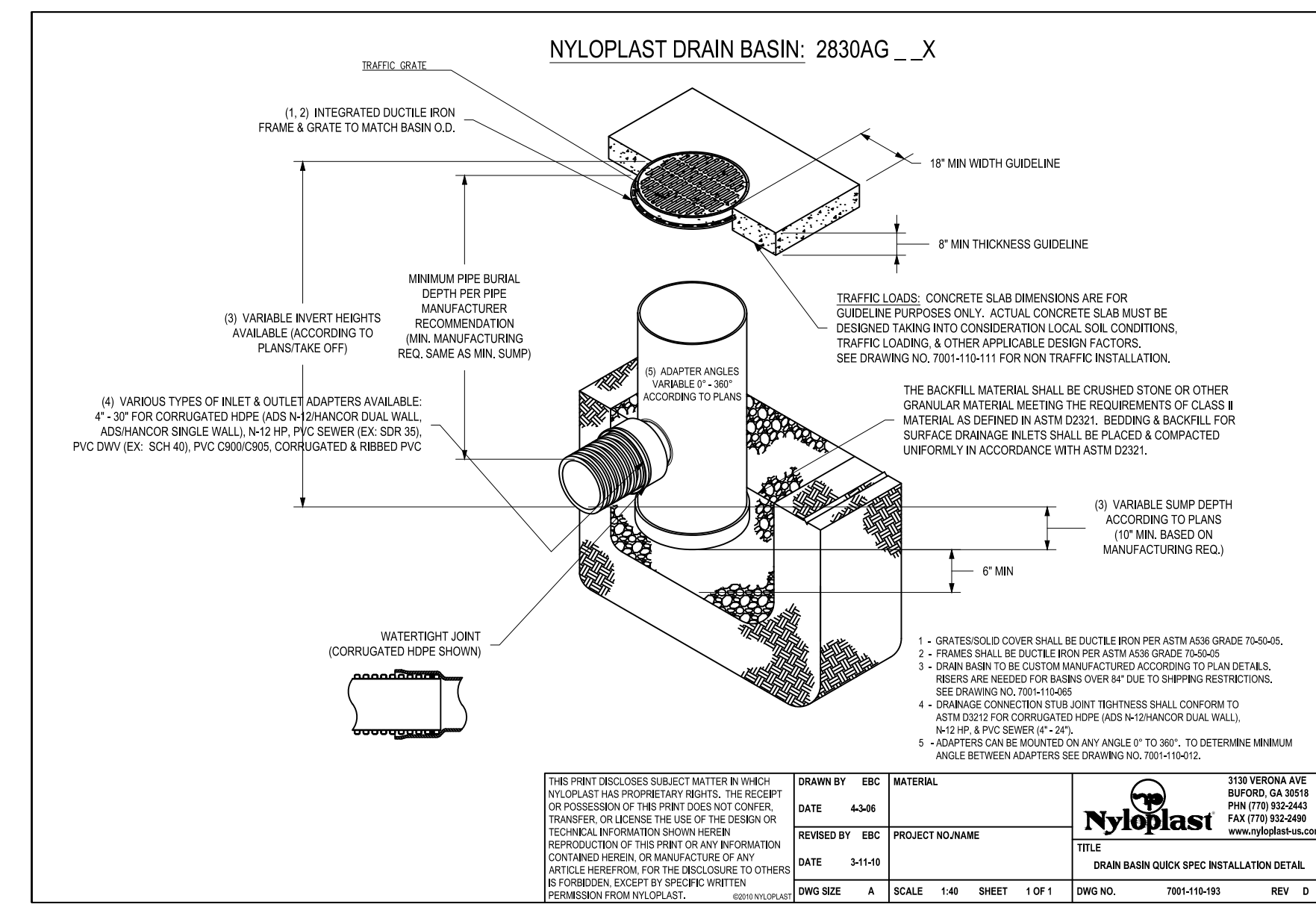
- GENERAL NOTES:**
- INFORMATION CONCERNING UNDERGROUND UTILITIES WAS OBTAINED FROM AVAILABLE RECORDS AND FIELD CONDITIONS WHEN POSSIBLE, BUT THE CONTRACTOR MUST DETERMINE THE EXACT LOCATION AND ELEVATION OF ALL EXISTING UTILITIES BY DIGGING TEST PITS BY HAND AT ALL UTILITY CROSSING WELL IN ADVANCE OF TRENCHING. IF THE CLEARANCES ARE LESS THAN SPECIFIED ON THE PLANS OR 12", WHOEVER IS LESS, CONTACT DYNAMIC ENGINEERING CONSULTANTS, PLLC, AT 903-382-3444.
 - THE CONTRACTOR SHALL INCLUDE IN THE CONTRACT PRICE THE REMOVAL AND STOCK PILE ON SITE OF ANY EXCESS TOPSOIL THAT IS NOT REQUIRED TO PERFORM THE FINAL GRADING AND LANDSCAPING OPERATIONS.
 - CONTRACTOR IS RESPONSIBLE FOR THE DESIGN AND IMPLEMENTATION OF ALL REQUIRED/NECESSARY SHEETING, SHORING, AND SPECIAL EXCAVATION MEASURED REQUIRED ON THE PROJECT TO MEET OSHA, FEDERAL, STATE, AND LOCAL REGULATIONS PURSUANT TO THE INSTALLATION OF THE WORK INDICATED ON THE DRAWINGS. MILLER GROVE ISD AND DYNAMIC ENGINEERING CONSULTANTS, PLLC, ACCEPT NO RESPONSIBILITY FOR THE DESIGN OR INSTALLATION OF SAID ITEMS.
 - CALL BEFORE YOU DIG TEXAS ONE-CALL 811.
 - ALL WORK SHALL CONFORM TO FEDERAL, STATE, COUNTY, AND/OR CITY STANDARDS, WHICHEVER IS MORE RESTRICTIVE.
 - ALL CURB/HANDICAP RAMP DESIGNS SHALL CONFORM TO ADA STANDARDS, TODOT OR CITY STANDARDS, WHICHEVER IS MORE RESTRICTIVE.
 - THE CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR PRECISE BUILDING DIMENSIONS, ETC. (IF APPLICABLE).
 - THE CONTRACTOR SHALL INCLUDE IN THE CONTRACT PRICE DAILY RECORD KEEPING OF THE AS-BUILT CONDITIONS OF ALL OF THE UNDERGROUND UTILITIES, STORM DRAIN, AND CONSTRUCTION STAKEOUTS ASSOCIATED WITH THE PROJECT.
 - THE CONTRACTOR SHALL INCLUDE IN THE CONTRACT PRICE ALL MATERIAL AND LABOR ASSOCIATED WITH THE TESTING OF THE WATER AND SEWER LINES AS REQUIRED.
 - THE CONTRACTOR SHALL INCLUDE IN THE CONTRACT PRICE OF ANY DE-WATERING NECESSARY TO CONSTRUCT THE PROJECT AS SHOWN ON THESE PLANS.
 - THE CONTRACTOR SHALL INCLUDE IN THE PRICE ANY AND ALL COSTS ASSOCIATED WITH PROVIDING PROFESSIONAL ENGINEER ON SITE IF REQUIRED, DURING THE CONSTRUCTION OF THE STORM WATER MANAGEMENT FACILITY, UNDERGROUND UTILITIES, ETC. AS REQUIRED FOR AS-BUILT CERTIFICATION.
- SITE NOTES:**
- PROPERTY BOUNDARY INFORMATION SHOWN HERE IN IS TAKEN FROM A BOUNDARY TOPOGRAPHIC SURVEY PREPARED FOR MGISD ISD BY DYNAMIC ENGINEERING CONSULTANTS, PLLC. THE CONTRACTOR IS RESPONSIBLE FOR PROTECTION OF ALL PROPERTY CORNERS.
 - GENERAL CONTRACTOR SHALL COORDINATE WITH APPROPRIATE UTILITY COMPANIES PRIOR TO CONSTRUCTION, ADJUSTMENT, OR RELOCATION OF EXISTING UTILITIES AS DESIGNATED ON PLANS.
 - CONTRACTOR IS RESPONSIBLE FOR REPAIRING THE DAMAGE DONE BY ANY EXISTING ITEMS DURING CONSTRUCTION, SUCH AS, BUT NOT LIMITED TO, DRAINAGE, UTILITIES, PAVEMENT, STRIPING, CURB ETC. REPAIRS SHALL BE EQUAL TO, OR BETTER THAN, EXISTING CONDITIONS. CONTRACTOR IS RESPONSIBLE TO DOCUMENT ALL EXISTING DAMAGE AND NOTIFY CONSTRUCTION MANAGER PRIOR TO CONSTRUCTION STARTS.
 - CONTRACTOR TO REMOVE OR RELOCATE, WHEN APPLICABLE, ALL EXISTING DRAIN PIPES, SANITARY SEWER PIPES, POWER POLES, AND GUY WIRES, WATER METER AND WATER LINES, WELL, SIDEWALKS, SIGN POLES, UNDERGROUND GAS, AND CONCRETE PAVING, SHOWN AND NOT SHOWN, WITHIN CONSTRUCTION LIMITS AND WHERE NEEDED, TO ALLOW FOR NEW CONSTRUCTION AS SHOWN.
 - CONTRACTOR SHALL FOLLOW ALL LOCAL, STATE, AND FEDERAL REGULATIONS IN DISPOSING OF DEMOLISHED MATERIALS REMOVED FROM THIS SITE.
 - DIMENSIONS SHOWN ARE TO FACE OF CURB, FACE OF BUILDING, OR CENTERLINE OF PARKING BAY UNLESS NOTE OTHERWISE.
 - SEE PAVING PLAN SHEETS FOR PAVEMENT SPECS.
 - PROVIDE EXPANSION JOINTS AT ALL RADIUS POINTS IN CONCRETE CURB AND GUTTER AND AS SHOWN ON THE DETAILS, OR AS DIRECTED BY THE ENGINEER.
 - THE CONTRACTOR IS TO PROVIDE TRASH RECEPTACLES FOR USE OF SUBCONTRACTORS AND THEIR EMPLOYEES, ALL DUMPSTER SHOULD BE LOCATED OFF STREETS AND RIGHT OF WAYS. BLOCKING PERMITS ARE REQUIRED FOR ANY USE OF THE STREET RIGHT OF WAYS.
 - PROVIDE CONTAINERS FOR GARBAGE AND MINOR TRASH IN EATING AREAS, IN PARKING LOTS, AND ALONG WALKWAYS.
 - SERVICE TRASH CONTAINERS ADEQUATELY.
 - KEEP STREETS AND AREAS ADJACENT TO THE JOB SITE CLEAN AND FREE OF TRASH AND MUD ORIGINATING FROM THE SITE.
 - REQUIRE ALL WASTE HAULERS TO COVER TRUCKS BEFORE LEAVING SITE.
 - CONTRACTOR IS RESPONSIBLE FOR ANY DAMAGE TO STREETS, SIDEWALKS, CURB AND GUTTERS OR ANY OTHER PUBLIC PROPERTY. DAMAGE MUST BE REPAIRED OR REPLACED PRIOR TO FINAL INSPECTIONS.
 - REFERENCE GEO-REPORT FOR SOIL CHARACTERISTICS AND SITE DEVELOPMENT RECOMMENDATIONS.
- AUTHORITY AND RESPONSIBILITY:**
- THE ENGINEER, AS REPRESENTATIVE OF THE OWNER, SHALL NOT GUARANTEE THE WORK OF ANY CONTRACTOR OR SUBCONTRACTOR. SHALL HAVE NO AUTHORITY TO STOP WORK, SHALL HAVE NO SUPERVISION OR CONTROL AS TO THE WORK OR PERSONS DOING THE WORK. SHALL NOT HAVE CHARGE OF THE WORK. SHALL NOT BE RESPONSIBLE FOR SAFETY IN, ON, OR ABOUT THE JOB SITE OR HAVE ANY CONTROL OF THE SAFETY OF ADEQUACY OF ANY EQUIPMENT, BUILDING COMPONENT, SCAFFOLDING, SUPPORTS, FORMS, OR OTHER WORK AIDS, AND SHALL HAVE NO DUTIES OR RESPONSIBILITIES IMPOSED BY THE STRUCTURAL WORK ACT.
- PERMITS, BONDS, AND INSPECTIONS:**
- THE CONTRACTOR SHALL BE RESPONSIBLE TO INSURE THAT ALL NECESSARY INSPECTIONS AND/OR CERTIFICATIONS REQUIRED BY CODES AND/OR UTILITY SERVICE COMPANIES SHALL BE PERFORMED PRIOR TO THE ANNOUNCED BUILDING POSSESSION AND THE FINAL CONNECTION OF SERVICES. THIS SHALL INCLUDE THE HIRING OF A PROFESSIONAL ENGINEER TO CONDUCT INSPECTIONS AND PROVIDE CERTIFICATIONS, AS MAY BE REQUIRED.

SITework NOTES

- PROPOSED GRADES ARE TO BE ATTAINED BY RESHAPING EXISTING SITE BY CUT AND FILL OPERATIONS. FILL OPERATIONS ARE TO BE ACCOMPLISHED BY PLACING MATERIALS IN 8" MAX. LIFTS AND COMPACTING TO 95% DENSITY AS DETERMINED BY ASTM D698. SITE SHALL BE CLEARED & GRUBBED IS APPLICABLE SCARIFIED AND TOP SOIL REMOVED PRIOR TO CONSTRUCTION. TOPSOIL AS REQUIRED FOR PLANTING SHALL BE STOCKPILED ON-SITE & REUSED. DISPOSE OF EXCESS SITE MATERIALS. EXCESS TOPSOIL REMOVED FROM THE SITE WHICH MUST BE REPLACED FOR SITE PLANTING & LANDSCAPING SHALL BE REPLACED WITH SIMILAR QUALITY MATERIALS AT CONTRACTORS EXPENSE. IMPORT FILL MATERIALS SHALL BE SELECT FILL SANDY CLAY OR CLAYEY SAND MATERIALS MEETING THE REQUIREMENTS FOR THE GEOTECHNICAL REPORT.
- FOUR (4) INCHES OF TOPSOIL SHALL BE RETURNED TO AREAS TO BE SEEDED OR SODDED AND FERTILIZED TO ACHIEVE FINISHED GRADES.
- MAXIMUM CUT OR FILL SLOPES ARE NOT TO EXCEED 4 FT. HORIZONTAL TO 1 FT. VERTICAL, UNLESS OTHERWISE SPECIFIED.
- CONTRACTOR TO BE RESPONSIBLE FOR EROSION CONTROL DURING AND AFTER CONSTRUCTION. UNTIL COVER IS ESTABLISHED & EROSION SILTATION HAS STABILIZED, CONTRACTOR SHALL FURNISH TEMPORARY SILT CONTROL MEASURES (SILT FENCE, STRAW BALES, ETC.) AS REQUIRED DURING CONSTRUCTION & SHALL REMOVE THESE TEMPORARY MEASURES AFTER COVER IS ESTABLISHED. THIS PROJECT RESULTS IN THE TOTAL DISTURBANCE OF LESS THAN 1 ACRE OF GROUND SURFACE. TCEQ STORM WATER PERMIT REQUIREMENTS ARE NOT APPLICABLE. A WRITTEN STORM WATER POLLUTION PREVENTION PLAN (SWPPP) WILL BE REQUIRED AND WILL BE ON THE SITE AT ALL TIMES WORK IS IN PROGRESS. TCEQ REQUIREMENTS FOR POSTING, INSPECTION, MAINTENANCE & RECORD KEEPING SHALL BE FOLLOWED DURING CONSTRUCTION. SILT FENCE WILL NOT BE ALLOWED TO EXIT THE SITE TO NEIGHBORING PROPERTIES & EROSION / SILTATION WILL BE STABILIZED PRIOR TO ACCEPTANCE OF THE WORK. THE WRITTEN PLAN WITH INSPECTION AND MAINTENANCE REPORTS WILL BE TURNED OVER TO THE OWNER AT PROJECT COMPLETION. CONTRACTOR SHALL PREPARE THE WRITTEN PLAN PRIOR TO BEGINNING WORK & SHALL SUBMIT REQUIRED NOTICES OF INTENT AND TERMINATION WITH REQUIRED FILING FEES TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ).
- MAINTAIN SITE IN "FIRST CLASS" CONDITION. THE WORK SITE SHALL BE CLEANED UP AT THE END OF EACH DAY.
- INSURE THAT NO DRAINAGE ON OR OFF THE SITE IS BLOCKED BY PROPOSED CONSTRUCTION. FINISHED GRADES ARE TO BE SLOPED TO PROVIDE PROPER DRAINAGE.
- PROTECT EXCAVATIONS FROM FLOODING DUE TO GROUNDWATER INFILTRATION AND RUNOFF.
- NEAR COMPLETION OF WORK, REMOVE ALL SITE / CONSTRUCTION DEBRIS AND FINE GRADE ALL DISTURBED AREAS IN PREPARATION FOR LANDSCAPING, HYDROMULCH SEEDING OR SODDING.
- UPON SUBSTANTIAL COMPLETION AND APPROVAL OF FINAL GRADING, HYDROMULCH SEED & FERTILIZE ALL AREAS WHERE CONSTRUCTION HAS BEEN DISTURBED SOIL.
- EXCESS EXCAVATED MATERIAL AND DEBRIS IS TO BE REMOVED FROM SITE AND DISPOSED OF.
- CONTRACTOR TO PROVIDE TRAFFIC CONTROL IN ACCORDANCE WITH THE TEXAS MANUAL ON UNIFORM TRAFFIC CONTROL FOR STREETS AND HIGHWAYS, IF APPLICABLE.
- DROP-OFFS GREATER THAN 2 INCHES ADJACENT TO THE EXISTING STREETS WILL NOT BE ALLOWED TO REMAIN OPEN OVERNIGHT.
- DRESS-UP AND CLEAN-UP PERIMETER TRANSITION AROUND SITE.
- VERIFY FLOW LINES OF ALL CULVERTS AND CURB LINES PRIOR TO CONSTRUCTION.
- ANY ROOTS, TRASH OR OTHER MATERIALS EXPOSED OR UNCOVERED DURING SITE WORK SHALL BE REMOVED & DISPOSED OF.
- PAVEMENT MARKING SHALL BE 4" WIDE STRIPS APPLIED IN TWO COATS OF REFLECTIVE YELLOW TRAFFIC MARKING PAINT. SURFACES TO BE CLEAN AND DRY PRIOR TO APPLICATION.

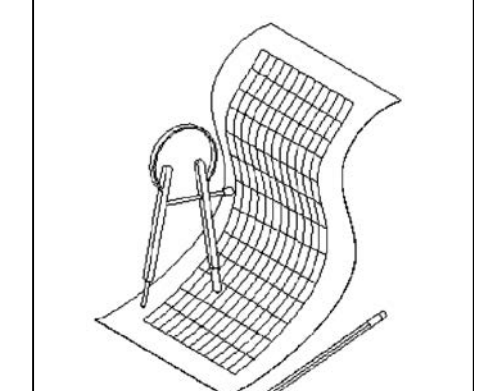
NOTES

- REMOVE / ABANDON EXIST OMP PIPE AS REQUIRED TO INSTALL NEW DRAINAGE SYSTEM
- PROPOSED 12" HDPE PIPE SHALL MEET THE SPECIFICATIONS OF ADS/HANCOCK DUAL WALL OR APPROVED EQUIVALENT
- NYOPLAST DRAIN BASINS SHALL BE INSTALLED PER MANUFACTURER RECOMMENDATIONS REFERENCE SHEET C1.1
- RESURFACE 4" OF TOP SOIL IN ALL SOD AREAS. FINISH GRADE IS TOP OF SOD.
- DENSITY TESTING IS REQUIRED FOR ALL FILL PLACEMENT BELOW PAVING.
- CONCRETE CYLINDERS SHALL BE COLLECTED & STRENGTH TESTED FOR ALL PROPOSED PAVING.



CONSTRUCTION 6/13/2017
ISSUED FOR: DATE:

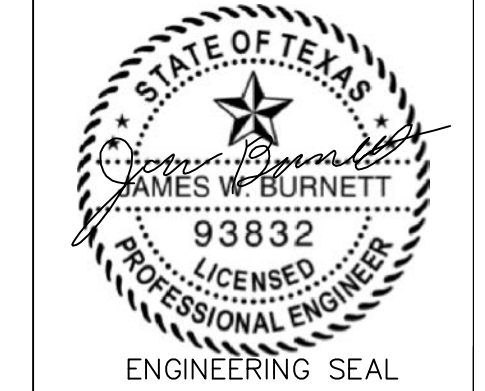
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FIRM REGISTRATION # F-8215



NAME	DATE
DRAWN SR GREGORY	6/13/2017
CHECKED	
ENG APPR JW BURNETT	6/13/2017
Q.A.	

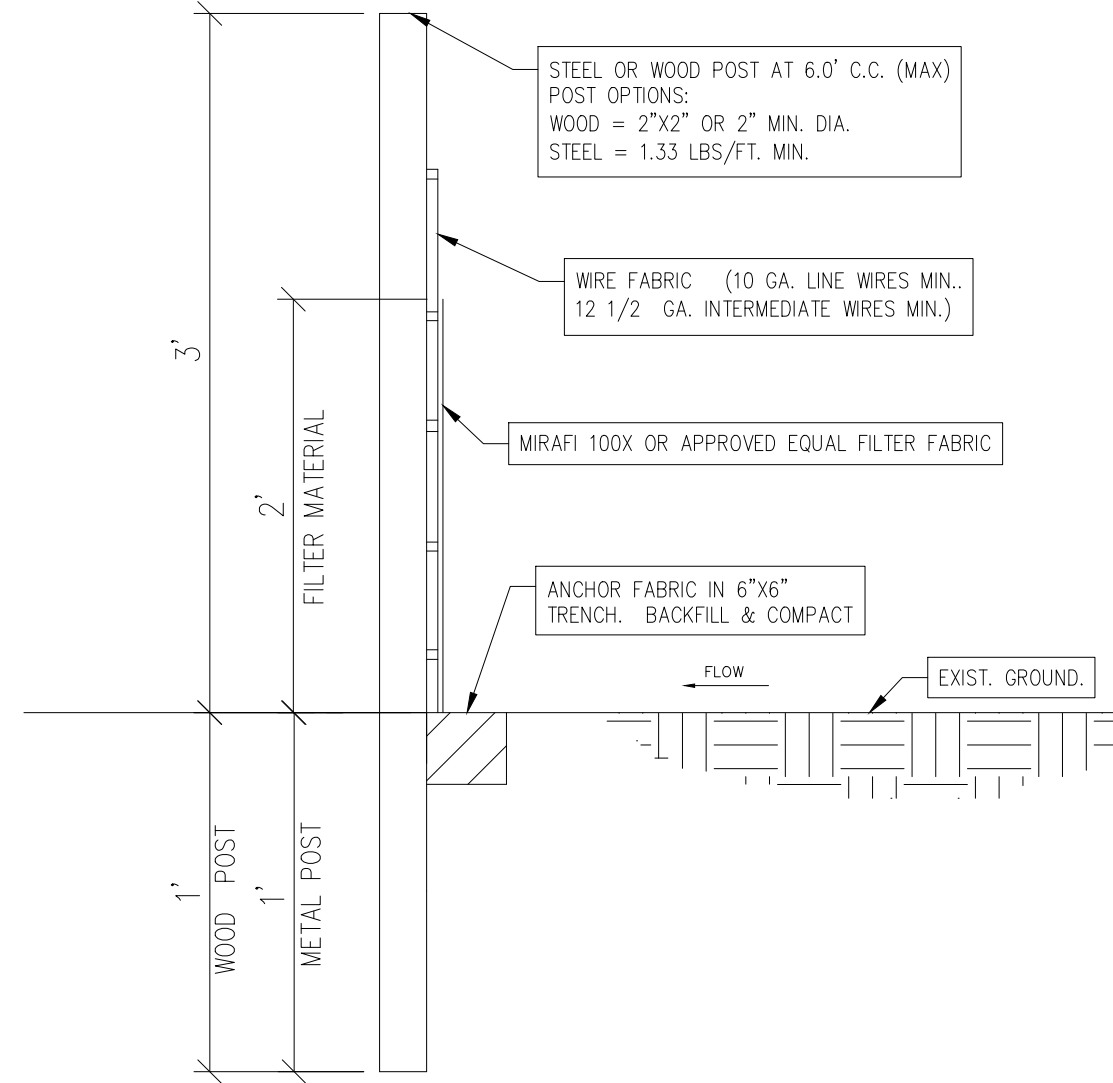
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GRADING PLAN
PROJECT # 6090
SHEET NUMBER
C1.1



EROSION CONTROL NOTES

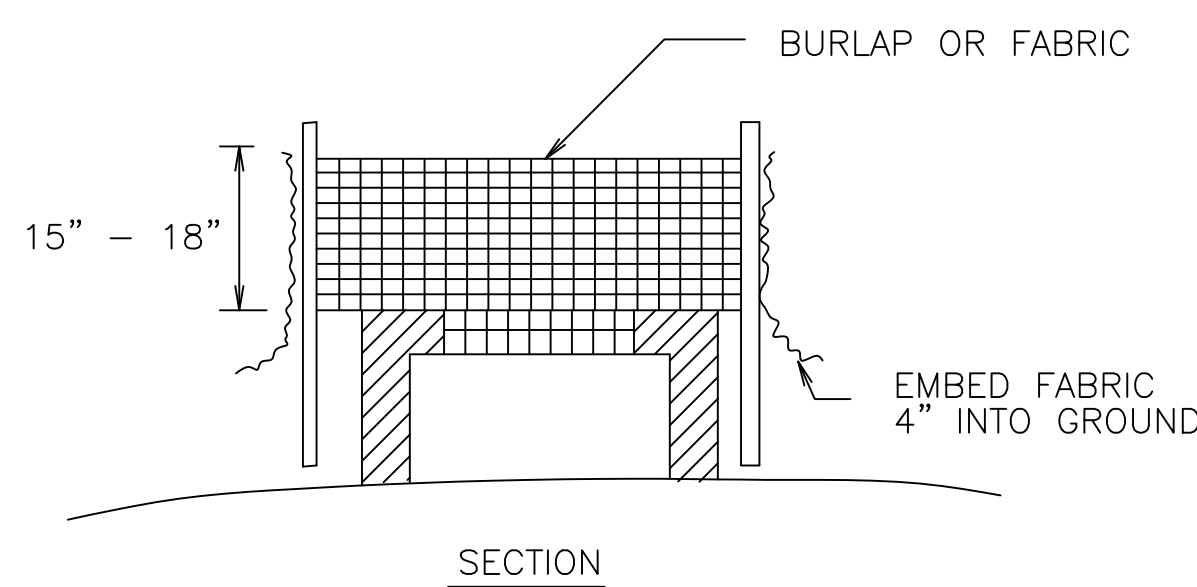
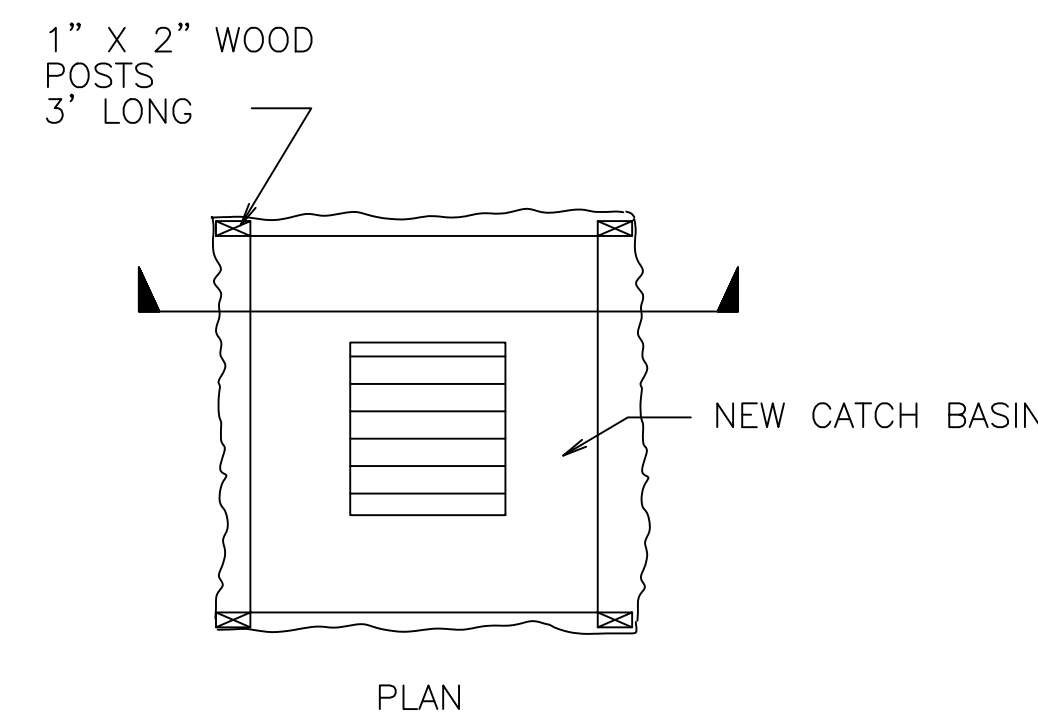
- CONTRACTOR MUST COMPLETE A CONSTRUCTION SITE NOTICE, OBTAIN SIGNED COPIES OF NOTICE FROM BOTH OWNER AND CONTRACTOR (IF APPLICABLE TO THIS SITE), AND POST THEM AT THE CONSTRUCTION SITE, IN ACCORDANCE WITH THE TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES (TX150000). THE GENERAL CONTRACTOR, (AND ALL SUBCONTRACTORS INVOLVED WITH ANY CONSTRUCTION ACTIVITY RELATED TO EARTHWORK, EROSION CONTROL, ETC., OR WHICH UTILIZE POSSIBLE POLLUTANTS AS DEFINED IN THE TPDES GENERAL PERMIT) MUST BE FAMILIAR WITH THE CONTENTS OF THE STORM WATER POLLUTION PREVENTION PLAN (SWPPP) AS WELL AS ALL THE REQUIREMENTS SET FORTH IN THE TPDES GENERAL PERMIT AND ANY APPLICABLE LOCAL PERMIT REQUIREMENTS, AND SHALL COMPLY WITH ALL SUCH REQUIREMENTS DURING ALL CONSTRUCTION ACTIVITIES.
- THE CONTRACTOR SHALL ADHERE TO THE SEQUENCE OF OPERATIONS FOR EROSION CONTROL IMPLEMENTATION SHOWN HEREIN. ANY DEVIATION FROM THIS SEQUENCE DEEMED NECESSARY BY THE CONTRACTOR MAY REQUIRE THAT THE STORM WATER POLLUTION PREVENTION PLAN BE MODIFIED IN ACCORDANCE WITH THE TPDES GENERAL PERMIT GUIDELINES AND SECTION 1.01 OF THE STORM WATER POLLUTION PREVENTION PLAN.
- THE CONTRACTOR SHALL MODIFY THIS PLAN TO SHOW LOCATIONS OF TEMPORARY WASH DOWN AREAS, PORTABLE TOILETS, EQUIPMENT MAINTANCE/REPAIR AREAS, STOCKPILE AREAS, FUEL STORAGE AREAS, AND POLLUTANT CONTROLS FOR EACH, AS SOON AS POSSIBLE.
- THE GENERAL CONTRACTOR SHALL PERFORM ALL REQUIRED INSPECTIONS OF STORM WATER CONTROLS AND PRACTICES AT FREQUENCIES GIVEN IN THE TPDES GENERAL PERMIT, AND SHALL COMPLETE AND SIGN APPROPRIATE INSPECTION FORMS (AS PROVIDED IN THE STORM WATER POLLUTION PREVENTION PLAN).
- OIL AND GREASE ABSORBING MATERIALS SHALL BE READILY AVAILABLE ON-SITE AND SHALL BE PROMPTLY USED TO CONTAIN AND/OR CLEAN UP ALL FUEL OR CHEMICAL SPILLS OR LEAKS.
- DUST CONTROL SHALL BE ACCOMPLISHED BY WATERING DRY, EXPOSED AREAS ON A REGULAR BASIS. SPRAYING OF PETROLEUM BASED OR TOXIC LIQUIDS FOR THIS PURPOSE IS PROHIBITED.
- DISTURBED AREAS OF THE SITE WHERE CONSTRUCTION ACTIVITIES HAVE CEASED FOR AT LEAST FOURTEEN DAYS SHALL BE TEMPORARILY STABILIZED WITH VEGETATION AND MULCH.
- DISTURBED AREAS OF THE SITE WHERE CONSTRUCTION ACTIVITIES HAVE PERMANENTLY CEASED SHALL BE PERMANENTLY SEEDED WITHIN FOURTEEN DAYS PER LANDSCAPING SPECIFICATIONS.
- ALL VEHICLES SHALL BE CLEANED AT THE CONSTRUCTION SITE EXIT POINTS ACCORDING TO NOTES SHOWN ON THE DETAIL THEREOF. IF THE MAJORITY OF MUD OR DIRT IS NOT REMOVED FROM EXITING TRAFFIC, HOSE BIBS SHALL BE PROVIDED AT CONSTRUCTION TRAFFIC EXIT POINTS, AND VEHICLE TIRES SHALL BE WASHED BEFORE EXITING ONTO PUBLIC ROADS. SILT FROM THIS WASHING OPERATION SHALL BE INTERCEPTED AND TRAPPED BEFORE WASH WATER IS ALLOWED TO BE DISCHARGED OFF-SITE.
- ALL MATERIALS SPILLED, DROPPED, WASHED OR TRACKED ONTO ADJACENT ROADWAYS BY VEHICLES EXITING THE SITE SHALL BE CLEANED OR REMOVED IMMEDIATELY.
- CONTRACTOR SHALL PREVENT ANY SILTATION FROM ENTERING THE STORM SEWER SYSTEM. ALL INLETS AND INLET OPENINGS SHALL BE FULLY ENCLOSED WITH APPROPRIATE INLET PROTECTION DEVICES.
- THE CONTRACTOR SHALL REMOVE ALL ACCUMULATED SILT IN ANY TEMPORARY OR PERMANENT DETENTION PONDS, STORM SEWER INLETS AND PIPES, AND ALONG SILT FENCES, WITHIN 48 HOURS AFTER INSPECTION OF DEVICES REVEALS THE PRESENCE OF EXCESSIVE SILTATION (AS SPECIFIED IN SECTION 5.02 OF THE STORM WATER POLLUTION PREVENTION PLAN).
- SILT FENCES SHALL BE PLACED AROUND ANY STOCKPILES USED ON THIS SITE.
- THE CONTRACTOR IS ADVISED TO CONSTRUCT TEMPORARY OR PERMANENT FENCING AROUND DETENTION PONDS AND SEDIMENT BASINS AT THE EARLIEST POSSIBLE TIME TO PREVENT ACCIDENTAL ACCESS BY PERSONS OR ANIMALS.
- ANY ADDITIONAL EROSION CONTROL MEASURES REQUIRED TO ENSURE COMPLIANCE WITH THE TPDES GENERAL PERMIT OR LOCAL PERMIT REQUIREMENTS SHALL BE IMPLEMENTED BY THE CONTRACTOR, AT NO ADDITIONAL EXPENSE TO THE OWNER.
- ALL TEMPORARY EROSION CONTROL MEASURES SHALL BE REMOVED AND PROPERLY DISPOSED OF OFF-SITE WITHIN THIRTY DAYS AFTER STABILIZATION OF ALL SURFACES.
- THE CONTRACTOR SHALL ASSUME LIABILITY FOR DAMAGE TO ADJACENT PROPERTIES AND/OR PUBLIC RIGHT-OF-WAY RESULTING FROM FAILURE TO FULLY IMPLEMENT AND EXECUTE ALL EROSION CONTROL PROCEDURES SHOWN AND NOTED IN THESE PLANS.
- WHENEVER DIRT, ROCK, OR OTHER MATERIALS ARE EXPORTED FOR USE OFF OF THE PRIMARY CONSTRUCTION SITE, CONTRACTOR SHALL ASSUME RESPONSIBILITY FOR COMPLIANCE WITH ALL TCEQ STORMWATER REQUIREMENTS FOR REMOTE SITE. CONTRACTOR SHALL FURNISH THE ENGINEER AND THE OWNER'S CONSTRUCTION MANAGER WITH DOCUMENTATION OF COVERAGE FOR THE BORROW OF FILL SITE UNDER A TPDES PERMIT FOR STORMWATER DISCHARGES AND OF A WRITTEN AGREEMENT WITH THE LANDOWNER OF THE REMOTE SITE INDICATING EROSION CONTROL MEASURES HAVE BEEN IMPLEMENTED THEREON. AT A MINIMUM, EROSION CONTROL MEASURES MUST CONSIST OF PERIMETER CONTROLS (SILT FENCES) ON ALL DOWN SLOPES AND SAID SLOPE BOUNDARIES OF ANY DISTURBED AREA, PLUS PROVISIONS FOR RE-VEGETATION AFTER THE FILL MATERIALS ARE IN PLACE.
- ALL SLOPES ON SITE WHICH ARE 3:1 OR STEEPER SHALL BE STABILIZED BY TRACK WALKING (TRAVERSING UP AND DOWN THE SLOPE WITH A TRACKED VEHICLE) FOLLOWED BY INSTALLATION OF EROSION CONTROL BLANKET INSTALLED IN ACCORDANCE WITH MANUFACTURE'S INSTRUCTIONS. EROSION CONTROL BLANKET SHALL BE NORTH AMERICAN GREEN S150 OR APPROVED EQUAL.



SILT FENCE DETAIL

N.T.S.

NOTE: STRAW BALES MAY BE USED IN LIEU OF FABRIC AROUND CATCH BASINS. BALES SHALL BE EMBEDDED 4" INTO GROUND AND SECURELY STAKED IN PLACE.



CATCH BASIN PROTECTION

N.T.S.

SWPPP MAINTENANCE NOTES

- ALL MEASURES STATED ON THIS EROSION AND SEDIMENT CONTROL PLAN, AND IN THE STORM WATER POLLUTION PREVENTION PLAN, SHALL BE MAINTAINED IN FULLY FUNCTIONAL CONDITION UNTIL NO LONGER REQUIRED FOR A COMPLETED PHASE OF WORK OR FINAL STABILIZATION OF THE SITE. ALL EROSION AND SEDIMENTATION CONTROL MEASURES SHALL BE CHECKED BY A QUALIFIED PERSON ON A SCHEDULE WHICH COMPLIES WITH THE GENERAL PERMIT REQUIREMENTS AND CLEANED AND REPAIRED WITHIN 48 HOURS OF THE INSPECTION IN ACCORDANCE WITH THE FOLLOWING:
- INLET PROTECTION DEVICES AND BARRIERS SHALL BE REPAIRED OR REPLACED IF THEY SHOW SIGNS OF UNDERMINING, OR DETERIORATION.
 - ALL SEEDED AREAS SHALL BE CHECKED REGULARLY TO SEE THAT A GOOD STAND IS MAINTAINED, AREAS SHOULD BE FERTILIZED, WATERED, AND RESEEDED AS NEEDED.
 - SILT FENCES SHALL BE REPAIRED TO THEIR ORIGINAL CONDITIONS IF DAMAGED. SEDIMENT SHALL BE REMOVED FROM THE SILT FENCES WHEN IT REACHES ONE-HALF THE HEIGHT OF THE SILT FENCED.
 - THE TEMPORARY PARKING AND STORAGE AREA (IF PRESENT) SHALL BE KEPT IN GOOD CONDITION (SUITABLE FOR PARKING AND STORAGE). THIS MAY REQUIRE PERIODIC TOP DRESSING OF THE PARKING AS CONDITIONS DEMAND.
 - OUTLET STRUCTURES IN THE SEDIMENTATION BASINS OR SEDIMENT TRAPS (IF PRESENT) SHALL BE MAINTAINED IN OPERATIONAL CONDITION AT ALL TIMES. SEDIMENT SHALL BE REMOVED FROM SEDIMENT BASINS OR TRAPS WHEN THE DESIGN CAPACITY HAS BEEN REDUCED BY 50%.
 - MAINTENANCE PROCEDURES FOR THE EROSION AND SEDIMENTATION CONTROL SYSTEMS ARE SPECIFIED IN THE STORM WATER POLLUTION PLAN.

NOTICE TO CONTRACTORS

TOPOGRAPHIC INFORMATION TAKEN FROM A TOPOGRAPHIC SURVEY PERFORMED BY SURDUKAN SURVEYING, INC., ANNA, TEXAS. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY, IN WRITING, OF ANY DISCREPANCIES OR OMISSIONS TO THE TOPOGRAPHIC INFORMATION. THE CONTRACTOR(S) SHALL BE RESPONSIBLE FOR CONFIRMING THE LOCATION (HORIZONTAL/VERTICAL) OF ANY BURIED CABLES, CONDUITS, PIPES, AND STRUCTURES (STORM SEWERS, SANITARY SEWER, WATER, GAS, TELEPHONE, ETC.) WHICH IMPACT THE CONSTRUCTION SITE. THE CONTRACTOR(S) SHALL NOTIFY THE OWNER AND ENGINEER IF ANY DISCREPANCIES ARE FOUND BETWEEN THE ACTUAL CONDITIONS VERSUS THE DATA CONTAINED IN THE CONSTRUCTION PLANS. ANY COSTS INCURRED AS THE RESULT OF NOT CONFIRMING THE ACTUAL LOCATION (HORIZONTAL/VERTICAL) OF SAID CABLES, CONDUITS, PIPES, AND STRUCTURES SHALL BE BORN BY THE CONTRACTOR. ADDITIONALLY, THE CONTRACTOR(S) SHALL NOTIFY THE OWNER AND ENGINEER IF ANY ERRORS OR DISCREPANCIES ARE FOUND ON THE CONSTRUCTION DOCUMENTS WHICH NEGATIVELY IMPACT THE PROJECT. ENGINEER AND OWNER SHALL BE INDEMNIFIED OF PROBLEMS AND/OR COST WHICH MAY RESULT FROM CONTRACTOR'S FAILURE TO NOTIFY ENGINEER AND OWNER.

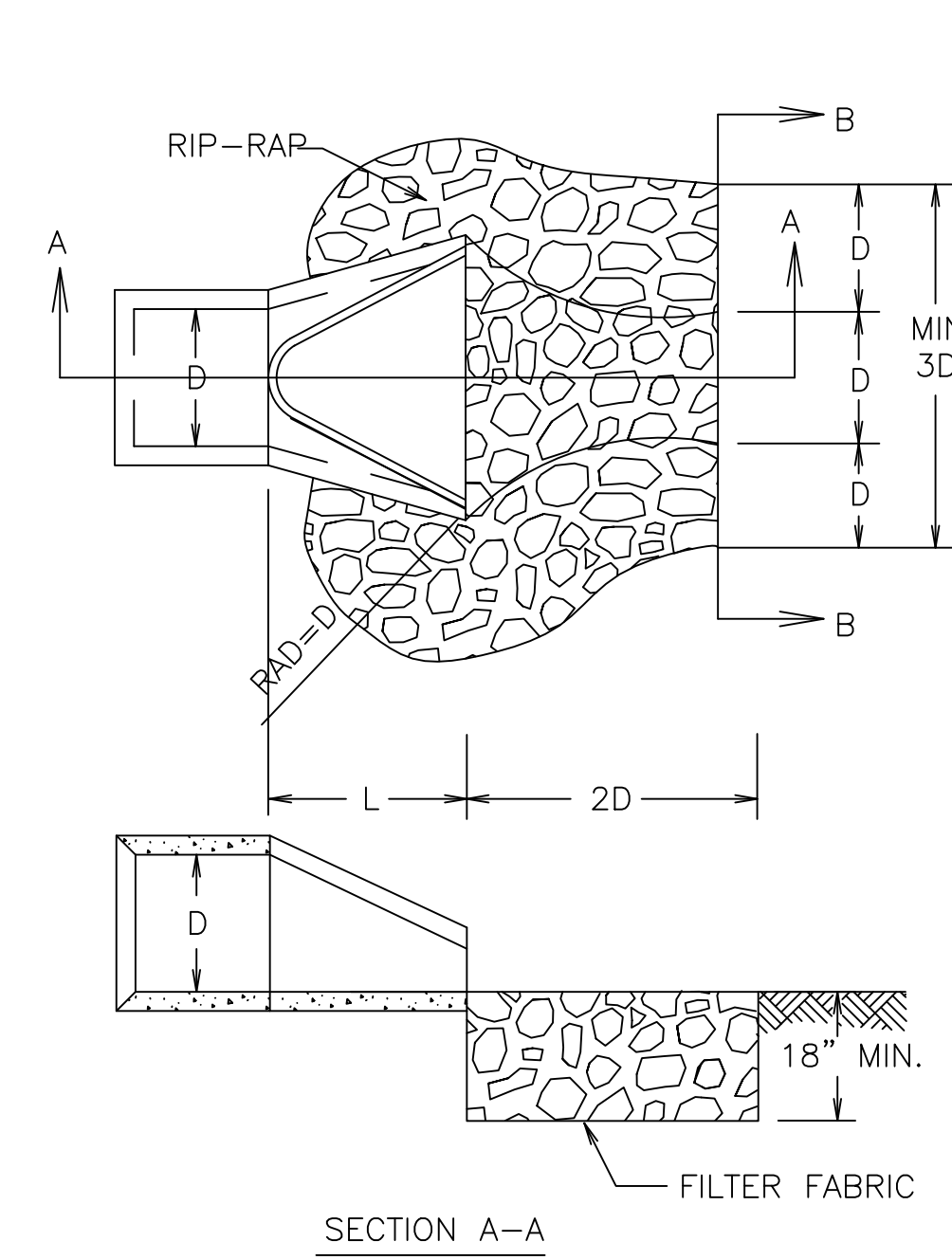
SWPPP & PERMIT REQUIREMENTS

THE LIMITS OF DISTURBANCE FOR THIS PROJECT IS LESS THAN 1 ACRE. THEREFORE, A SWPPP PLAN & CONSTRUCTION GENERAL PERMIT IS NOT REQUIRED FOR STORM WATER DISCHARGE FROM CONSTRUCTION ACTIVITIES. INSTALL ALL EROSION CONTROL MEASURES PER THE EROSION CONTROL PLANS & DETAILS

EROSION CONTROL SEQUENCE

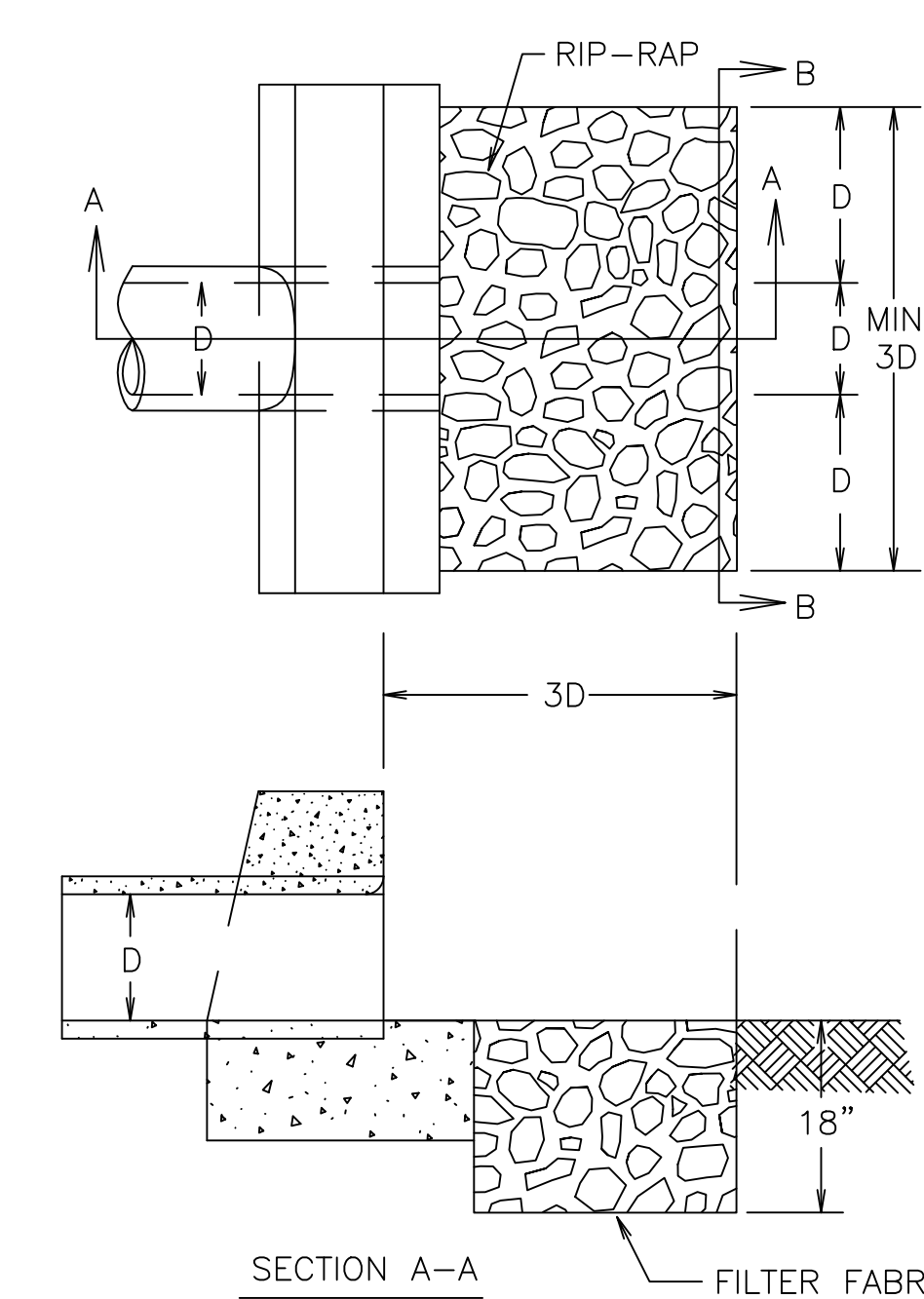
- CONSTRUCT TEMPORARY CONSTRUCTION EXIT (IF SPECIFIED ON DWG.).
- INSTALL PERIMETER SILT FENCE AS SHOWN.
- COMMENCE GRUBBING AND REMOVAL OF VEGETATION IN AREAS TO RECEIVE CUT OR FILL.
- COMMENCE GRADING OPERATION FOR BUILDING PADS PREPARATION (SEE GRADING PLAN).
- INSTALL ALL UNDERGROUND UTILITIES.
- FINALIZE PAVEMENT SUB-GRADE.
- INSTALL BASE MATERIAL AS REQUIRED FOR PAVEMENT, CURB, AND GUTTER.
- INSTALL ALL PAVING, CURB AND GUTTER.
- COMPLETE PLANTING AND/OR SEEDING OF VEGETATED AREAS TO ACCOMPLISH STABILIZATION, IN ACCORDANCE WITH THE LANDSCAPING PLAN.
- REMOVE ALL TEMPORARY SEDIMENT CONTROL MEASURES AND CONSTRUCTION EXIT.

FLARED END SECTION PLAN

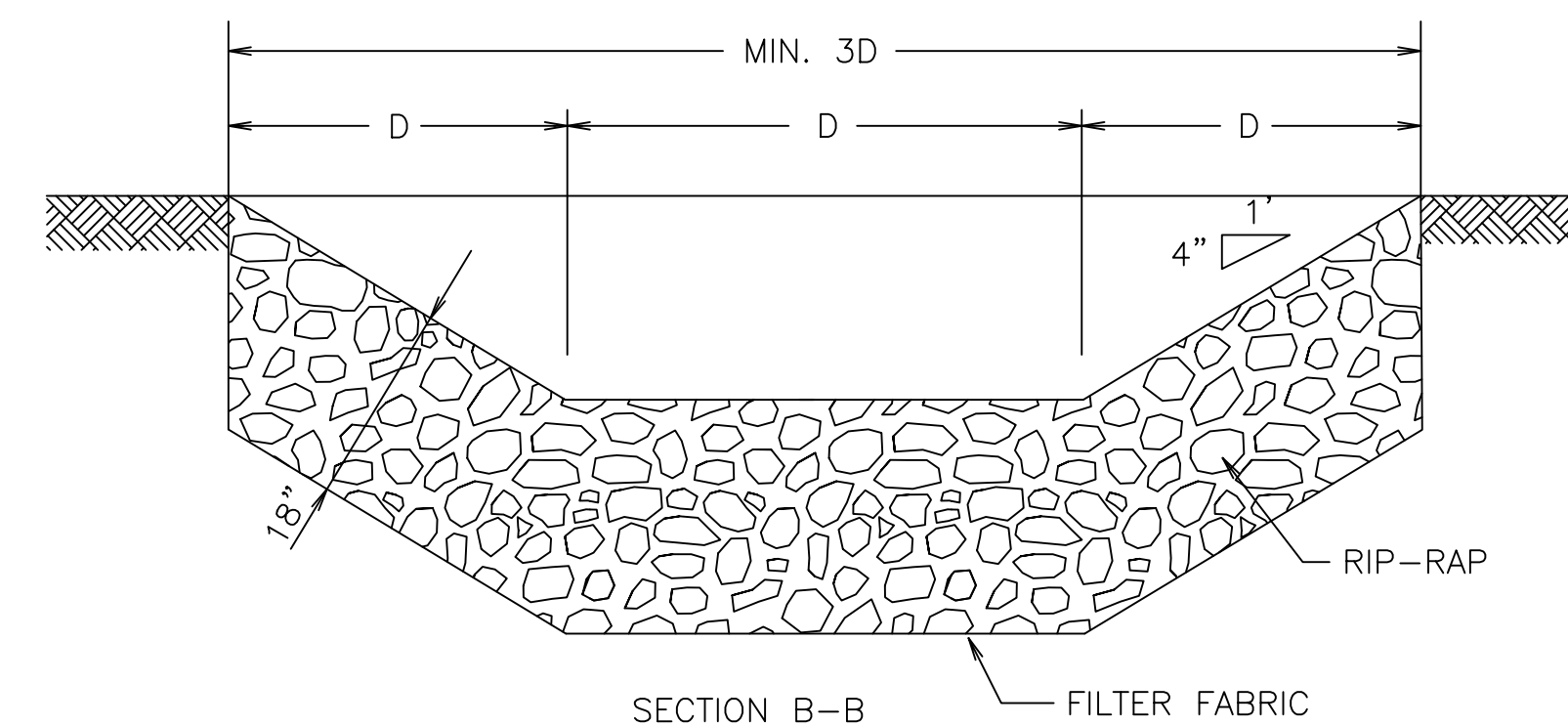


SECTION A-A

HEADWALL PLAN



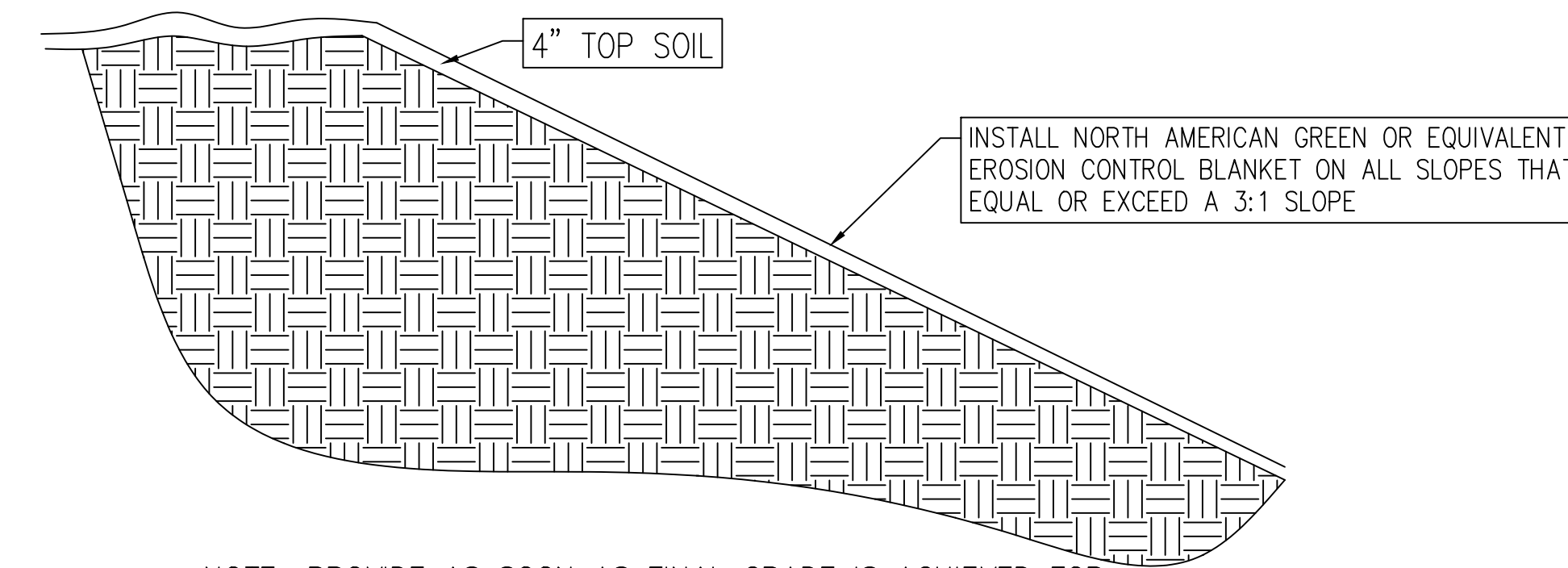
SECTION A-A



SECTION B-B

DISCHARGE AREA EROSION CONTROL DETAIL

N.T.S.



NOTE: PROVIDE AS SOON AS FINAL GRADE IS ACHIEVED FOR SLOPES TO REMAIN EXPOSED FOR 30 DAYS OR MORE.

SLOPE PROTECTION (SP)

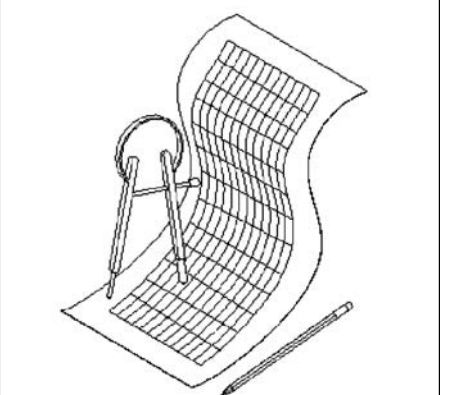
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CONSTRUCTION 6/13/2017

ISSUED FOR: DATE:

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ELEMENTARY ADDITION

MILLER GROVE, TX



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SULPHUR SPRINGS, TX
75482

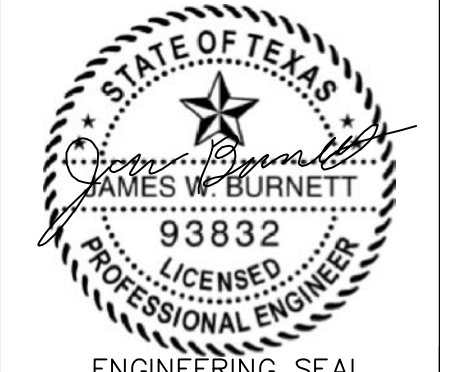
TEL: 903-513-3773

TEL: 903-382-3444

E-MAIL: jwburnett@dynamic-engineering.net

WEB: www.dynamic-engineering.net

FIRM REGISTRATION # F-8215



ENGINEERING SEAL

NAME DATE

DRAWN SR GREGORY 6/13/2017

CHECKED

ENG APPR JW BURNETT 6/13/2017

Q.A.

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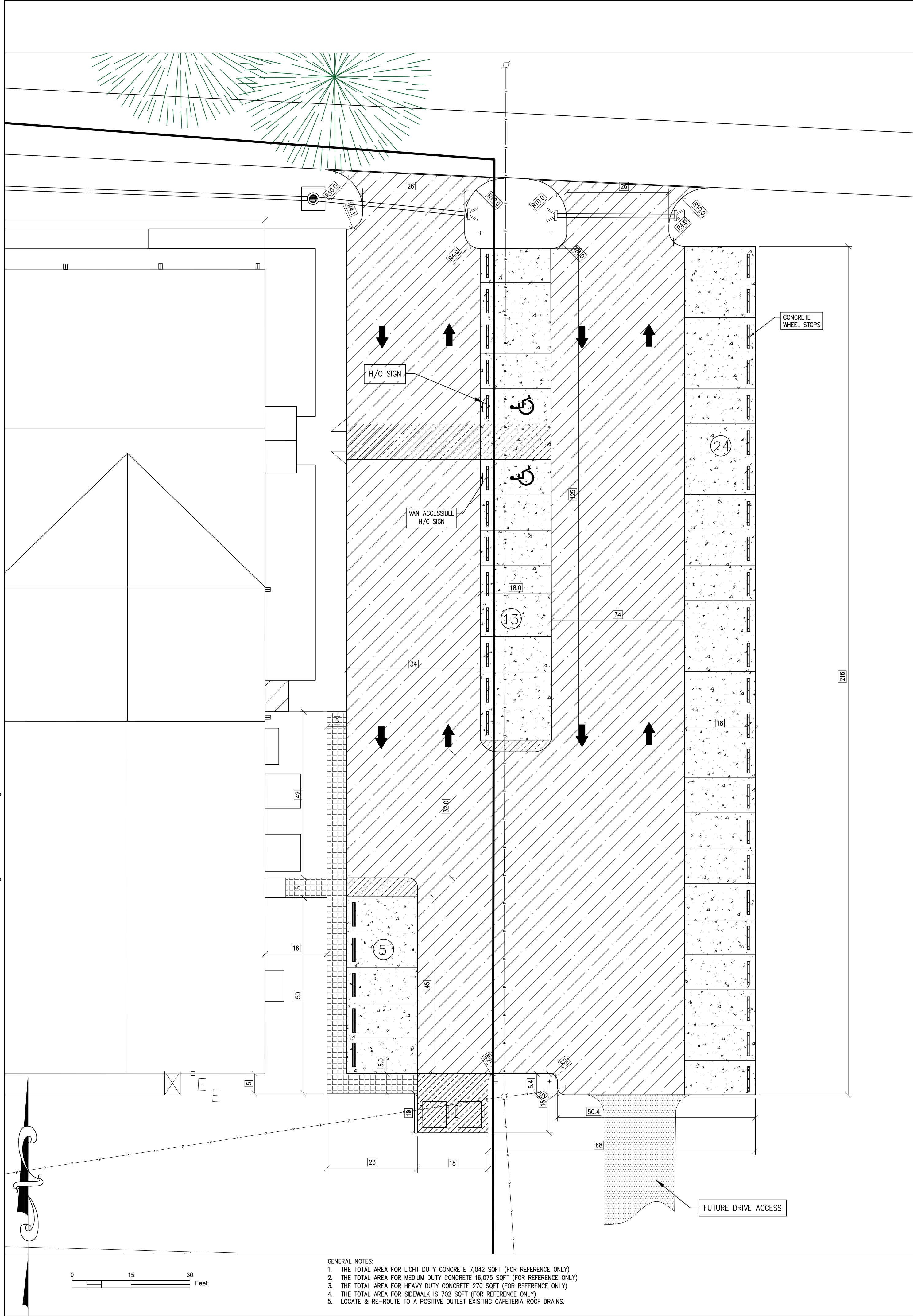
EROSION CONTROL NOTES & DETAILS

PROJECT # 6090

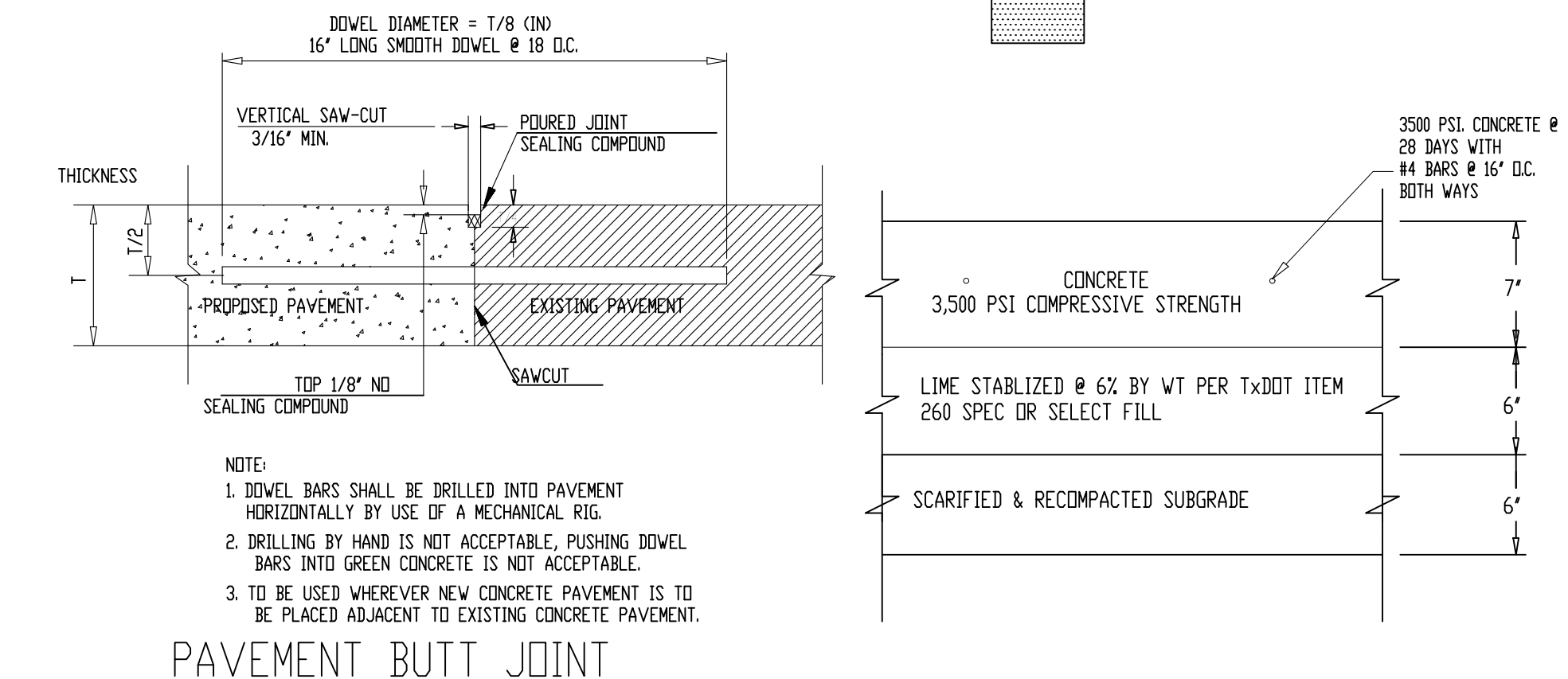
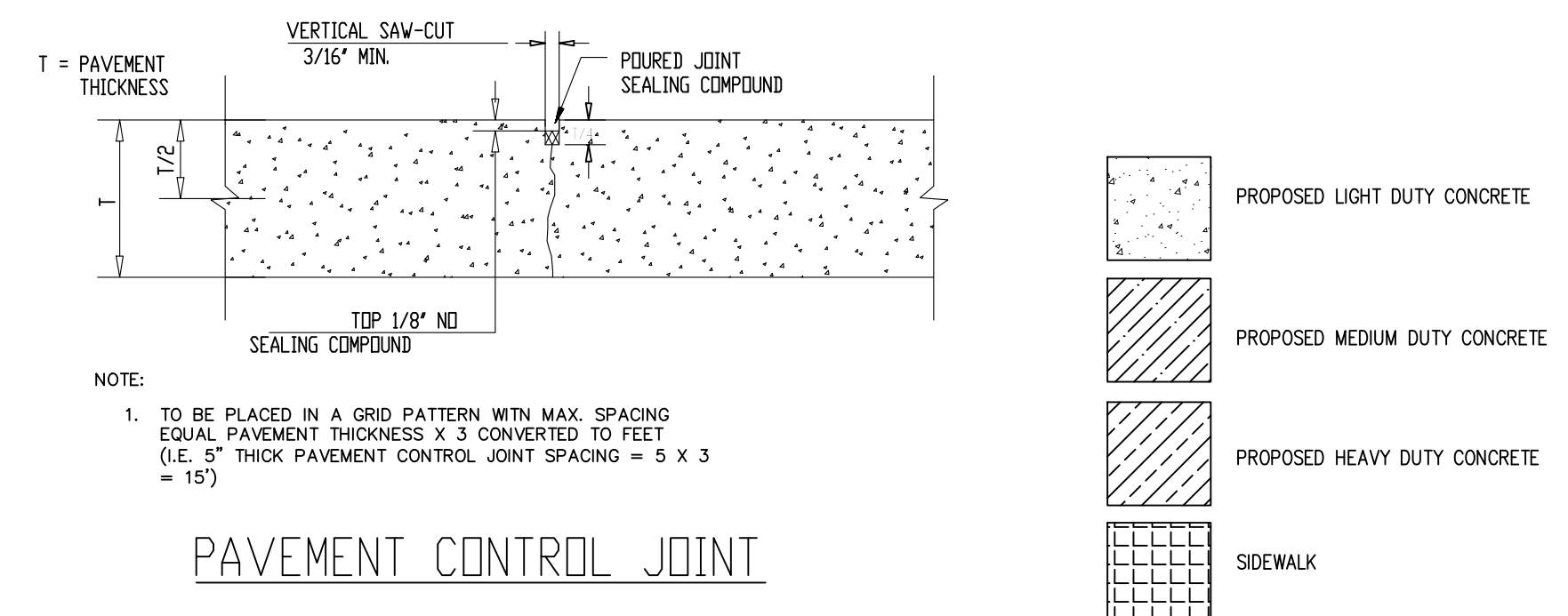
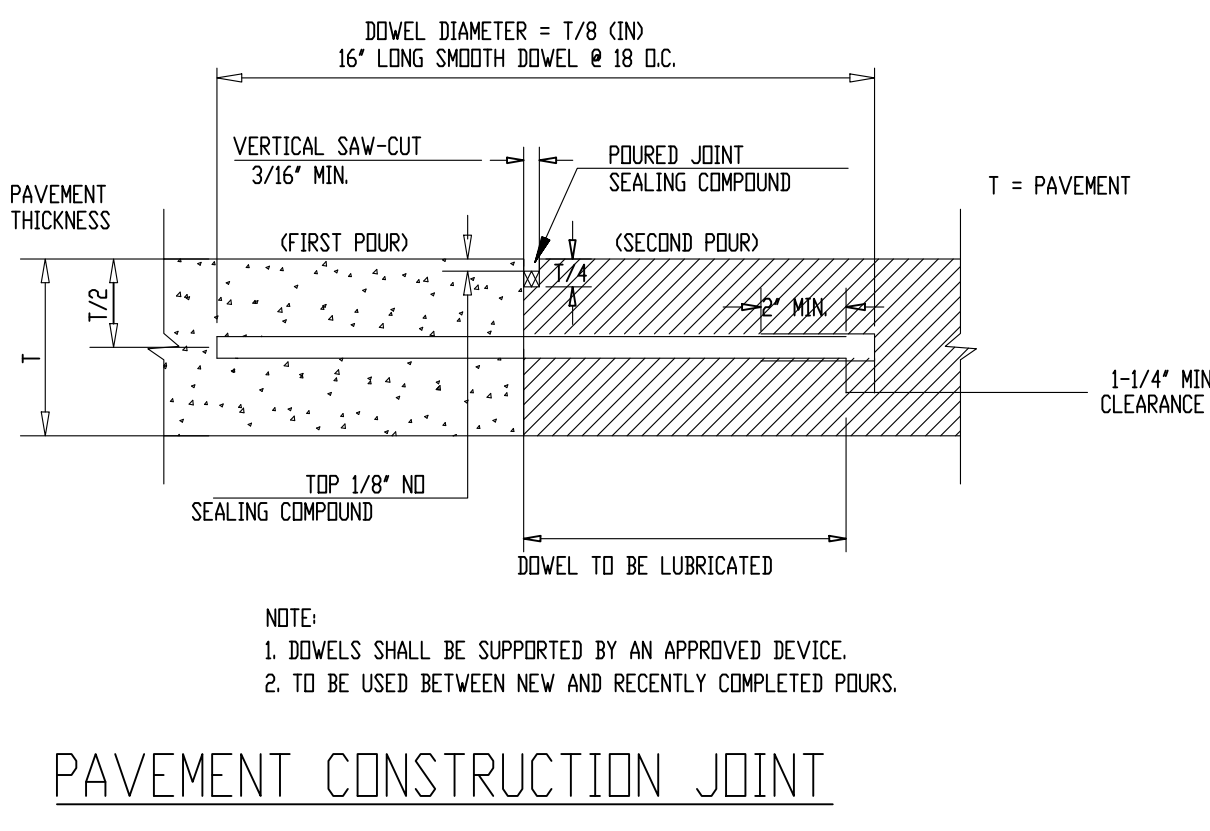
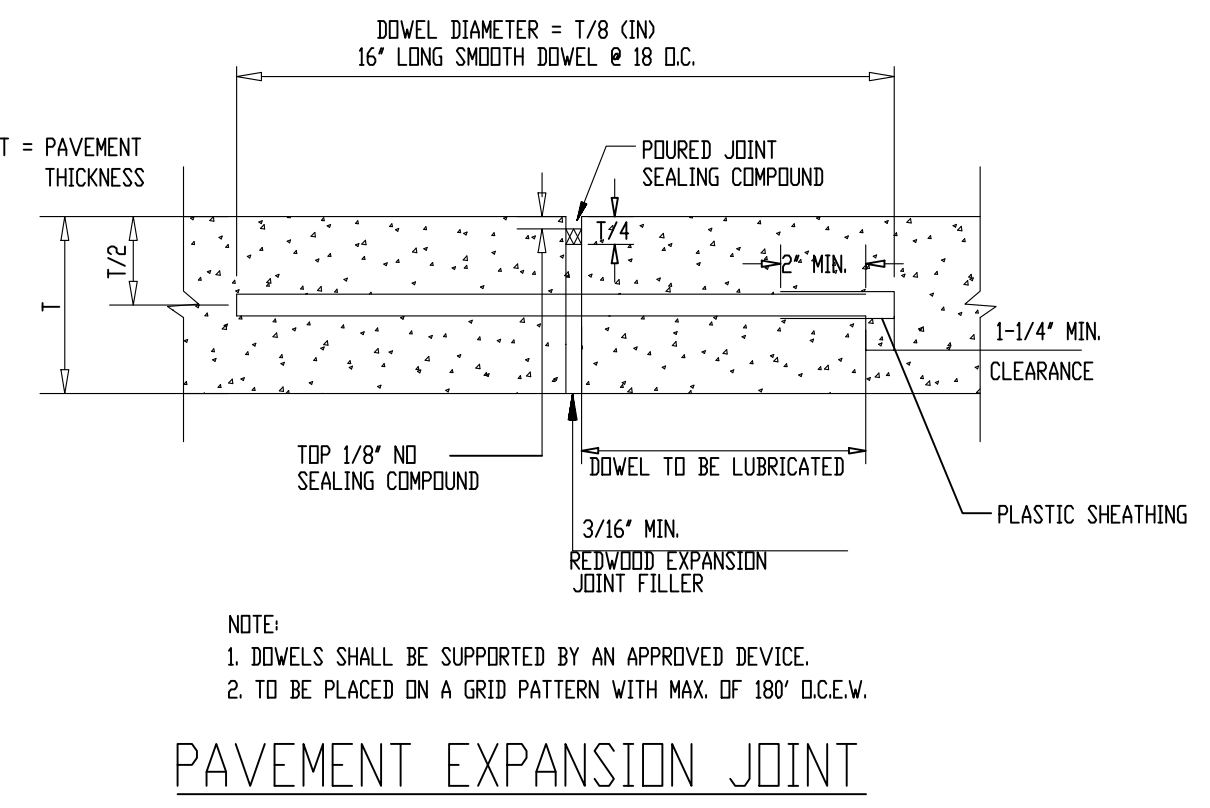
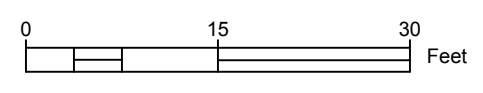
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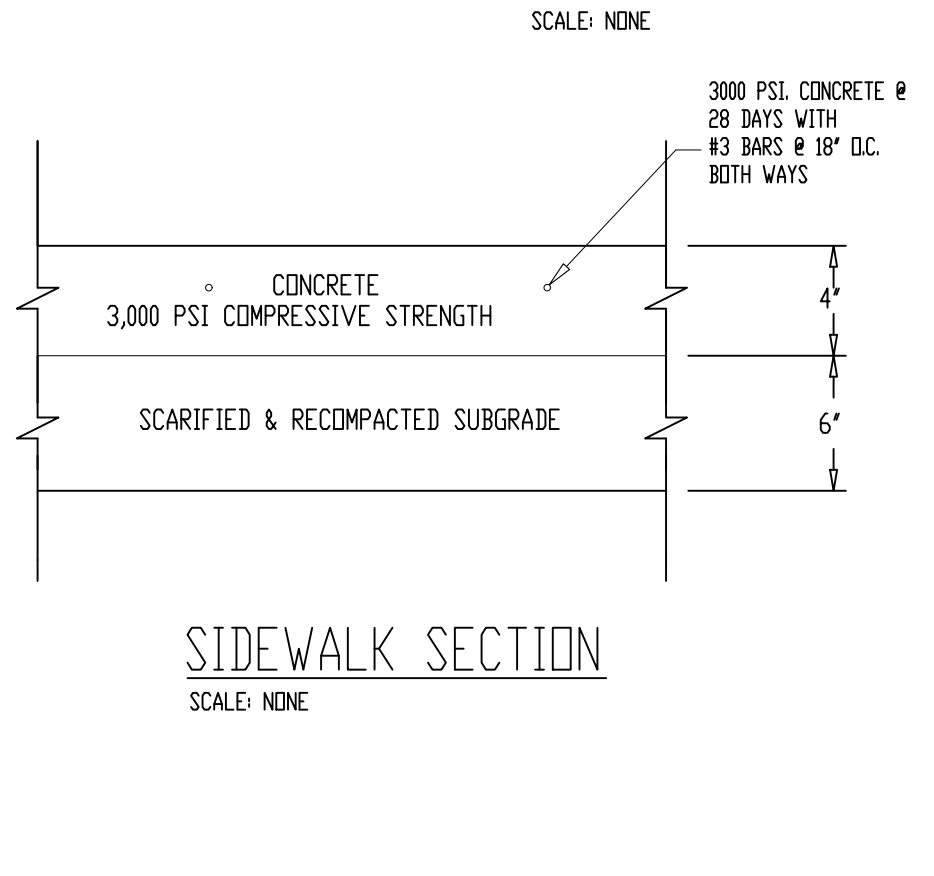
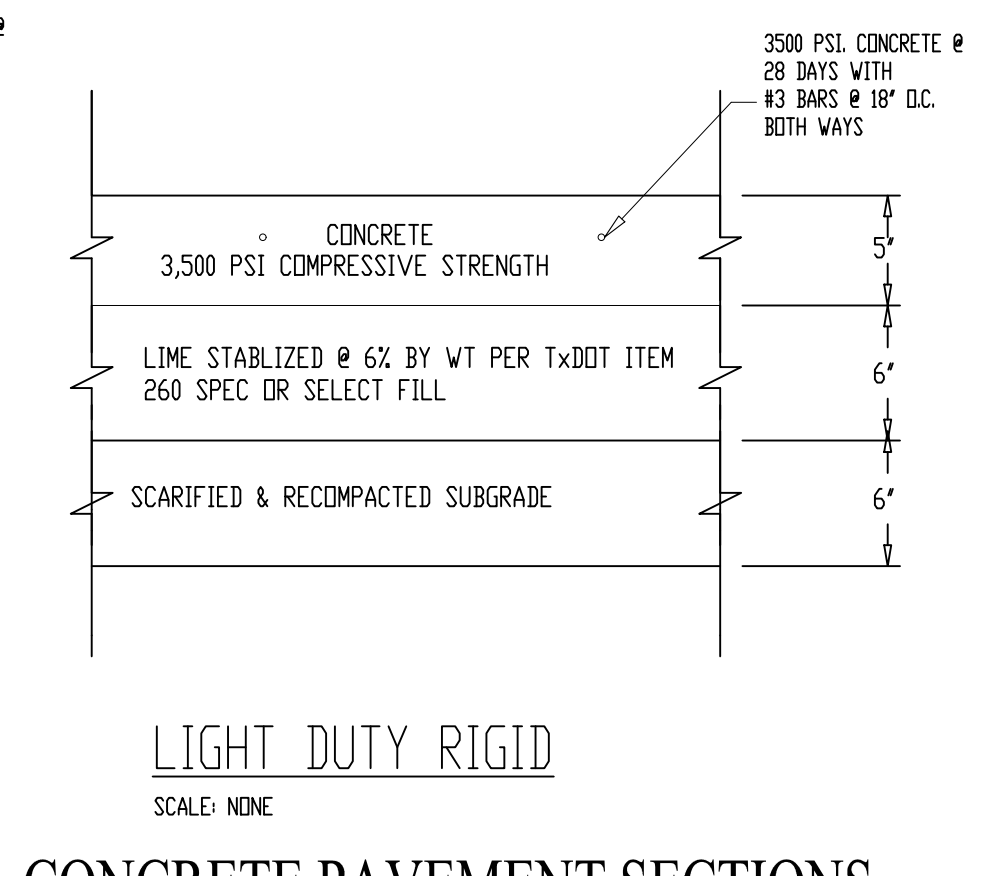
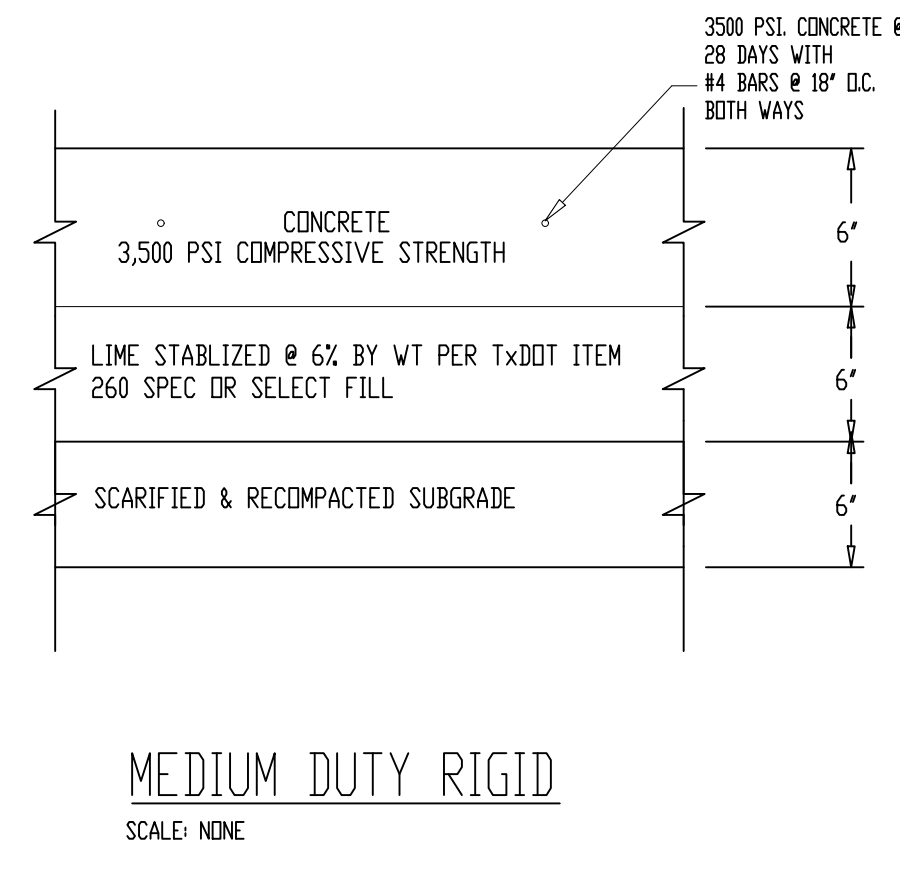
Miller Grove School Paving Plan 6-8-17.dwg



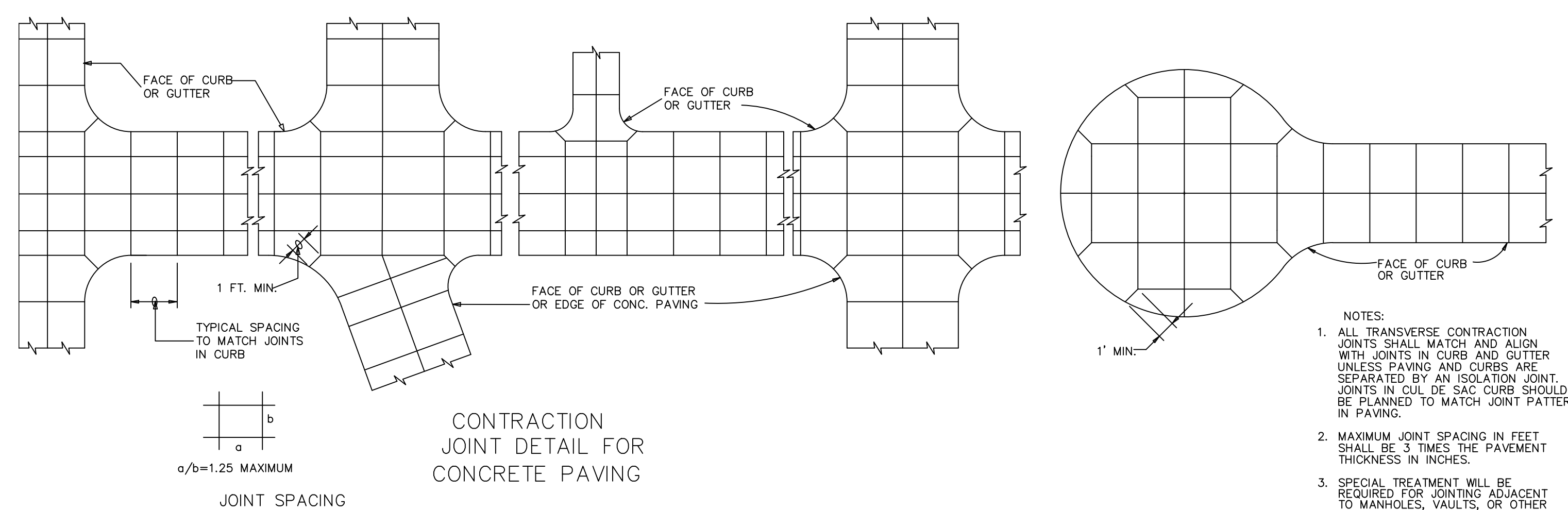
- GENERAL NOTES:
1. THE TOTAL AREA FOR LIGHT DUTY CONCRETE 7,042 SQFT (FOR REFERENCE ONLY)
 2. THE TOTAL AREA FOR MEDIUM DUTY CONCRETE 16,075 SQFT (FOR REFERENCE ONLY)
 3. THE TOTAL AREA FOR HEAVY DUTY CONCRETE 270 SQFT (FOR REFERENCE ONLY)
 4. THE TOTAL AREA FOR SIDEWALK IS 702 SQFT (FOR REFERENCE ONLY)
 5. LOCATE & RE-ROUTE TO A POSITIVE OUTLET EXISTING CAFETERIA ROOF DRAINS.



- PROPOSED LIGHT DUTY CONCRETE
- PROPOSED MEDIUM DUTY CONCRETE
- PROPOSED HEAVY DUTY CONCRETE
- SIDEWALK
- FUTURE DRIVE ACCESS



CONCRETE PAVEMENT SECTIONS



CONSTRUCTION: 6/13/17
ISSUED FOR: DATE:

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ELEMENTARY ADDITION
MILLER GROVE, TX

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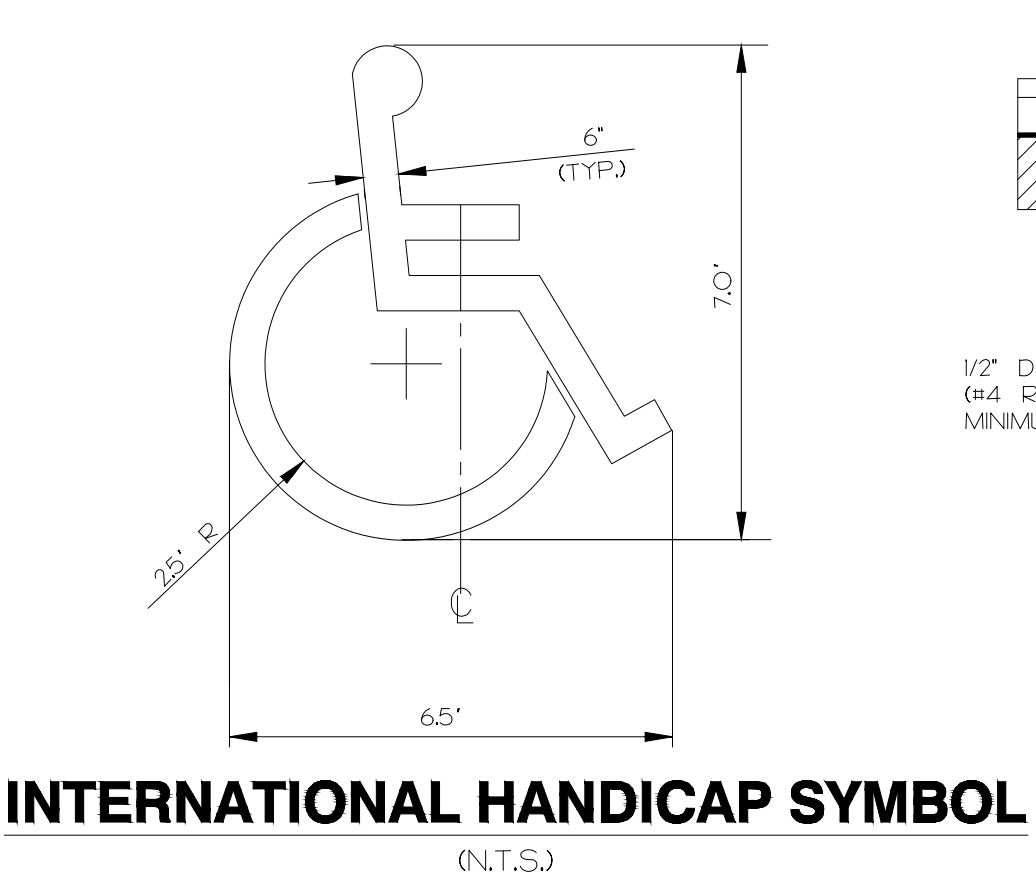
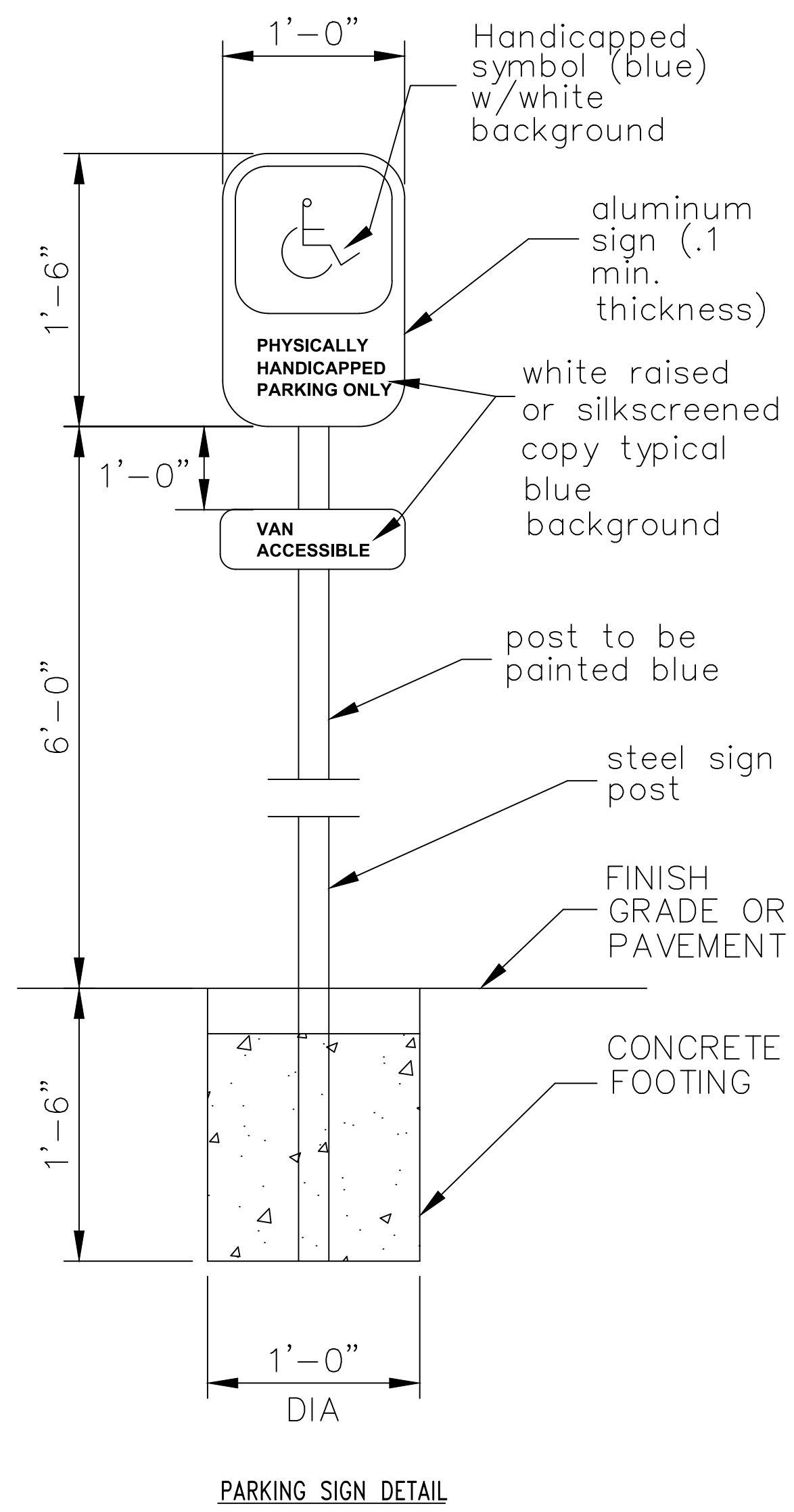
STATE OF TEXAS
JAMES D. BURNETT
93832
LICENSE
PROFESSIONAL ENGINEER
ENGINEERING SEAL

DRAWN	NAME	DATE
SR GREGORY	SR GREGORY	6/13/17
CHECKED		
ENG APPR	JW BURNETT	6/13/17
Q.A.		

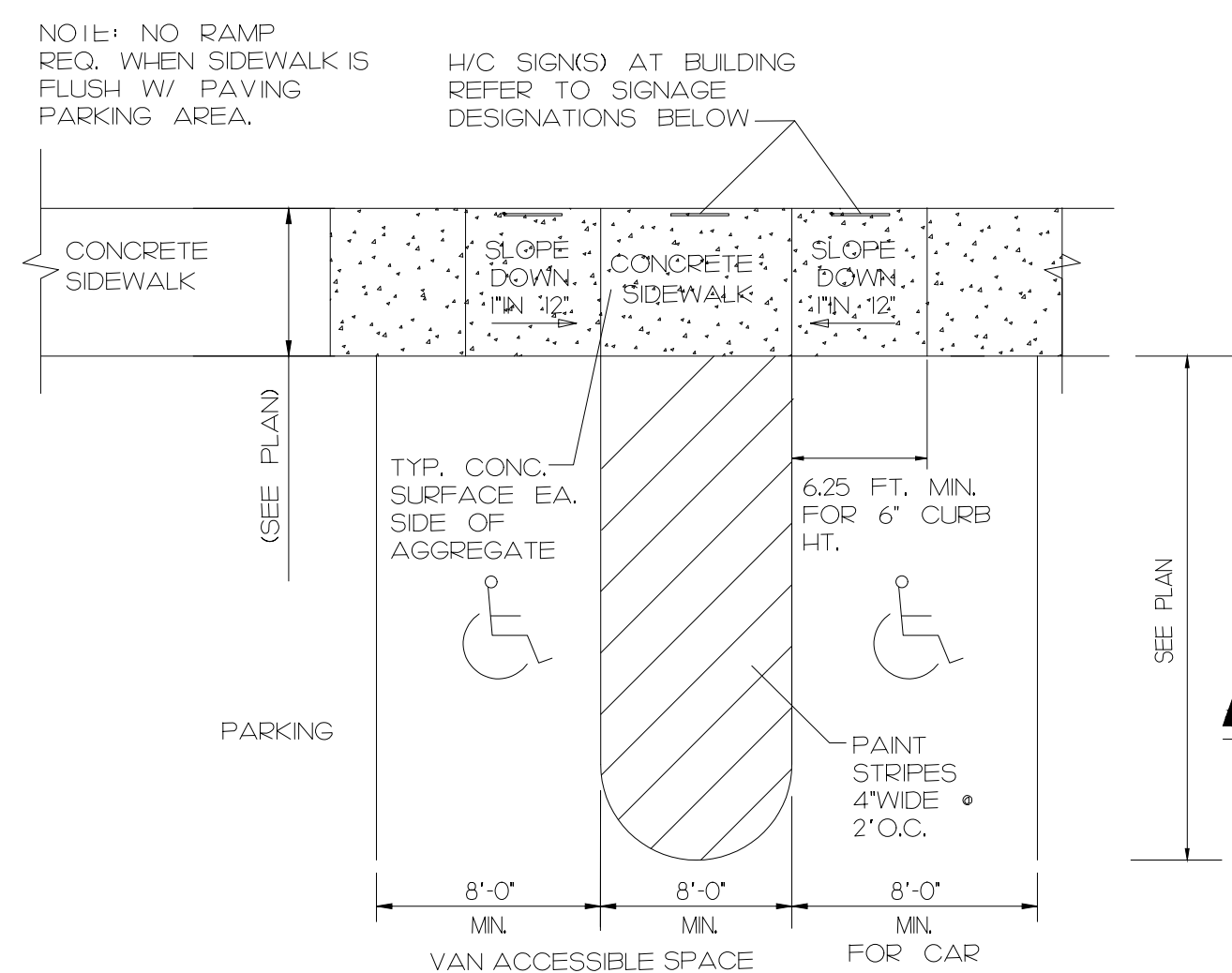
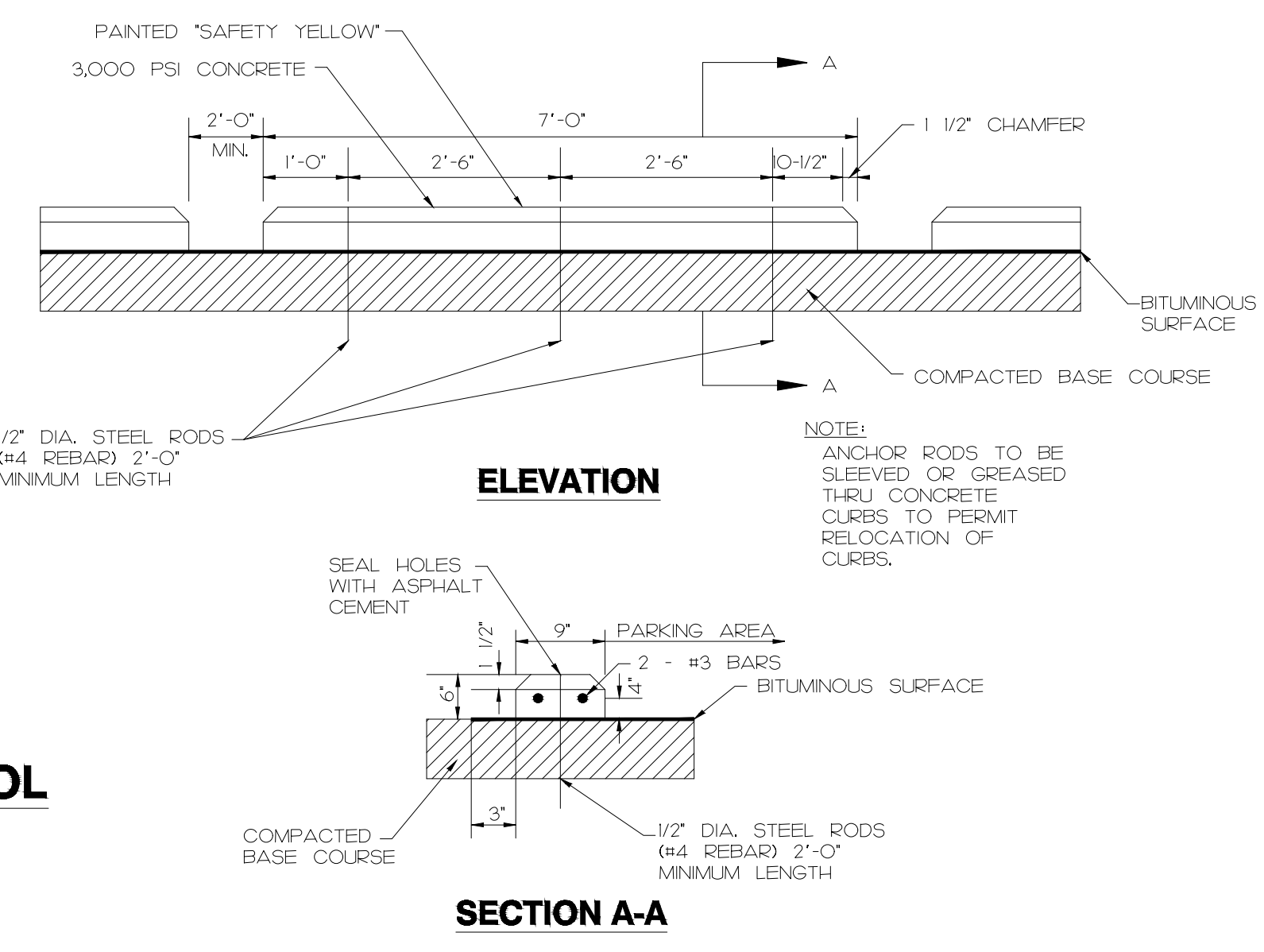
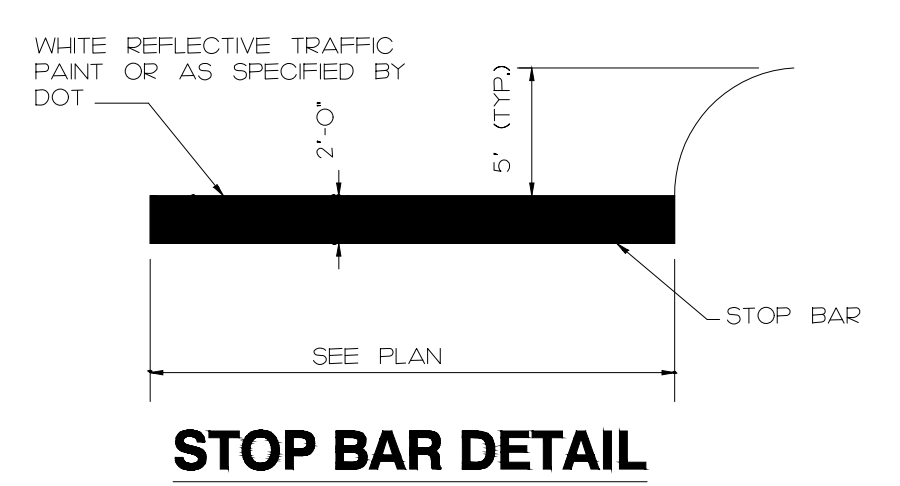
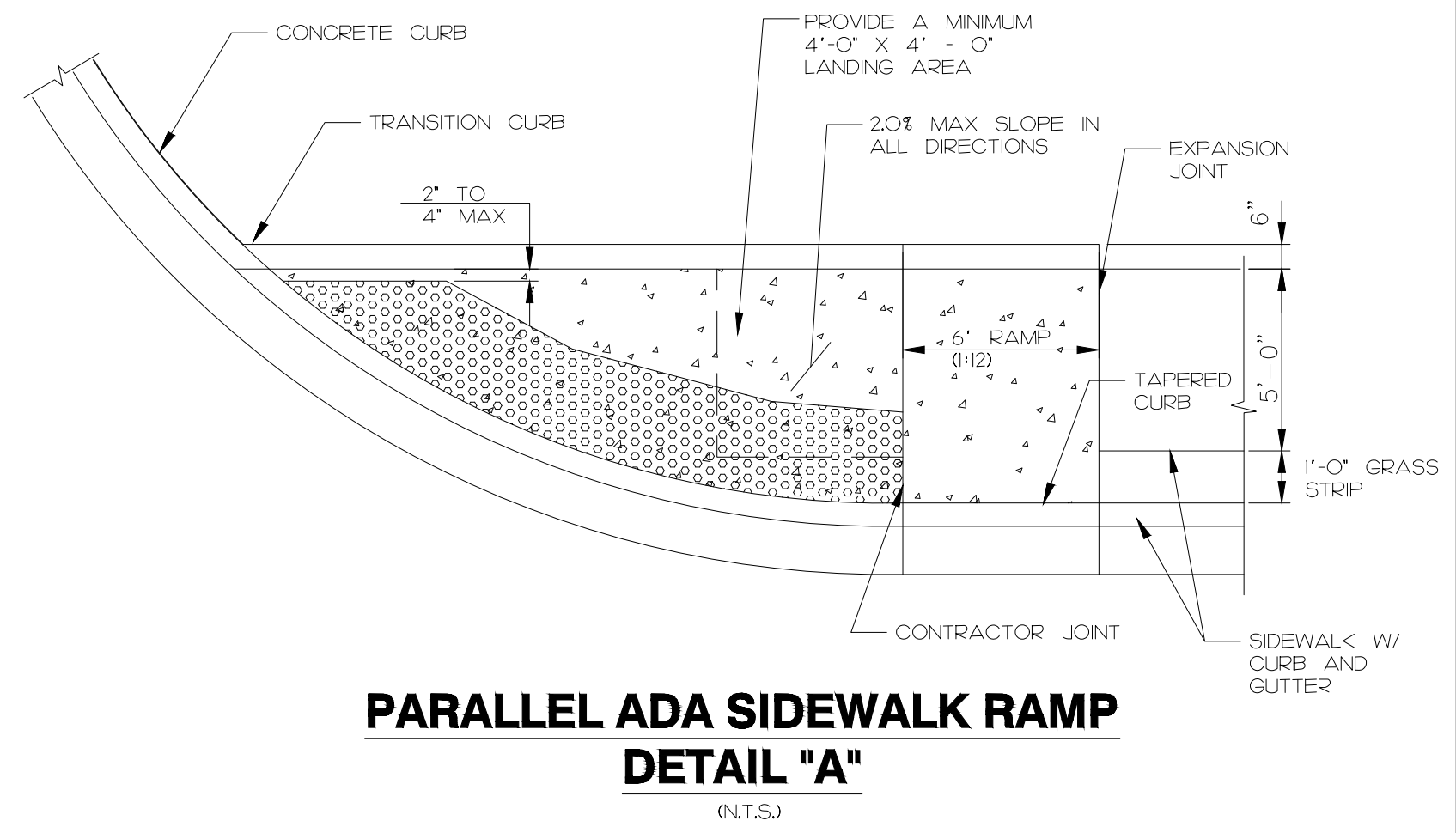
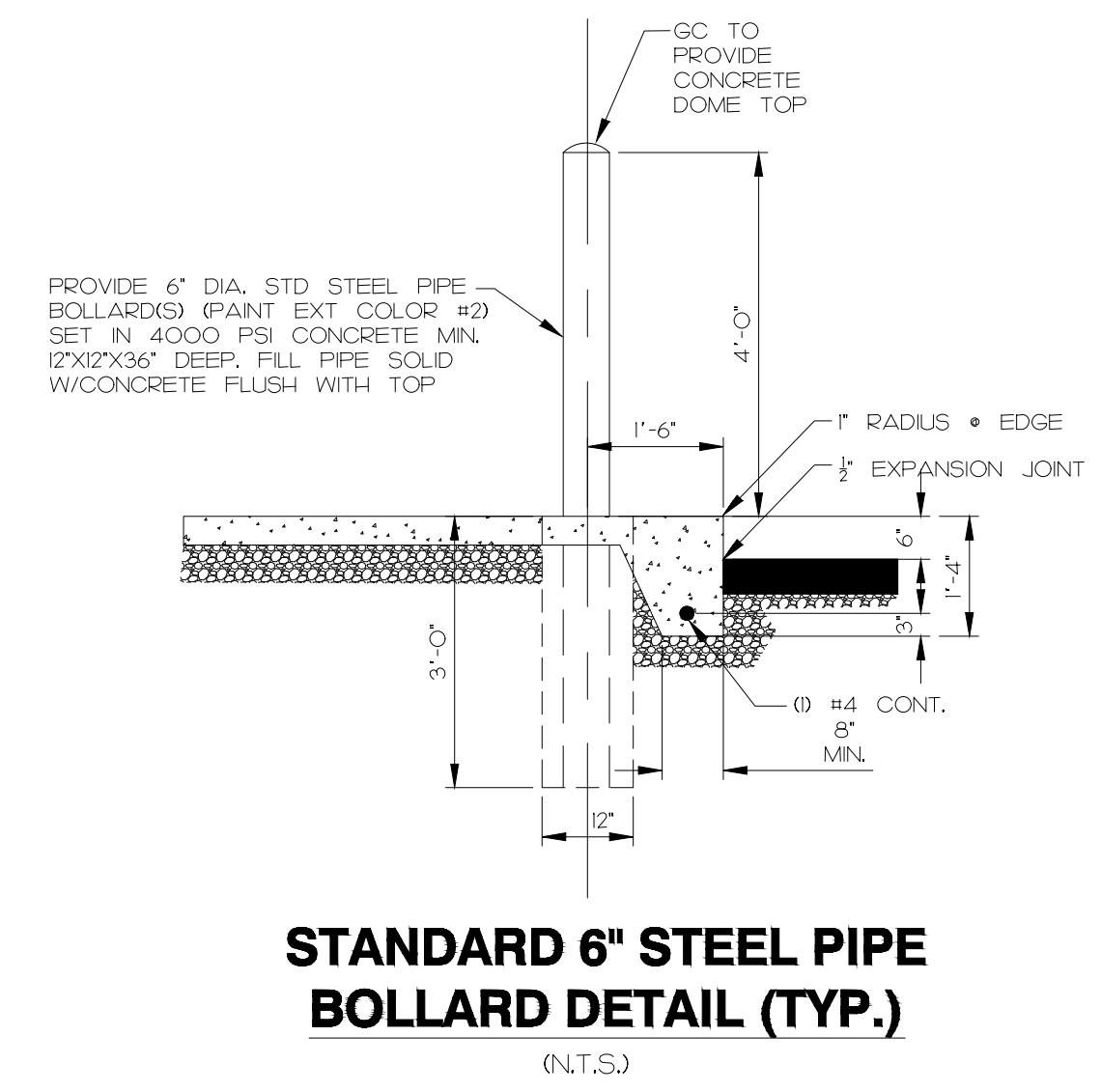
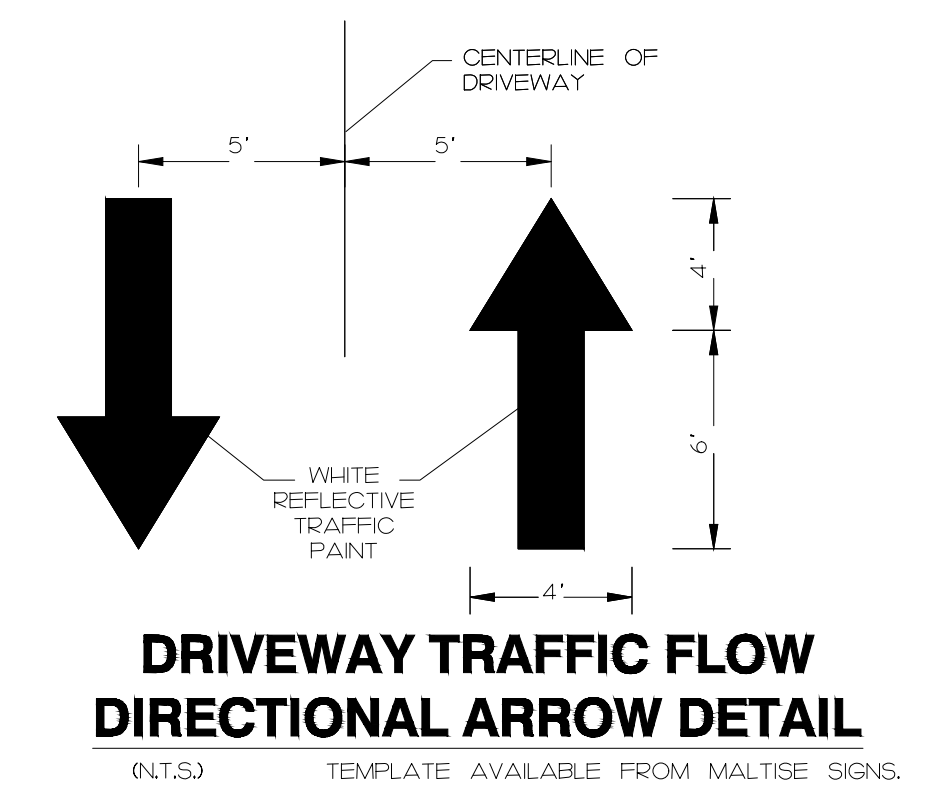
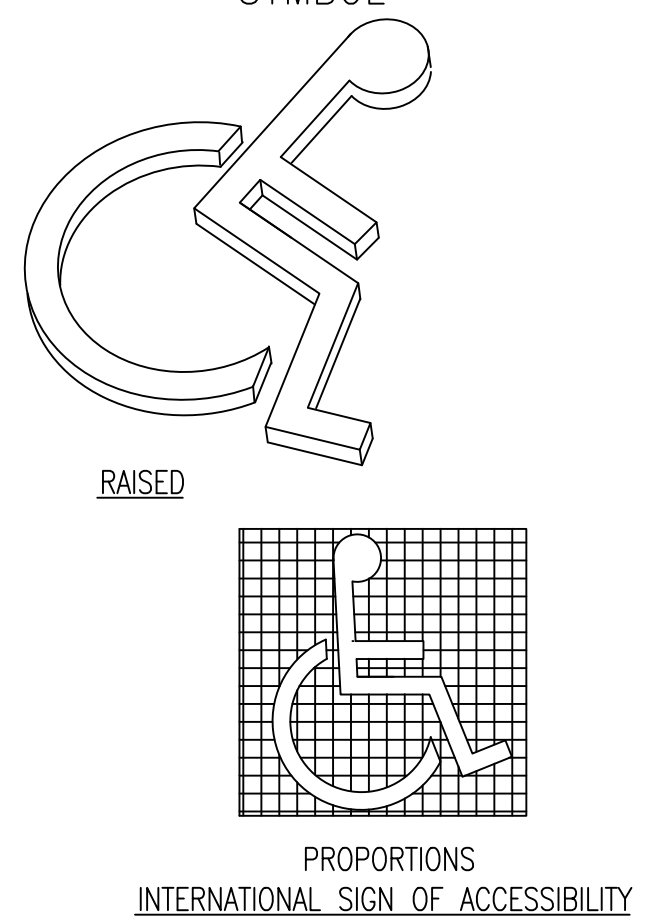
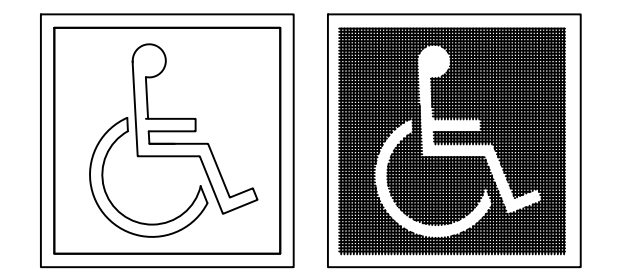
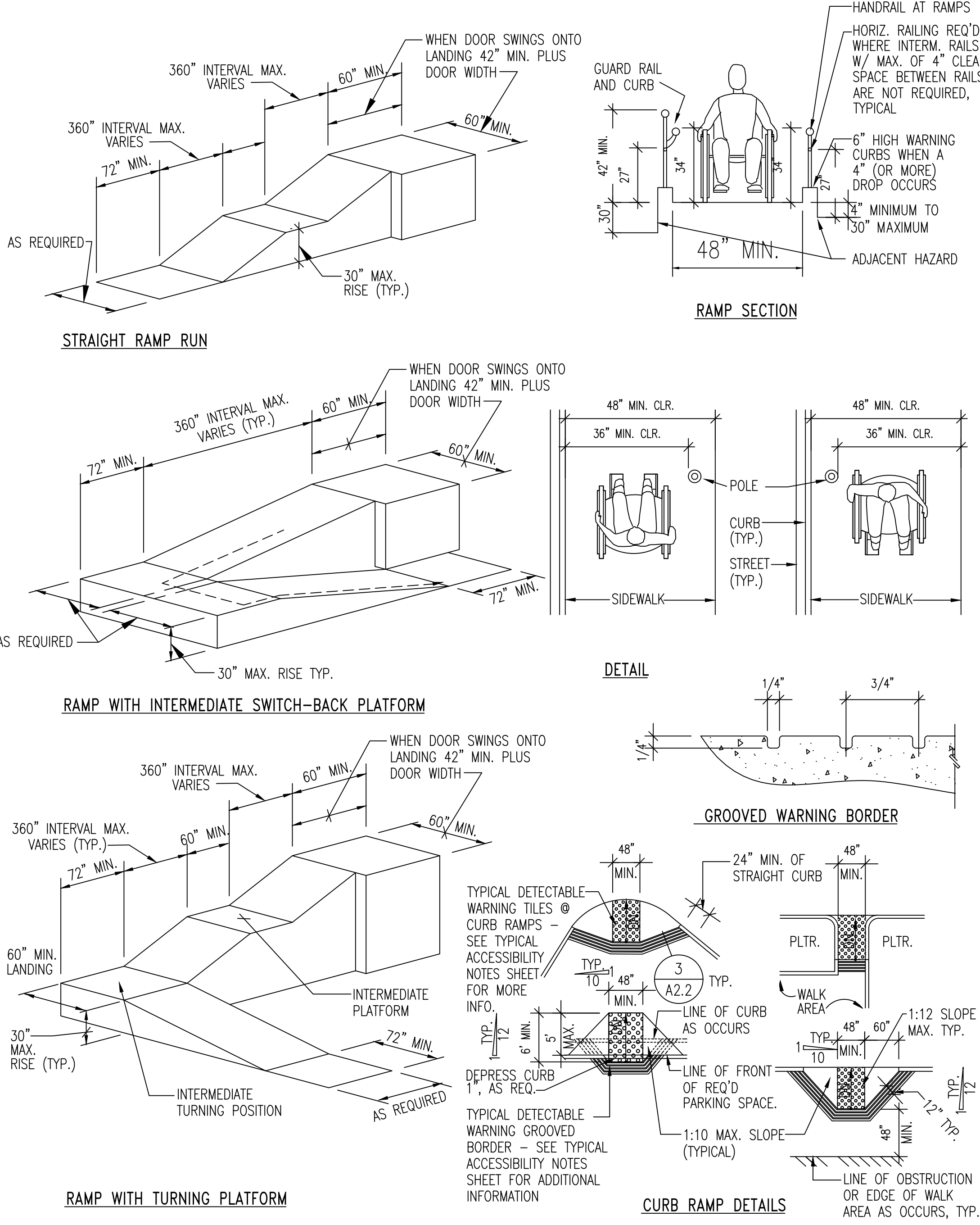
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PAVING PLAN
PROJECT #6090
SHEET NUMBER
C4.0

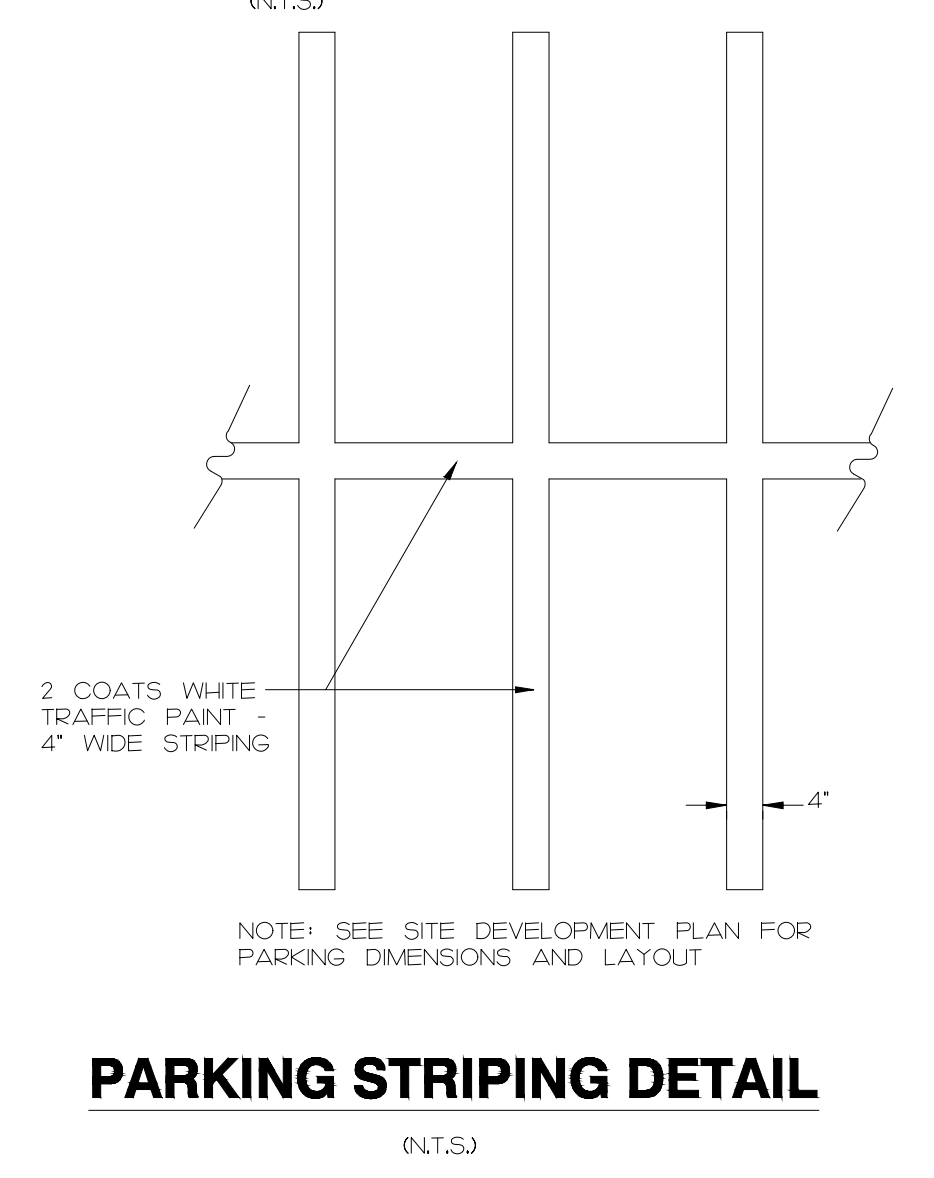
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NOTE:
ALL RAMPS MUST MEET HANDRAIL AND CURB REQUIREMENTS.

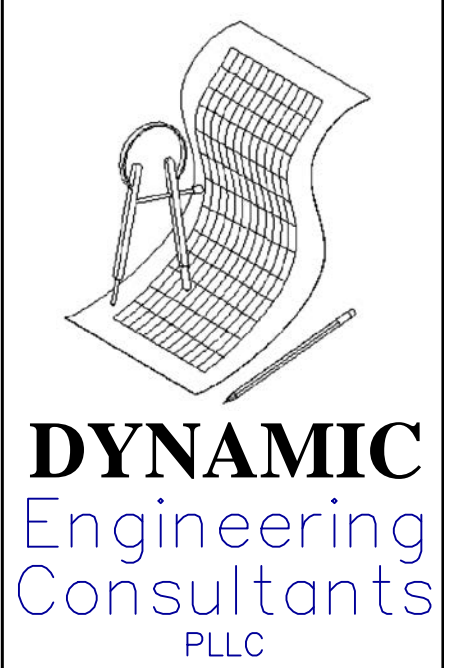


DETECTABLE WARNING NOTE:
1. MARKED CROSSINGS THAT ARE RAISED TO THE SAME LEVEL AS THE ADJOINING SIDEWALK SHALL BE PRECEDED BY A 24" DEEP DETECTABLE WARNING EXTENDED THE FULL WIDTH OF THE MARKED CROSSING.
2. THE DETECTABLE WARNING SHALL BE LOCATED SO THE EDGE NEAREST THE CURB LINE IS 6' TO 8' FROM THE CURB LINE.
3. DETECTABLE WARNING SURFACES SHALL CONTRAST VISUALLY WITH ADJACENT SURFACES, EITHER LIGHT-ON-DARK OR DARK- ON-LIGHT.
4. DETECTABLE WARNING SURFACES SHALL HAVE TRUNCATED DOMES WITH BASE DIAMETER OF 0.9" MIN. TO 1.4" MAX AND A TOP DIAMETER OF 50% MIN. TO 65% MAX OF THE BASE DIAMETER.
5. HEIGHT SHALL BE 0.2".
6. SPACING SHALL BE A CENTER TO CENTER SPACING OF 16" MIN. TO 2.4" MAX AND A BASE TO BASE SPACING OF 0.65" MIN. MEASURED BETWEEN THE MOST ADJACENT DOMES ON THE GRID.



PERMIT: 6/13/17
ISSUED FOR: DATE:

MILLER GROVE ISD
ELEMENTARY ADDITION
MILLER GROVE, TX



PROFESSIONAL ENGINEERING SERVICES
200 S HILLCREST DRIVE
SULPHUR SPRINGS, TX 75482
TEL: 903-513-3773
TEL: 903-382-3444
E-MAIL: jburnett@dynamic-engineering.net
WEB: www.dynamic-engineering.net
FIRM REGISTRATION # F-8215



DRAWN	NAME	DATE
SR GREGORY	6/13/17	
ENG APPR	JW BURNETT	6/13/17
Q.A.		

PROPRIETARY AND CONFIDENTIAL
THE INFORMATION CONTAINED IN THIS DRAWING IS THE SOLE PROPERTY OF DYNAMIC ENGINEERING. ANY REPRODUCTION IN PART OR AS A WHOLE WITHOUT THE WRITTEN PERMISSION OF DYNAMIC ENGINEERING IS PROHIBITED.

PAVING DETAILS
PROJECT #6090
SHEET NUMBER
C4.1

Contract Terms and Conditions

Please initial your answer and sign on page 2 or 2 of this section

Indemnification

The Miller Grove ISD is a Texas Political Subdivision and a local governmental entity; therefore, is prohibited from indemnifying third parties pursuant to the Texas Constitution (Article 3, Section 52) except as specifically provided by law or as ordered by a court of competent jurisdiction. A provision in a contract to indemnify or hold a party harmless is a promise to pay for any expenses the indemnified party incurs, if a specified event occurs, such as breaching the terms of the contract or negligently performing duties under the contract. Article III, Section 49 of the Texas Constitution states that "no debt shall be created by or on behalf of the State ... " The Attorney General has counseled that a contractually imposed obligation of indemnity creates a "debt" in the constitutional sense. Tex. Att'y Gen. Op. No. MW-475 (1982). Contract clauses which require the System or institutions to indemnify must be deleted or qualified with "to the extent permitted by the Constitution and Laws of the State of Texas." Liquidated damages, attorney's fees, waiver of vendor's liability, and waiver of statutes of limitations clauses should also be deleted or qualified with "to the extent permitted by the Constitution and laws of State of Texas."

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? YES _____ NO _____

Remedies

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit Miller Grove ISD to an arbitration resolution of any disagreement under any circumstances. Any Claim arising out of or related to the Contract, except for those specifically waived under the terms of the Contract, may, after denial of the Board of Directors, be subject to mediation at the request of either party. Any issues not resolved hereunder must be referred to non-binding mediation to be conducted by a mutually agreed upon mediator as a prerequisite to the filing of any lawsuit over such issue(s). The parties shall share the mediator's fee and any associated filing fee equally. Mediation shall be held in Hopkins County, Texas. Agreements reached in mediation shall be reduced to writing, and will be subject to the approval by the Miller Grove ISD Board of Trustees, signed by the Parties if approved by the Board, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

Do you agree to these terms? YES _____ NO _____ **If you do not, please reference objection in Deviation form section**

Choice of Law

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? YES _____ NO _____

Jurisdiction and Service of Process

Any Proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction shall be brought in a court of competent jurisdiction in Hopkins County, Texas and each of the parties irrevocably submits to the exclusive jurisdiction of said court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction in any other court. The parties agree that either or both of them may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and freely bargained for agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this Section may be served on any party anywhere in the world.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? YES _____ NO _____

Alternative Dispute Resolution

Prior to filing of litigation, the parties may select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree that if non-binding mediation is chosen as a resolution process, the parties must agree to the chosen mediator(s) and that all mediation venue shall be at a location in Hopkins, County, Texas agreed by the parties. The parties agree to share equally the cost of the mediation process and venue cost.

Do you agree to these terms? YES _____ NO _____ **If you do not, please reference objection in Deviation form section**

Infringement(s)

The successful vendor will be expected to indemnify and hold harmless the Miller Grove ISD and its employees, officers, agents, representatives, contractors, assignees and designees from any and all third party claims and judgments involving infringement of patent, copyright, trade secrets, trade or service marks, and any other intellectual or intangible property rights in connection with the vendor's proposal or ultimate contracts awarded and approved.

Do you agree to these terms? YES _____ NO _____ If you do not, please reference objection in Deviation form section

Acts or Omissions

The successful vendor will be expected to indemnify and hold harmless the Miller Grove ISD, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any acts or omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by Miller Grove ISD and the vendor.

Do you agree to these terms? YES _____ NO _____ If you do not, please reference objection in Deviation form section

Contract Governance

Any contract made or entered into by the Miller Grove ISD is subject to and is to be governed by Section 271.151 *et seq*, Tex Loc Gov't Code. Otherwise, Miller Grove ISD does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? YES _____ NO _____ Not a negotiable term.

Funding Out Clause

Pursuant to Texas Local Government Code Sec. 271.903, any proposal offer accepted by Miller Grove ISD and its members and all contracts to be approved are subject to the budgeting and appropriation of then currently available funds. See statute for specifics or consult your legal counsel.

Not a negotiable term. Failure to agree will render your proposal non-responsive and it will not be considered. Do you agree to these terms? YES _____ NO _____ Not a negotiable term.

Signature below certifies accuracy of answers to all sections on page 1 and 2 of this document.

Authorized Signature _____

Printed Name _____

Company Name and address:

Telephone Number _____ Date _____

DEVIATION/COMPLIANCE SIGNATURE FORM

Miller Grove ISD Parking Lot Project

COMPANY NAME

ADDRESS

CITY

STATE

PHONE NUMBER

FAX NUMBER

Name and signature of authorized official

If the undersigned bidder intends to deviate from the General Conditions Standard Terms and Conditions or Item Specifications listed in this bid invitation, all such deviations must be listed on this page, with complete and detailed conditions and information included or attached. The Miller Grove ISD will consider any deviations in its bid award decisions, and the Miller Grove ISD reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this form, the bidder assures the Miller Grove ISD of their full compliance with the Standard Terms and Conditions, Item Specifications, and all other information contained in this Bid Invitation.

No, Deviation _____

Yes, Deviations _____

If yes is checked, please list below. Or attach to this form by stapling your deviations

Insurance and Fingerprint Requirements

Miller Grove ISD Parking Lot Project

Insurance

If applicable and your staff will be on Miller Grove ISD premises for delivery, training or installation etc. and/or with an automobile, you must carry automobile insurance as required by law. You may be asked to provide proof of insurance. See attached "Insurance and Indemnity Provisions" if applicable.

FINGERPRINT

It is possible that a vendor may be subject to Chapter 22 of the Texas Education Code. The Texas Education Code, Chapter 22, Section 22.0834. Statutory language may be found at: <http://www.statutes.legis.state.tx.us/>

If the vendor has staff that meet both of these criterion-

(1) will have continuing duties related to the contracted services;
and

(2) has or will have direct contact with students

Then you have "covered" employees for purposes of completing the attached form.

Miller Grove ISD recommends all vendors consult their legal counsel for guidance in compliance with this law. If you have questions on how to comply, see below. If you have questions on compliance with this code section, contact the Texas Department of Public Safety Non-Criminal Justice Unit, Access and Dissemination Bureau, FAST-FACT at NCJU@txdps.state.tx.us and you should send an email identifying you as a contractor to a Texas Independent School District. Texas DPS phone# is 512-424-2474

See form below to complete entitled:

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees

Texas Education Code Chapter 22 Contractor Certification for Contractor Employees
Miller Grove ISD Parking Lot Project

Introduction: Texas Education Code Chapter 22 requires entities that contract with school districts to provide services to obtain criminal history record information regarding covered employees. Contractors must certify to the district that they have complied. Covered employees with disqualifying criminal histories are prohibited from serving at a school district.

Definitions: *Covered employees*: Employees of a contractor or subcontractor who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students. *Disqualifying criminal history*: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school:

(a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

On behalf of _____ ("Contractor"), I certify that

[check one below]:

None of the employees of Contractor and any subcontractors are *covered employees*, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that the employees of Contractor and any subcontractor will not become *covered employees*. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

Some or all of the employees of Contractor and any subcontractor are *covered employees*. If this box is checked, I further certify that:

(1) Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.

(2) If Contractor receives information that a covered employee subsequently has a reported criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.

(3) Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.

(4) If the District objects to the assignment of a covered employee on the basis of the covered employee's criminal history record information, Contractor agrees to discontinue using that covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

Company name _____

Printed name of Company Representative: _____

Signature _____ .Date _____

FELONY CONVICTION NOTICE

Statutory citation covering notification of criminal history of contractor is found in the Texas Education Code #44.034. Following is an example of a felony conviction notice:

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states “a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.”

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

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION

Complete only one of the three below: A or B or C.

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

Official: _____
Print Authorized Company Official’s Name

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

Signature of Authorized Company Official: _____

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

Signature of Authorized Company Official: _____

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

Name of Felon(s): _____

Details of Conviction(s): _____

Signature of Authorized Company Official: _____

CERTIFICATION BY CORPORATE OFFERER
To Miller Grove ISD

IF OFFERER IS A CORPORATION,

THE FOLLOWING CERTIFICATE SHOULD BE EXECUTED AND INCLUDED AS PART OF PROPOSAL FORM/PROPOSAL FORM.

OFFERER: _____
(Name of Corporation)

I, certify that I am the Secretary of _____
(Name of Corporate Secretary)

the Corporation named as OFFERER herein above; that

(Name of person who completed proposal document)

who signed the foregoing proposal on behalf of the corporation offerer is the authorized person that is acting as

(Title/Position of person signing proposal/offer document within the corporation)

of the said Corporation; that said proposal/offer was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

CORPORATE SEAL

SIGNATURE

DATE

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received

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

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

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

Name of Officer

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

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

Yes No

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

Yes No

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

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

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

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

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

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

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

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

(2) the vendor:

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

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

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

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

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

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

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

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

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

PERFORMANCE BOND FORM
(Penalty of this bond must be 100% of contract amount)

Bond No.: _____

KNOW ALL MEN BY THESE PRESENTS, that: _____
(hereinafter called the Principal), as principal, and
a corporation organized and existing under the laws of the State of _____ authorized and
admitted to do business in the State of Texas and licensed by the State of Texas to execute bonds as Surety
(hereinafter called the Surety), as Surety, are held and firmly bound unto

(hereinafter called the Obligee) in the amount of _____

Dollars(\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and
their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated this _____
day of _____, _____.

MILLER GROVE ISD PARKING LOT

which contract is hereby referred to and made a part hereof as fully and the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall
faithfully perform the work in accordance with the plans, specifications and contract documents, then this obligation
shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 22.53 of the Texas
Government Code and all liabilities on this bond shall be determined in accordance with the provisions of said
Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this Instrument this _____
day of _____, _____.

Principal (Seal)

Surety Address _____ By: _____

Surety (Seal)

Surety Telephone Number _____ By: _____
Attorney-in-Fact

PAYMENT BOND FORM
(Penalty of this bond must be 100% of contract amount)

Bond No.: _____

KNOW ALL MEN BY THESE PRESENTS, that: _____
(hereinafter called the Principal), as principal,
a corporation organized and existing under the laws of the State of _____ authorized and
admitted to do business in the State of Texas and licensed by the State of Texas to execute bonds as Surety
(hereinafter called the Surety), as Surety, are held and firmly bound unto

(hereinafter called the Obligee) in the amount of _____

Dollars(\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and
their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated this _____
day of _____, _____.

MILLER GROVE ISD PARKING LOT

which contract is hereby referred to and made a part hereof as fully and the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all
claimants supplying labor and material to him or a Subcontractor in the prosecution of the work provided for in said
contract, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 22.53 of the Texas
Government Code and all liabilities on this bond to all such claimants shall be determined in accordance with
the provisions of said Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this Instrument this _____
day of _____, _____.

Witness: _____ (Seal)
Principal

_____ By: _____

Witness: _____ (Seal)
Surety

_____ By: _____
Attorney-in-Fact

_____ Surety Telephone Number
Surety Address

**RESOLUTION OF THE BOARD OF TRUSTEES OF
MILLER GROVE INDEPENDENT SCHOOL DISTRICT DETERMINING METHOD OF PROCUREMENT
AND DELEGATING AUTHORITY CONCERNING CONSTRUCTION MATTERS
RELATED TO THE PARKING LOT PAVING PROJECT**

WHEREAS, the Miller Grove Independent School District (the “District” or “MGISD”) is undertaking the Parking Lot Paving Project (the “Project”); and

WHEREAS, the Board of Trustees of the Miller Grove ISD has determined that Competitive Sealed Proposal procurement method provides the best value to the MGISD for the Project; and

WHEREAS, the Board of Trustees of the Miller Grove ISD desires to delegate its authority with regard to certain actions authorized or required by Chapter 2269 of the Texas Government Code concerning the Project to the MGISD Superintendent, certain designated representatives, committees or other persons and hereby provides notice of the delegation, the limits of the delegation and the name or title of each person or committee.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF MILLER GROVE INDEPENDENT SCHOOL DISTRICT AS FOLLOWS:

1. It is found that the foregoing recitals are true and correct and are hereby adopted as findings of fact by the Board of Trustees of Miller Grove Independent School District.
2. The delegations enumerated herein are made and determined by rule as permitted by law, and wherever the word “proposal(s)” is used herein, it shall be deemed to include bid(s) and/or qualification(s), as applicable.
3. The Board of Trustees of Miller Grove Independent School District delegates to the MGISD Superintendent of Schools, with regard to the Project, the authority to: (1) develop Requests for Competitive Sealed Proposals and any other solicitation documents, as appropriate and in keeping with the Board’s selected procurement or delivery method; (2) establish the selection criteria and the weight to be given to each criterion to be used in evaluating and ranking proposals; (3) advertise or publish notices of requests for competitive sealed proposals in a manner prescribed by law and/or otherwise solicit proposals in accordance with law; (4) appoint members to an evaluation committee(s) to analyze and rank bids, proposals or qualifications, the members to be appointed by name or title, which could include, but is not limited to, a representative or representatives of the design professionals for the Project; (5) receive and publicly open the proposals and read aloud the names of the offerors/bidders/proposers and any monetary amounts, or designate another individual(s) to perform those functions; (6) evaluate, analyze and rank the proposals according to the published selection criteria and weights through the appointed evaluation committee; (7) negotiate proposals and contracts; and (8) other ministerial duties as required to procure public work contracts.

4. The Board of Trustees of Miller Grove Independent School District further authorizes both the MGISD Superintendent of Schools and the proposal evaluation committee to utilize the assistance of any person or entity that they deem appropriate, including, but not limited to, the design professionals for the Project, and/or the legal counsel of MGISD, in carrying out the authority granted to them.
5. The Board of Trustees of Miller Grove Independent School District further delegates to the Superintendent the authority to publish, offer and negotiate the terms and conditions of contracts pertaining to the Project.
6. This Resolution shall take effect immediately.

PASSED and ADOPTED the ____ day of June, 2017, by the Board of Trustees of the Miller Grove Independent School District by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Brandon Darrow, President, Board of Trustees

ATTEST:

Brian Lennon, Secretary, Board of Trustees

**RESOLUTION OF THE BOARD OF TRUSTEES OF
MILLER GROVE INDEPENDENT SCHOOL DISTRICT
DETERMINATION OF PREVAILING WAGE RATE
PARKING LOT PAVING PROJECT**

WHEREAS, the Miller Grove Independent School District (the "District" or "MGISD") is undertaking the Parking Lot Paving Project (the "Project"); and

WHEREAS, Chapter 2258 of the Texas Government Code requires the Board of Trustees ("Board") of MGISD to determine the general prevailing wage rate in the locality where the Project will be constructed.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF MILLER GROVE INDEPENDENT SCHOOL DISTRICT AS FOLLOWS:

1. It is found that the foregoing recitals are true and correct and are hereby adopted as findings of fact by the Board of Trustees of Miller Grove Independent School District.
2. The MGISD Board of Trustees further determines that the prevailing wage rate in Miller Grove ISD for the Project is as determined by the United States Department of Labor in its Wage Rate General Decision # TX170038 for Hopkins County, Texas and dated January 6, 2017 and incorporated herein as Exhibit "A" to this resolution.
3. The MGISD Board of Trustees further determines that the prevailing wage rate for the Project for legal holiday and overtime work is the rate of one and one-half times the prevailing wage rate determined above.
4. This Resolution shall take effect immediately.

PASSED and ADOPTED the ____ day of June, 2017, by the Board of Trustees of the Miller Grove Independent School District by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Brandon Darrow, President, Board of Trustees

ATTEST:

Brian Lennon, Secretary, Board of Trustees

EXHIBIT A TO RESOLUTION PREVAILING WAGE RATE FOR PARKING LOT PROJECT

6/20/2017

https://www.wdol.gov/wdol/scafiles/davisbacon/TX38.dvb?v=0

General Decision Number: TX170038 01/06/2017 TX38

Superseded General Decision Number: TX20160038

State: Texas

Construction Type: Highway

Counties: Anderson, Angelina, Bosque, Camp, Cass, Cherokee, Erath, Falls, Fannin, Franklin, Freestone, Grimes, Hamilton, Henderson, Hill, Hood, Hopkins, Houston, Jack, Jasper, Lamar, Leon, Limestone, Madison, Marion, Milam, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Red River, Sabine, San Augustine, Shelby, Somervell, Titus, Trinity, Tyler, Van Zandt, Walker, Washington and Wood Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number 0 Publication Date 01/06/2017

* SUTX2011-009 08/08/2011

	Rates	Fringes
CONCRETE FINISHER (Paving and Structures).....	\$ 13.38	
ELECTRICIAN.....	\$ 20.92	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 11.33	
Structures.....	\$ 13.07	
LABORER		
Asphalt Raker.....	\$ 11.34	
Flagger.....	\$ 9.03	
Laborer, Common.....	\$ 10.30	
Laborer, Utility.....	\$ 11.53	
Pipelayer.....	\$ 13.24	
Work Zone Barricade		
Servicer.....	\$ 11.22	
POWER EQUIPMENT OPERATOR:		

Agricultural Tractor.....	\$ 12.35
Asphalt Distributor.....	\$ 14.36
Asphalt Paving Machine.....	\$ 12.92
Broom or Sweeper.....	\$ 10.30
Concrete Pavement Finishing Machine.....	\$ 19.31
Concrete Paving, Curing, Float, Texturing Machine....	\$ 16.34
Crane, Hydraulic 80 Tons or Less.....	\$ 20.21
Crane, Lattice boom 80 Tons or less.....	\$ 14.67
Crane, Lattice boom over 80 Tons.....	\$ 17.49
Crawler Tractor.....	\$ 13.38
Excavator 50,000 pounds or less.....	\$ 13.88
Excavator, Over 50,000 pounds.....	\$ 16.22
Foundation Drill, Truck Mounted.....	\$ 20.76
Front End Loader 3 cu yd or Less.....	\$ 12.89
Front End Loader, over 3 cu yd.....	\$ 12.32
Loader/Backhoe.....	\$ 12.87
Mechanic.....	\$ 18.58
Milling Machine.....	\$ 12.86
Motor Grader, Fine Grade....	\$ 17.07
Motor Grader, Rough.....	\$ 15.12
Pavement Marking Machine....	\$ 13.17
Reclaimer/Pulverizer.....	\$ 10.46
Roller, Asphalt.....	\$ 11.68
Roller, other.....	\$ 10.30
Scraper.....	\$ 12.43
Spreader Box.....	\$ 13.68

Servicer.....\$ 13.83

Steel Worker (Reinforcing).....\$ 15.83

TRUCK DRIVER

Lowboy-Float.....	\$ 14.30
Off Road Hauler.....	\$ 12.23
Single Axle.....	\$ 10.30
Single or Tandem Axle Dump..	\$ 12.28
Tandem Axle Tractor with Semi Trailer.....	\$ 12.50

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is

like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION



Miller Grove Parking Lot Project Request for Competitive Sealed Proposals

The following pages provides the potential bidders a draft copy of the base language of the Modified AIA Contracts the district will require from the successful contractor. This information is provided here to speed up the review process for final execution of the contracts and order to proceed with work by the district.

AIA[®] Document A101[™] – 2007

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

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

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

Miller Grove Independent School District
7819 FM 275 South
Cumby, Texas 75433
903.459.3288: T
903.459.3744: F

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

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

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

The Owner and Contractor agree as follows.

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

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

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

Init.

AIA Document A101[™] – 2007. Copyright © 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved. **WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 09:08:16 on 07/07/2017 under Order No.6442435116 which expires on 05/02/2018, and is not for resale.

User Notes:

(1349470576)

TABLE OF ARTICLES

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and written Modifications signed by both parties that are issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. As used in the Contract Documents, the terms "AIA Document A201 – 2007", "General Conditions", "General Conditions of the Contract for Construction" or "A201-2007" shall refer to the General Conditions document that pertains to the Project, as modified or amended by the Owner. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

The Date of Commencement shall be the date that the Contractor receives a Notice to Proceed from the Owner or Architect

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

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

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

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

Contractor shall achieve substantial completion no later than _____, 20__.

§ 3.4 The Contractor shall achieve Final (100%) Completion of the entire Work no later than thirty (30) days after the date that Substantial Completion is achieved.

§ 3.5 Liquidated Damages

§ 3.5.1 **Substantial Completion.** Time is of the essence in this Contract. It is understood and agreed that the Owner shall have the right to retain from the amounts otherwise payable to the Contractor under this Agreement or recover from the Contractor the sum of \$500.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages. Owner and Contractor agree and acknowledge that (i) Owner's actual damages for the unexcused delay of Contractor in achieving Substantial Completion would be substantial but extremely difficult to ascertain, and (ii) such sum represents a fair and reasonable estimate of the damages Owner will incur as a result of the delayed achievement of Substantial Completion. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required to, withhold from any amounts otherwise due to the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays.

(Table deleted)

§ 3.5.2 **Final Completion.** Timely Final Completion is an essential condition of this Agreement. Owner and Contractor agree that should Contractor fail to achieve Final Completion of the Agreement by the deadline stated in §3.4 above, Owner shall continue to be damaged to a greater degree by such delay. Contractor and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of \$500.00 per day. Owner may deduct from the Final Payment made to Contractor, or, if sufficient funds are not available, then Contractor shall pay Owner the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work. Owner and Contractor agree and acknowledge that (i) Owner's actual damages for the unexcused delay of Contractor in achieving Final Completion would be substantial but extremely difficult to ascertain, and (ii) such sum represents a fair and reasonable estimate of the damages Owner will incur as a result of the delayed achievement of Final Completion.

§ 3.5.3 The damages set forth in § 3.5.2 shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

ARTICLE 4 CONTRACT SUM

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

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

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

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
------	-------

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect and the Architect's Certificate of Payment is submitted for the approval of the Owner's Board of Trustees at least one week prior to the Board's regular monthly Board meeting, the Owner shall make payment of the amount approved by the Owner's Board of Trustees not later than the thirtieth (30th) day after the date of the Owner's approval, or as otherwise required by Chapter 2251 of the Texas Government Code. If the Architect's Certificate of Payment is not submitted at least one week prior to the Board's regular monthly Board meeting, the Certificate of Payment will be presented to the Owner's Board of Trustees at their regular meeting for the following month, and any approved amount will be paid not later than the 30th day after the date of the Owner's approval.

(Federal, state or local laws may require payment within a certain period of time.)

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

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

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5.0 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended for the Project;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5.0 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007, as amended for this Project, or other reason allowed under the Contract Documents.

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

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

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

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

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Sections 3.5 and 12.2.2 of AIA Document A201–2007, as amended for this Project, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the Architect’s final Certificate for Payment has been accepted and approved by the Owner’s Board of Trustees at a lawfully called Board meeting.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, as amended for this Project, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim or dispute between the parties, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

Litigation in a court of competent jurisdiction

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[] Other (Specify)

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

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

1.0 % per annum or the interest rate determined in accordance with the Texas Prompt Payment Act, Chapter 2251 *et seq.*, Texas Government Code, whichever is lower.

§ 8.3 Owner's Designated Representative

The Owner's Board of Trustees, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas independent school district organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order requiring an increase in the Contract Sum, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Board may designate in writing an authorized representative (or representatives), as appropriate, to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Board of Trustees and shall have the authority to bind the Owner only to the extent expressly authorized or delegated by the Board of Trustees. The authorized representative shall have no implied authority. Such authorized representative shall also bring recommendations to the Board of Trustees on any matter requiring Board approval. Except as expressly authorized by the Owner or the Contract Documents, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 8.3.1 The Owner's authorized representative is:
(Name, address and other information)

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

Init.

§ 8.5 The Contractor's representative shall not be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 The subject of this Contract is a public school facility which is governed by School Facilities Standards promulgated by the State Board of Education and said project must be constructed in compliance with these Standards. Upon request, Owner, its Architect, and/or its Engineer shall make available information related to the School Facilities Standards necessary for compliance with said Standards.

§ 8.6.2 The Owner is an organization exempt from Texas taxes. Owner shall not be responsible for sales, consumer, use, and similar taxes on labor, materials, equipment, systems, and other items purchased for the project which the Owner would ordinarily be exempt.

§ 8.6.3 All provisions in the Contract Documents that mandate arbitration are expressly deleted and rendered null and void.

§ 8.6.4 Subcontracts, purchase orders and rental agreements entered into by the Contractor shall contain provisions permitting assignment to the Owner upon default by Contractor under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Contractor under this Agreement and for which payment has not already been made to the Contractor. Contractor shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement.

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

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

§ 8.6.7 **Notice.** All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, and correctly addressed to the party at the address provided in this Agreement. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Architect must be copied on notices sent to the Owner.

§ 8.6.8 **Certificate of Occupancy.** Any provision in the Contract Documents to the contrary notwithstanding, if any of the facilities to be constructed or modified under this Agreement or the Contract require the issuance of a Certificate of Occupancy or other regulatory approval, then Substantial Completion of any such facilities shall not be deemed to have been attained for those facilities prior to the date on which an unconditional Certificate of Occupancy or other regulatory approval is obtained.

§ 8.6.9 **Safe Access.** If the building will be used or occupied by the Owner or members of the public, the Contractor shall be responsible for maintaining safe routes of travel from sidewalks and parking areas to the building, and shall reroute access as necessary to maintain safe access during construction.

§ 8.6.10 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is certifying to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project. Contractor is also representing that it will

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require all subcontractors to provide workers' compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to the Contractor. The Contractor will provide the certifications to Owner. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§ 8.6.11 The Contractor shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of the existence of workers' compensation coverage for its employees, or, at the Contractor's sole discretion, provide for coverage of the subcontractor's employees under the Contractor's workers' compensation insurance coverage. The Construction Manager shall maintain records of all required certificates of insurance provided by the subcontractors, and shall forward copies to the Owner and the Architect.

§ 8.6.12 Warranty. The Contractor shall be responsible for the coordination of warranty work, if any during the first year after Substantial Completion of the Entire Work.

§ 8.6.13 No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a waiver of any immunity or a consent to suit.

§ 8.6.14 The Owner's competitive procurement solicitation documents/packet and the response of the Contractor to same are incorporated herein by reference as if copied verbatim. The Contractor agrees to comply with all requirements incorporated or included in the competitive procurement solicitation documents/packet by the Owner.

§ 8.7 Governing Law and Venue

§ 8.7.1 Section 13.1 of the General Conditions document pertaining to the Project, as modified by the Owner, shall apply to the Agreement, the Contract, and the Contract documents in all respects. No provision of this Agreement is a waiver of any immunity, defense, or a consent to suit.

§ 8.7.2 Venue

To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of [] County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in [] County, Texas.

§ 8.8 Severability

If any provision or part of the Contract Documents is held to be illegal, invalid, or unenforceable under any present or future law or regulation, such provision shall be fully severable and the Contract Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents. The remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 9.1.3 The Supplementary and other Conditions of the
(Paragraphs deleted)

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Contract

§ 9.1.4 The

(Paragraphs deleted)

Specifications for the Project, whether issued or created prior to or after the execution of this Agreement.

§ 9.1.5 The

(Paragraphs deleted)

Drawings for the Project, whether issued or created prior to or after the execution of this Agreement.

§ 9.1.6 The Addenda, if

(Paragraphs deleted)

any, for the Project, whether issued or created prior to or after the execution of this Agreement.

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

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)
 - .1 Owner's competitive procurement solicitation documents and Contractor's responses and proposals to same.
 - .2 The Project Manual for the Project, including all sections to same, whether issued or created prior to or after the execution of this Agreement.
 - .3 Statutory Payment and Performance Bonds.
 - .4 Certificates of Insurance required of the Contractor.
 - .5 All documents listed or described in Section 1.1.1 of AIA Document A201-2007, as amended by the Owner.
 - .6 Scale/Schedule of Prevailing Wages (attached as Exhibit "1" to the AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by the Owner) and incorporated herein as if fully set forth.
 - .7 Any modifications to this Agreement or to the Contract or any Contract Documents approved by the Parties.
 - .8 Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract

ARTICLE 10 INSURANCE AND BONDS

(Paragraph deleted)

§ 10.1 The Contractor shall purchase and maintain insurance, shall require subcontractors to purchase and maintain insurance, and shall provide bonds as set forth and required in the General Conditions document, as amended by the Owner, pertaining to the Project and/or any supplemental conditions pertaining to the Project. The types of insurance or bond required and the limit of liability or amount of bond for each type include, but are not limited to, the following:

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage)	See liability limits in Article 11 of A201 – 2007 as amended for this Project
Workers Compensation	See liability limits in Article 11 of A201 – 2007 as amended

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Automobile Liability	for this Project See liability limits in Article 11 of A201 – 2007 as amended for this Project
Excess/Umbrella Liability	See liability limits in Article 11 of A201 – 2007 as amended for this Project
Builder's Rick Insurance	See requirements in Article 11 of A201 – 2007, as amended for this Project
Statutory Performance Bond	Entire Amount of the Contract
Statutory Payment Bond	Entire Amount of the Contract

Should the General Conditions document for the Project, as amended by the Owner, require additional insurance or insurance of a type not listed above, the Contractor shall provide the additional or different type(s) of insurance as required by the General Conditions document.

§ 10.2 The Contractor shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of the existence of workers' compensation coverage for its employees, or, at the Contractor's sole discretion, provide for coverage of the subcontractor's employees under the Contractor's workers' compensation insurance coverage. The Contractor shall maintain records of all required certificates of insurance provided by the subcontractors, and shall forward copies to the Owner and the Architect.

§ 10.3 The Contractor's failure to abide by the requirements of this Article 10, including its subparts, the insurance requirements contained in the General Conditions document pertaining to the Project, as modified by the Owner, or insurance requirement contained in the supplemental conditions pertaining to the Project shall be a material breach of the Contract.

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

[] INDEPENDENT SCHOOL DISTRICT

[NAME OF CONTRACTOR]

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

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

THE OWNER:

(Name, legal status and address)
Miller Grove Independent School District
7819 FM 275 South
Cumby, Texas 75433
903.459.3288: T
903.459.3744: F

THE ARCHITECT:

(Name, legal status and address)

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- 1 GENERAL PROVISIONS
- 2 OWNER
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- 12 UNCOVERING AND CORRECTION OF WORK
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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor, as amended, (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect or the Owner. All sections of the Project Manual shall be a part of the Contract Documents. The Contract Documents include the solicitation documents used by the Owner, including advertisement or Requests for bids or Proposals, Instructions to Bidders, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, and Addenda relating to such solicitation documents, except to the extent that the proposal has been modified by the terms of the Contract. Any reference to any Contract Documents shall mean the document as amended and/or supplemented for this Project.

§ 1.1.1.2 In the event of conflict, terms and conditions contained in the Agreement, as amended, shall take precedence over terms and conditions contained in the General Conditions, as amended, and the terms and conditions in the General Conditions, as amended, shall take precedence over all other terms and conditions contained in the other Contract Documents, except that a modification takes precedence over an earlier version of the same Contract provision, but only if the modification is signed by both parties. The Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction and are as fully a part of the Contract as if attached hereto or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto. After execution of the original Contract Documents, the Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

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§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions or recommendations on Claims in accordance with Section 15.2.

§ 1.1.9 AGREEMENT BETWEEN OWNER AND ARCHITECT

The term "agreement between Owner and Architect" means the agreement for professional services for this Project between the Owner and Architect.

§ 1.1.10 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement, either or both in accordance with the Owner's interpretation.

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

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

§ 1.2.4 INTENT OF DRAWINGS

§ 1.2.4.1 Drawings are in part diagrammatic, and do not necessarily show complete details of construction, materials, or their performance, or installation, and do not necessarily show how construction details or other items of work or fixtures or equipment may affect any particular installation. These shall be ascertained by the Contractor from the Architect and correlated to bring the parts together to a complete whole.

§ 1.2.4.2 All dimensions shall be verified by field measurements and all work laid out to permit pipes, valves, ductwork, lights, panels, other items of construction, to be located as closely as possible to locations shown. All items shall be checked before installation to determine that they can be concealed properly, if appropriate, and that they clear any structural components, supports for other items, and cabinets and equipment or other mechanical, electrical or architectural items having fixed locations.

§ 1.2.4.3 Work shall be laid out to assure ready accessibility to valves, fittings, and other items requiring servicing, adjustment or checking.

§ 1.2.4.4 Actual physical dimensions of specified stock items shall govern over dimensions shown for work to receive stock items. Custom items or modified stock items shall be fabricated to dimensions shown, or to fit into other dimensioned work.

§ 1.2.4.5 If Work is required in a manner which makes it impossible to produce the specified quality of Work, or should errors, omissions, or discrepancies exist in the Contract Documents, the Contractor shall request in writing an interpretation before proceeding with Work. If Contractor fails to make such a written request, no excuse or claim will thereafter be entertained for failure to carry out Work in a satisfactory manner as specified by Contract Documents. Should conflict occur in or between Drawings and Specifications which should reasonably have been

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ascertained by the Contractor, Contractor is deemed to have estimated and included in the Contract Sum the more expensive way of doing the Work.

§ 1.2.5 Diagrammatic indications of piping, ducts, conduit, and other similar items are subject to adjustment to obtain required grading, passage over, under or around obstructions, to avoid exposure to finished areas, or unsightly, obstructing conditions. Contractor shall be responsible for coordination of these adjustments and recommending alternate solutions whenever design details affect construction feasibility, costs, or schedules.

§ 1.2.6 All manufactured articles, materials, and equipment shall be incorporated into the Work in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.7 **RELATION OF SPECIFICATIONS AND DRAWINGS:** The Drawings and specifications are correlative and have equal authority and priority. Should they disagree in themselves, or with each other, the proposals should be based on the most expensive combination of quality and quantity of work indicated. The appropriate method of performing the Work, in the event of the above-mentioned disagreements, will be made by the Architect, in consultation with and subject to the approval of the Owner.

§ 1.2.7.1 If Drawings and Specifications are not in concurrence regarding quantity or quality or if there are any other discrepancies in the Drawings and Specifications, Contractor shall request interpretation from the Architect.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights, subject to any rights and/or licenses to or in the Instruments of Service granted to the Owner by the terms and provisions of the agreement between Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner's Board of Trustees, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas independent school district

organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order requiring an increase in the Contract Sum, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Board may designate in writing an authorized representative (or representatives), as appropriate, to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Board of Trustees and shall have the authority to bind the Owner only to the extent expressly authorized or delegated by the Board of Trustees. The authorized representative shall have no implied authority. Such authorized representative shall also bring recommendations to the Board of Trustees on any matter requiring Board approval. Except as expressly authorized by the Owner or the Contract Documents, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The presence of the Owner, the Owner's representative(s) or Architect at the Work site does not imply acceptance or approval of the Work.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Intentionally Omitted.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Contractor shall pay for all permit fees and inspection fees required for performance of the Work other than inspection and testing fees which the Owner contracts for separately with a third party, and Certificates of Occupancy fees. All of such fees shall be considered Cost of the Work unless the Contractor is required to pay for them without reimbursement due to the Contractor's fault under other provisions of the Contract Documents.

§ 2.2.3 If requested in writing to do so by the Contractor prior to the start of the work, the Owner may, at the Owner's sole discretion, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. THE OWNER DOES NOT IN ANY WAY REPRESENT, WARRANT OR GUARANTY TO CONTRACTOR OR TO ANY OTHER PERSON THE RELIABILITY, CONSTRUCTABILITY, COMPLETENESS, OR ACCURACY OF ANY SURVEYS, REPORTS, STUDIES, TESTS, ARCHITECTURAL OR ENGINEERING PLANS, OR SIMILAR INFORMATION PROVIDED BY OWNER IN CONNECTION WITH THIS CONTRACT, NOR DOES THE OWNER REPRESENT, WARRANT OR GUARANTY THAT SUCH INFORMATION IS FREE FROM DEFECTS, ERRORS OR DEFICIENCIES, AND ALL SUCH REPRESENTATIONS, WARRANTIES AND GUARANTIES ARE HEREBY EXPRESSLY DENIED AND DISCLAIMED. The Owner shall not be liable to the Contractor or any other person for breach of warranty or misrepresentation in the event of any errors or deficiencies in such information provided to the Contractor by the Owner. The Owner's provision of a survey will not relieve the Contractor from its obligations to examine the site or exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services and the agreement by Owner to furnish such other information or services, provided that Owner shall not be required to expend any funds to obtain such information unless Owner agrees to do so.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor, after reasonable notice and opportunity to cure, but in no event longer than ten (10) days, fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may, at the Owner's discretion, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

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§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and shall perform the Work in a good and workmanlike manner except where the Contract Documents expressly specify a higher degree of finish or workmanship.

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor also represents by its execution of the Contract, that the Contractor has thoroughly reviewed all of the Contract Documents and that based on such review and to the best knowledge of Contractor as a contractor, not as a design professional, that said Contract Documents are sufficient to enable the Contractor to determine the Contract Sum and that the Contract Documents are sufficient to enable it to perform the Work described in the Contract Documents, and otherwise to fulfill all its obligations hereunder in accordance with the terms of the Contract. The Contractor further acknowledges and declares that it has visited and examined the site (but only as to visible surface conditions or conditions ascertainable from the results of any subsurface tests required or provided in connection with this Project, or other reports and documents available to the Contractor) and reasonably examined the physical, legal and other conditions affecting the Work including, without limitation, all soil, subsurface, water, survey and engineering reports and studies delivered to or obtained by Contractor and the conditions described in this Section 3.2.1. In connection therewith, Contractor, by execution of the Contract will be representing and warranting to Owner that it has, by careful examination, satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation, (1) the location, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic and weather conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. In arriving at the Contract Sum, the Contractor has, as an experienced and prudent manager and contractor, exercised its reasonable judgment and expertise to include the impact of such circumstances upon the Contract Sum.

- .1 Claims for additional compensation or time because of the failure of the Contractor to familiarize itself with visible surface conditions at the site or other conditions under which the Work is to be performed will not be allowed.
- .2 The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project Site. The Contractor shall be solely responsible for

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providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in the Contract Sum, Guaranteed Maximum Price, if applicable, or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.

- .3 The Contractor represents that the Subcontractors, manufacturers and suppliers engaged or to be engaged by it are and will be familiar with the requirements for performance by them of their obligations. All contracts with subcontractors and suppliers shall be in writing, and shall reflect the terms of this Contract which directly or indirectly affect subcontractors or suppliers, including Owner's right to withhold payment, retainage requirements, and Owner's rights and liability on termination of this Contract. The Contractor shall require compliance with the terms and provisions of the Contract Documents applicable to them, including, without limitation, the requirement for subcontractors to comply with the prevailing wage rates established in the Contract, to maintain worker's compensation coverage on employees, and to provide certification of such coverage to Contractor.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor. In addition, as part of the Contractor's preconstruction services, in reviewing the Contract Documents, the Contractor shall endeavor to detect any errors, omissions, or inconsistencies in the design and other documents which affect the performance or constructability of the Work. The Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- .1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner.
- .2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any and the Owner nonconformity in the Contract Documents with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities that is discovered by or made known to the Contractor as a request for information in such form as the Architect or the Owner may require. The Owner is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall notify the Owner prior to incurring such additional cost or expending such additional time, or if Contractor cannot reasonably provide notice prior to incurring costs or expending additional time, then as soon thereafter as reasonably possible, and may make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless (1) such errors,

inconsistencies, omissions, differences, or nonconformities are the fault of Contractor, in whole or in part, (2) the Contractor failed to discover such errors, inconsistencies, omissions, differences, or nonconformities due to his failure to properly perform the obligations of Section 3.2.2 or 3.2.3, (3) the Contractor recognized such errors, inconsistencies, omissions, differences, or nonconformities and failed to report them to the Architect and the Owner, or (4) the Contractor should have detected such errors, inconsistencies, omissions, differences, or nonconformities as part of Contractor's performance of its obligations under the Contract Documents, including the performance of Contractor's preconstruction services.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor or that was caused by the Contractor's negligent conduct.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

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

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

§ 3.3.6 The Contractor has the responsibility to ensure that all materials suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations and construction utilities. The

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Contractor shall be responsible for the space requirements, locations, and routing of all materials and equipment required under the Agreement or other Contract Documents. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

- .1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; and (iii) when, in the judgment of the Owner or the Architect, a substitution would be in the Owner's best interests in terms of cost, time, or other considerations.
- .2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect and the Owner in sufficient time to allow the Architect and the Owner no less than twenty-one (21) working days for review, unless a shorter time is agreed upon in writing. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.
- .3 Whether or not any proposed substitution is accepted by the Owner or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or other consultants for evaluating each proposed substitute.

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

§ 3.4.4 PREVAILING WAGES.

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§ 3.4.4.1 The Contractor and each subcontractor who performs any portion of the Work must comply with all applicable state and federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety, minimum wage and prevailing wage rates requirements under Chapter 2258 of the Texas Government Code. The Contractor shall require all subcontractors to comply with the provisions of this Section 3.4.4 and its subparts.

§ 3.4.4.2 The Contractor and each subcontractor who performs any portion of the Work must pay not less than the prevailing wage rates attached as Exhibit "1" to this A201-2007 General Conditions document, as modified by the Owner, and incorporated herein as if fully set forth. In the event that a prevailing wage scale/schedule is not attached to the Agreement, the wage scale/schedule shall be the most recent scale/schedule adopted or determined by the United States Department of Labor for projects located in [] County, Texas. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

- .1 A Contractor or subcontractor who violates the provisions of these Sections 3.4.4.1 and/or 3.4.4.2 shall pay to the Owner the sum of Sixty Dollars and no/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project.

§ 3.4.4.3 **Records:** The Contractor and each subcontractor shall keep a record showing

- .1 the name and occupation of each worker employed by the Contractor or subcontractor in the construction of the Work; and
- .2 the actual per diem wages paid to each worker.

The record shall be open at all reasonable hours to inspection by officers and agents of Owner.

Owner may request samples of Contractor's and Subcontractor's payrolls at its discretion. Contractor and Subcontractor shall deliver such samples promptly upon demand.

Payment greater than the prevailing wage is not prohibited.

§ 3.4.4.4 In the event of a complaint of a breach of the requirements in Sections 3.4.4, 3.4.4.1 or 3.4.4.2 above, or any of the Section subparts of § 3.4.4, the Owner shall have the right to make a determination as provided by law, and to retain any amount due under the Contract pending a final determination of the violation. Owner may conduct, at its discretion, wage-related interviews of any worker at the sites of the work without prior warning to the Contractor or Subcontractor.

§ 3.4.5 All employees and subcontractors of the Contractor shall be qualified by training and experience to perform their assigned tasks and shall be capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. At the written request of Owner or Architect, the Contractor shall not use in the performance of the Work any employee or subcontractor reasonably deemed by Owner to be incompetent, careless, unqualified to perform the Work assigned to him, or otherwise unsatisfactory to Owner. Contractor shall engage sufficient workers on the Project at all times to perform the Work in the time periods required by the Contract.

§ 3.4.6 In the event of a strike or stoppage of work resulting from a dispute involving or affecting the labor employed by the Contractor or any of its Subcontractors, Owner may, at its option and without any notice required by the Contract, terminate the Agreement and/or the Contract for default unless the Contractor remedies the strike of work or work stoppage or other disruption within twenty (20) calendar days after the dispute arises.

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

§ 3.4.8 The Contractor shall furnish a list to the Owner, through the Architect, of all engineers, consultants, subcontractors and suppliers involved in construction.

§ 3.4.8.1 The Owner may reject or require removal of any engineer, consultant, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the project.

§ 3.4.8.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.4.8.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the School District's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

§ 3.4.9 The Contractor will, before any duties are performed on Owner's property, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor as required by Texas Education Code Chapter 22 if the person has or will have continuing duties related to the Project, and the person has or will have direct contact with students. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

Additionally, the Contractor will, before any duties are performed on Owner's property where students are regularly present, and at least annually thereafter, obtain national criminal history record information that relates to an employee, applicant, agent, consultant, supplier and/or subcontractor if the person has or will have continuing duties related to the Project, and the duties are or will be performed on Owner's property or at another location where students are regularly present. The criminal history records shall be obtained from the clearinghouse provided by §411.0845 of the Texas Government Code.

The Contractor shall assume all expenses associated with the background checks, and shall immediately remove any employee, agent or other person who was convicted of a felony under Title V of the Texas Penal Code or any offense that requires the person to register as a sex offender. No person shall be engaged by the Contractor or by any entities with which the Contractor contracts, including but not limited to any suppliers or subcontractors, to work on Owner's property where students are regularly present who has charges pending, or who has been convicted, received probation, or deferred adjudication for the following:

1. Any offense against a child;
2. Any sex offense;
3. Any crimes against persons involving weapons or violence;
4. Any felony offense involving controlled substances; or
5. Any offenses involving the sale or distribution of controlled substances.

The Owner shall determine what constitutes "direct contact with students" and "where students are regularly present".

It shall be the responsibility of the Contractor and the entities with which the Contractor contracts to ensure compliance with this provision.

§ 3.4.10 IDENTIFICATION OF EMPLOYEES. Contractor is responsible for the "badging" of workers and employees on the jobsite for identification. Contractor shall furnish photo identifications of all workers and employees and ensure that all workers and employees are badged and identifiable at all time.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance unless such maintenance is Contractor's responsibility, improper operation, or normal wear and tear and normal usage. If required by the Architect or the Owner, the Contractor shall

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furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor further warrants to the Owner and the Architect that the Work will be performed and completed in a good and workmanlike manner and in accordance with the Contract Documents, all applicable building codes and good engineering and construction practices befitting the Work as specified. The Contractor shall perform all work reasonably required, to correct Work with errors, omissions, defects or deviations from what is required by the Contract Documents, at no cost to Owner. The warranties set out in this subparagraph are not exclusive of any other warranties, remedies or guarantees set out in other places in the Contract Documents or implied under applicable law, but are in addition to and not in limitation of any other such warranties, remedies, or guarantees.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials, equipment, machinery, components and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. As a condition precedent to final payment, the Contractor shall submit to Owner a complete set of warranties on equipment, machinery, materials, components or labor from subcontractors, manufacturers, or suppliers, as appropriate, on the subcontractor's, manufacturer's, or supplier's approved forms and executed by Contractor as required, with a warranty commencement date as required by the Contract Documents. All warranties shall include labor and materials.

§ 3.5.3 ONE-YEAR CORRECTION PERIOD

§ 3.5.3.1 The Contractor is required to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner or discovered by the Owner within a period of one (1) year after Substantial Completion of the entire Work or, if latent defect, within one (1) year after discovery thereof by Owner. This one-year period shall be referred to herein as the "One-Year Correction Period." Upon written notice from the Owner as provided by this Section 3.5.3.1 of any defective materials, equipment, or Work, the Contractor shall promptly remedy any such defects. The Contractor shall make written response to the Owner acknowledging receipt of the Owner's notice of defect and providing the proposed schedule to conduct corrective work within twenty-four (24) hours of Contractor's receipt of the Owner's written notice. If Contractor does not respond to Owner's written notice within the time specified herein or within such shorter period as may be required in the Contract Documents or take the appropriate corrective action within the time specified by the Contract Documents, the Owner may take measures to correct the defects and Contractor will be obligated to reimburse the Owner's costs. Any measures taken by Owner to correct defects due to Contractor's failure to timely respond to Owner's written notice shall not operate to void or otherwise alter any warranties issued by, for, or through the Contractor. If notice of defects is given in writing to the Contractor on a timely basis, the obligation to provide the corrective work may extend beyond the applicable One-Year Correction Period until the defect is remedied and accepted by the Owner. The provisions of this subparagraph shall be in addition to, and not in lieu of, any other rights and remedies available to Owner.

§ 3.5.3.2 The Contractor shall issue in writing to the Owner as a condition precedent to final payment a "General Guarantee" reflecting the terms and conditions of Section 3.5.3.1 above for all Work under the Contract Documents in a form acceptable to the Owner. This "General Guarantee" shall be assignable.

§ 3.5.3.3 Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the One-Year Correction Period on each phase or building which is substantially complete will expire, and dates of Final Completion. Prior to termination of the appropriate One-Year Correction Period, Contractor shall accompany the Owner and Architect on a re-inspection of the phase or building to which said One-Year Correction Period applies and shall be responsible for correcting any deficiencies not caused by the Owner or by the use of the building which are observed or reported during the re-inspection. Contractor shall prosecute the work without interruption until accepted by the Owner and the Architect, even though such prosecution should extend beyond the limit of the One-Year Correction Period. If Contractor fails to accompany the Owner and Architect on a re-inspection of a phase or building at least one month prior to the expiration that phase's or building's One-Year Correction Period, Contractor's obligations described in Section 3.5.3.1 above and in this Section 3.5.3.3 shall continue until such inspection is conducted and any deficiencies found in the inspection are corrected.

§ 3.5.3.4 For extended warranties required by various sections, i.e. roofing, compressors, mechanical equipment, the Contractor shall start remedying defects within three (3) days of initial notification of any defect from Owner.

§ 3.5.3.5 The provisions set forth in Sections 3.5.3.1, 3.5.3.2, 3.5.3.3, and 3.5.3.4 above shall not, in any way, operate to shorten or abridge any warranty periods or other corrective action periods described in the Contract Documents. Furthermore, the provisions set forth in Sections 3.5.3.1, 3.5.3.2, 3.5.3.3, and 3.5.3.4 above shall not, in any way, operate to limit or abridge any warranty or other duty to correct a defect contained in this or any other Contract Document, and shall not, in any way, adversely affect any rights of the Owner, whether said rights arise under the Contract, at law, or in equity.

§ 3.5.3.6 The One-Year Correction Period shall begin on a date established by the Owner and Architect in accordance with the Contract Documents. Except for work to be completed or corrected after the date of Substantial Completion and prior to final payment, this date shall typically be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties. The One-Year Correction Period for work to be completed or corrected after the date of Substantial Completion and prior to final payment shall begin on the date the work is completed or corrected and accepted by the Owner and Architect or the date of final payment, whichever is later.

§ 3.5.3.7 In the event an item that is covered by the provisions of this §3.5.3 and its subparts fails during the One-Year Correction Period, the Contractor shall extend the original One-Year Correction Period by a length of time equal to the elapsed time which occurs from the notification in writing by the Owner of a defect claim until acknowledgement by the Owner that the claim has been resolved.

§ 3.5.4 Nothing contained in this Section 3.5 and its subparts shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the One-Year Correction Period as described in Section 3.5.3 and its subparts relates only to the specific obligation of the Contractor to correct the Work or to replace defective materials or equipment during that time period, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents. The corrective remedies set forth in this Section 3.5 and its subparts are not exclusive and shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

§ 3.5.5 The warranties and other duties of Contractor to correct a defect in this Section 3.5 and its subparts shall in no way limit or abridge the warranties of the suppliers or manufacturers of equipment or systems which are to comprise a portion of the Work, and all of such warranties shall be in form and substance as required by the Contract Documents. Contractor shall not engage in any act or conduct, whether by commission or omission, that results in the termination or expiration of such third party warranties or which otherwise operates to prejudice the rights of Owner under such warranties.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, but **shall not** include in the Contract Sum, Guaranteed Maximum Price, if applicable, or any Modification any amount for any taxes from which the Owner is exempt by virtue of its status as a governmental entity and/or as a Texas independent school district.

§ 3.6.2 Owner is an exempt entity under the tax laws of the State of Texas. The Owner represents that this Project is eligible for exemption for the State Sales Tax on tangible personal property and material incorporated in the project, provided that the Contractor fulfills the requirements of the Limited Sale, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time a Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from their suppliers and shall make the Contractor or Sub-Contractor responsible for absorbing the tax, without compensation from Owner. Contractor hereby RELEASES, INDEMNIFIES AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Sub-Contractor to comply with the provisions of any or all such laws and regulations.

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§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall procure (as required by the Contract Documents) all certificates of inspection, use; occupancy, permits and licenses, pay all charges, deposits and fees and give all notices necessary and incidental to the due and lawful prosecution of the work, certificates of inspection, use and occupancy shall be delivered to the Architect upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum, and constitute Costs of Work unless otherwise provided by the Contract Documents.

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection at that time.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent.

§ 3.9.4 The superintendent and all on-site supervisory staff shall be satisfactory to the Owner and Architect in all respects, and Owner and Architect shall have the right to reasonably require Contractor to remove from the Project any superintendent or on-site supervisor whose performance is not reasonably satisfactory to Owner and/or Architect, and to replace such superintendent or on-site supervisor with a superintendent or on-site supervisor reasonably satisfactory to Owner and Architect.

§ 3.9.5 The list of all supervisory personnel, including the project manager and superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart shall be submitted to the Owner and Architect. The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other than as approved by Owner and Architect, and shall not change such personnel or form of organization without the written approval of the Owner.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project and, upon such revision, shall be submitted to Architect and Owner for their review and approval, shall be related to the entire Project to the extent required by the Contract Documents or the Owner or the Architect, and shall provide for expeditious and practicable execution of the Work.

- .1 If any updated schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits, inclusive of previously accepted time extensions, set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Architect. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining

Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.4 If reasonably required by Owner, Contractor shall also prepare and furnish project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

§ 3.10.5 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the project schedule.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§ 3.11.2 Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes, applicable to the project. Contractor shall make such reports and records available to inspection by the Owner, Architect, or their respective agents, within five (5) working days of request by Owner, Architect, or their respective agents.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Contractor shall provide composite drawings within four (4) weeks of execution of the Agreement showing how all piping, ductwork, lights, conduit and equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by Code, or in keeping with good construction practice. Space for all trade elements must be considered on the same drawing. Drawings shall be 1/4" per foot minimum scale and shall include invert elevations, elevation views and sections required to meet the intended purpose. Trades required to participate include, but are not necessarily limited to structural, mechanical, plumbing, fire sprinkler, electrical, data and special systems.

§ 3.13 USE OF SITE

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

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

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior consent of the Owner.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords the Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be

performed, to the fullest extent possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area and buildings adjacent to the site or the Work.

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

§ 3.13.6 The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including parking of vehicles and entry into adjacent facilities.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

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

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

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract and shall, not less than one time each week, clean up by removing rubbish, including old and surplus materials. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project and shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction. Contractor shall clean exterior gutters, drainage, walkways, driveways and roofs of debris.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, at its discretion, may perform the clean-up and withhold costs incurred from funds due to Contractor or, if the costs incurred are in excess of the funds due to the Contractor, may require the Contractor to reimburse the Owner for the costs incurred.

§ 3.15.3 The Contractor shall be responsible for damaged or broken glass, and at completion of the Work, shall replace such damaged or broken glass.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.16.2 Upon request of the Architect or Owner, the Contractor shall accompany the Architect or Owner on an inspection of the Work.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular

manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS OFFICERS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR DAMAGES, INJURIES TO PERSONS (INCLUDING DEATH), PROPERTY DAMAGES, LOSSES (INCLUDING LOSS OF USE RESULTING THEREFROM), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES, ARISING OUT OF, OR RESULTING FROM THE PERFORMANCE OF THE WORK UNDER THE CONTRACT, PROVIDED THAT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED, IN WHOLE OR IN PART, BY (1) ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (2) THE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, (3) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE BY THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER, OR (4) THE BREACH OF CONTRACT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER. THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS UNDER THIS SECTION 3.18.1 SHALL BE IN EFFECT REGARDLESS OF WHETHER OR NOT ANY SUCH CLAIM OR SUIT FOR DAMAGES, INJURY TO PERSONS, PROPERTY DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE OF A PARTY OR PARTIES INDEMNIFIED HEREUNDER, EXCEPT THAT THE CONTRACTOR'S OBLIGATION SHALL BE LIMITED TO THE COMPARATIVE FAULT OF THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER AS DETERMINED BY THE TRIER OF FACT. THE CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, OR HOLD HARMLESS A PARTY OR PARTIES INDEMNIFIED HEREUNDER AGAINST ANY CLAIM CAUSED SOLELY BY (1) THE NEGLIGENCE OR FAULT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, (2) THE BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OR (3) THE BREACH OF CONTRACT OF THE INDEMNITEE, ITS AGENT OR EMPLOYEE, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF THE INDEMNITEE, OTHER THAN THE CONTRACTOR OR THE CONTRACTOR'S AGENT, EMPLOYEE, OR SUBCONTRACTOR OF ANY TIER. THE INDEMNITY OBLIGATION SET FORTH HEREIN SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

(Paragraph deleted)

§ 3.18.2 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS OFFICERS, ITS AGENTS AND ITS EMPLOYEES (COLLECTIVELY, "PARTIES INDEMNIFIED") FROM AND AGAINST ALL CLAIMS AND SUITS FOR BODILY INJURY OR DEATH OF AN EMPLOYEE OF THE CONTRACTOR, THE CONTRACTOR'S AGENT, OR THE CONTRACTOR'S SUBCONTRACTOR OF ANY TIER, REGARDLESS OF WHETHER OR NOT SUCH CLAIMS OR SUITS ARE BASED IN WHOLE OR IN PART UPON THE NEGLIGENT ACTS OR OMISSIONS OF THE OWNER, ITS OFFICERS OR ITS EMPLOYEES. THE INDEMNITY REQUIRED BY THIS PARAGRAPH 3.18.2 IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 3.18.1.

§ 3.18.3 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the

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indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.4 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTOR'S CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN PART BY THE NEGLIGENCE OF OWNER OR ITS AGENTS, OFFICERS, OR EMPLOYEES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 3.18.1.

§ 3.18.5 The Contractor agrees to waive any and all claims it may have against the Owner, connected with, resulting from, or arising out of, claims and suits covered by the indemnification agreement contained herein and agrees that any insurance policy provide for the waiver of subrogation rights against the Owner.

§ 3.18.6 To the extent allowed by law, the Contractor agrees to insure the indemnity and hold harmless clauses contained in this Section 3.18, including its subparts, with insurance policies, approved by the Owner, and issued by a carrier authorized to do business in the State of Texas, in the minimum amounts set out in Article 11 and/or Section 11.2 of these General Conditions.

§ 3.18.7 The provisions of Section 3.18, including all of its subparts, shall survive the termination of the Agreement or the Contract, howsoever caused, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance of occupancy in whole or in part of the Work shall waive or release any of the provisions of Paragraph 3.18 and its subparts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

§ 4.1.2 The Owner shall notify the Contractor when the duties, responsibilities or limitations of authority of the Architect have been modified.

§ 4.1.3 If the employment of the Architect is terminated, the Owner may employ a successor architect as to whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents or expressly authorized by the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will promptly inform Contractor and Owner of any non-compliance observed. The Architect will exercise care and diligence when on site in discovering and properly reporting to the Owner any defects or deficiencies in the Work of the Contractor or any of its Subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the

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Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

§ 4.2.5 Based on the Architect's evaluations of the Work progress and quality of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts, which shall be further subject to the Owner's review, modification, approval, or rejection.

§ 4.2.6 The Architect and Owner each has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect and/or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work, or constitute approval or acceptance of Work that is deficient or does not meet the requirements of the Contract Documents.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Any change affecting the Contract Sum or Contract Time must be approved in advance by the Owner in writing.

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

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perform additional inspection(s) to determine the date or dates of Substantial Completion or final completion due to Contractor's failure to meet the conditions for such completion, Contractor shall be responsible for paying or reimbursing Owner for the cost of any additional fees or other costs charged by Architect under the agreement between Owner and Architect.

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

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

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if (a) they are consistent with the intent expressed in the Contract Documents, and (b) the Owner gives its consent.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site, away from the site, or otherwise to furnish labor or materials. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" includes persons supplying materials or equipment for the Work.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site, away from the site, or otherwise to furnish labor or materials. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. The term "Sub-subcontractor" includes persons supplying materials or equipment for the Work.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect or the Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect or the Owner requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work and was rejected for a reason other than good cause, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. "Good cause" shall include, but not be limited to, Owner or Architect's prior experience of unsatisfactory work performed by the Subcontractor or debarment of the Subcontractor.

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

§ 5.2.5 The Owner may require the Contractor to change any Subcontractor or supplier previously approved by it, if such a change is due to failure of subcontractor to perform in accordance with the requirements of the Contract. If Owner requires removal of a subcontractor for such failure to perform, and Contractor reasonably objects to such removal, then Owner will pay any actual increase in the cost between the new subcontractor and the subcontractor replaced incurred by Contractor, taking into account any amounts which Contractor withholds or recovers in damages from the replaced subcontractor. If Contractor requests such payment from Owner, Contractor shall provide Owner with satisfactory proof of such additional costs incurred by Contractor.

§ 5.2.6 Contractor shall be fully responsible for the performance of its Subcontractors, including those selected or approved by the Owner.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing;
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract;
- .3 such assignment shall not constitute a waiver by Owner of any of its rights against Contractor, because of defaults, delays and defects for which a Subcontractor or material vendor may also be liable; and
- .4 the subcontractor provides bonds as required by law of prime contractors, and by Owner.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, provided, however, that Owner does not assume Contractor's obligations or liabilities for defaults occurring prior to Owner's assumption, or for the payment to the subcontractor or supplier for

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Work, if payment for such Work has previously been made to Contractor. Such liabilities or obligations shall remain with Contractor.

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.4 All subcontracts shall state that they will be assignable to the Bond Trustee or his designee, if funding for the Project is obtained through bond proceeds.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement and submit such revisions to the Owner for the Owner's approval. The construction schedules, if approved by the Owner, shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to have the same rights that apply to the Contractor under the Conditions of the Contract.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. If such separate contractor initiates a claim or legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner

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shall notify the Contractor, who shall defend such proceedings at its own expense, and if any judgment or award against the Owner arises therefrom, based on Contractor's act or omissions or the act or omissions of Contractor's employees, Subcontractor or parties for whom Contractor has liability, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor.

§ 6.2.6 The Contractor shall be responsible for any delays to a separate contractor caused by the Contractor or its Subcontractor.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 All proposals for a change involving an increase or decrease in the amount of the Contract Sum shall be submitted by the Contractor in a completely itemized breakdown form acceptable to the Owner that shall include, but not be limited to, the following:

- a. Material quantities and input prices (separated into trades).
- b. Labor costs.
- c. Construction equipment.
- d. Worker's Compensation and Commercial General Liability insurance and other insurance required by the Contract Documents.
- e. Social Security Tax.
- f. General Conditions.

The Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets, if requested by Owner, from any Subcontractor.

On proposals involving increases in the amount of the Cost of the Work, overhead and profit will be allowed on the net increase. No percentages for overhead and profit will be allowed on Tax.

The entire amount (100%) of any changes involving a decrease in the Cost of the Work or Contract Sum, including overhead and profit, will be credited back to the Owner.

The percentages for overhead and profit to be allowed to the Contractor or subcontractors on increases shall not exceed the following:

Combined Percentage Allowed (overhead and Profit)

To Contractor for Work performed by its own forces – 10.0%

To Contractor for Work performed by other than its own forces – 0%

To Subcontractor for Work performed by its own forces – 4.5%

To Subcontractor for Work performed by other than its own forces – 4.5%

For any changes in Work, overhead and profit will be calculated, at a maximum, for the Contractor and at most one subcontractor.

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved regardless of the Contractor's agreement with or disagreement with the adjustment in the Contract Sum or Contract Time or the method for determining them, and shall promptly advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

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- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others at rates that are no greater than market rates in the locale of the Work at the time of the Work. Unless otherwise established in the Contract, the rental value of the Contractor's own equipment shall not be more than the normal local rental rate for similar equipment;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work, except that sales, use or similar taxes to which the Owner is exempt shall not be included in the calculation of costs; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority, subject to the Owner's Approval, to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Contractor. The Owner shall also retain authority to order such minor changes in the Work.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and approved by the Owner in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

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§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an authorized employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control or which do not arise through the action or inaction of Contractor or its Subcontractor or suppliers, could not have been reasonably anticipated and could not have been avoided through the exercise of reasonable care or prudent construction management by the Contractor; or by delay authorized by the Owner pending mediation, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the Owner's concurrence. The foregoing notwithstanding, the Contractor shall not be entitled to an extension of time for changes in the Work required due to Contractor fault, or which extend beyond the time extension provided in a Change Order. Nothing in this provision will limit the rights of Owner under other provisions of this Contract, including Section 3.4.5 of this document. Notwithstanding anything herein to the contrary, extension of time provided for the completion of the Work shall be Contractor's sole remedy for delay, unless the same shall have been caused by acts constituting intentional interference by Owner with Contractor's performance of the Work and where to the extent that such acts of Owner continue after Contractor's notice to Owner of such interference.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A disagreement concerning time extensions shall not relieve the Contractor from performing the Work required by the Contract Documents and shall not be cause for the Contractor to suspend Work on the Project.

§ 8.3.3 THIS AGREEMENT DOES NOT PERMIT THE RECOVERY OF DAMAGES BY THE CONTRACTOR FOR DELAY OR DISRUPTION OR FOR EXTENSIONS OF TIME DUE TO BAD WEATHER OR ACTS OF GOD. CONTRACTOR AGREES THAT CONTRACTOR SHALL BE FULLY COMPENSATED FOR ALL DELAYS SOLELY BY AN EXTENSION OF TIME. OWNER'S EXERCISE OF ANY OF ITS RIGHTS UNDER THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION, ITS RIGHTS UNDER ARTICLE 6, CHANGES IN THE WORK, REGARDLESS OF THE EXTENT OR NUMBER OF SUCH CHANGES OR OWNER'S EXERCISE OF ANY OF ITS REMEDIES OF SUSPENSION OF THE WORK OR REQUIREMENT OR CORRECTION OR RE-EXECUTION OF ANY DEFECTIVE WORK, SHALL NOT, UNDER ANY CIRCUMSTANCES, BE CONSTRUED AS INTERFERENCE WITH CONTRACTOR'S PERFORMANCE OF THE WORK AND SHALL NOT ENTITLE THE CONTRACTOR TO ANY ADDITIONAL COMPENSATION.

§ 8.3.4 In the event of inexcusable delay by Contractor, Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts or re-sequencing of the Work. All such acceleration shall be at no cost to Owner.

§ 8.3.5 In the event that Contractor does not complete the Work within the Contract Time, then in addition to any other costs and damages (liquidated or otherwise) for which Contractor is responsible, Contractor will provide, at its expense, any bonds required by governmental authorities to enable Owner to secure a Certificate of Occupancy (if required) even though there are items of Work which are incomplete.

§ 8.3.6 The Contractor's claims related to time shall be made in accordance with applicable provisions of the Contract Documents or they shall be deemed waived.

§ 8.3.7 Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been caused by acts constituting interference by the Owner which interfere with Contractor's performance of the work, and then only to the extent that such acts continue after Contractor's written notice to Owner of such interference. Owner's exercise of any of its rights under the Contract Documents or Owner's exercise of any of its remedies of suspension of the Work or requirement or correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

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§ 9.1.2 Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor fails to perform any of its material obligations hereunder or otherwise is in default under any of the provisions of the Contract Documents, subject to the requirements of applicable law.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

§ 9.3.1.3 All progress payment requests shall be accompanied by (i) an itemization of all Subcontractors and material suppliers, the amounts due each and the amounts to be paid out of said progress payment to each of them and (ii) by unconditional lien waivers releasing all liens and lien rights with respect to Work for which Owner has made payment under a prior progress payment request in a form reasonably satisfactory to Owner from Contractor and all its subcontractors and material suppliers with contracts in excess of \$25,000.00. When Contractor submits its request for payment of retainage, Contractor shall submit "All Bills Paid" affidavits and unconditional final lien waivers fully releasing all liens and lien rights with respect to the Work in a form reasonably satisfactory to Owner from Contractor and all its Subcontractors and material suppliers with contracts in excess of \$25,000.00. Applications for Payment shall be certified as correct by Contractor. Each Application for Payment shall also be accompanied by Certified Payrolls and such other affidavits, certificates, information, data and schedules as Owner may reasonably require. The Owner is not required to make any payment to Contractor to the extent reasonably necessary to protect Owner.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Upon payment by the Owner of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the Owner. The Contractor warrants that title to all materials and equipment covered by an Application for Payment will pass to the Owner upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No work, material or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained or an encumbrance is attached by the seller, the Contractor, or other party.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the

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Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

§ 9.3.4 Contractor's request for payment of the retainage may be made only upon expiration of thirty (30) days after Final Completion. The request shall be accompanied by the Contractor's Affidavit of Payment of Debts and Claims or a comparable affidavit on a form acceptable to Owner. This document must be executed under oath and notarized.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Owner shall have the right to reject, modify, or approve the Architect's Certificate for Payment in whole or in part, and shall have the right to make the final determination of the payment to be made to the Contractor.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner in respect to the amount to be paid and shall be a prerequisite to any payment being made by the Owner to the Contractor. The Certificate of Payment is not binding on the Owner, and the Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, and on other information known to the Owner to determine the amount to be paid to or withheld from the Contractor.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to provide any submittals or documentation required under the Contract Documents in a timely manner, including a schedule of values and a construction schedule.

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

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

§ 9.5.4 The Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to any provision of the Contract Documents or withholds in reliance on any such Contract Document provision in good faith, or withholds, in good faith, in reliance on information that has come to the attention of the Owner that Owner reasonably believes constitutes sufficient reason to withhold payment, and, no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall review the Application for Payment and the Architect's Certificate and shall make payment or withhold payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor will receive the payments made by Owner and will hold such payments in trust to be applied first to the payment of Subcontractors and any other parties furnishing labor, materials, equipment or services for the Work in accordance with the provisions of their subcontracts. The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work, and before using any part of the payment from the Owner for any other purpose. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor has failed to make payment promptly to the Contractor's subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. The Owner shall have the right at all times to contact Subcontractors and material and equipment suppliers to ascertain whether they have been properly paid. Progress payments may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties. In the event Owner receives any notices of non-payment from parties furnishing labor, materials, equipment or services for the Work, progress payments and/or final payment may, in the discretion of Owner, be made in the form of checks payable jointly to the Contractor and such parties for such amounts as the Contractor agrees or the Owner determines are due. **Notwithstanding any other provision in the Contract Documents, neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.**

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

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

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with the terms and provisions of the Contract Documents, including Article 11 herein, and in accordance with Texas Government Code Chapter 2253. Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 The Contractor shall have the right to stop work for Owner's failure to pay undisputed amounts only in accordance with the provisions of applicable law.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, pursuant to the Contract the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to:

- .1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner; or
- .2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Operation and maintenance data shall have been submitted and approved, system demonstrations have been performed, and a certificate of occupancy shall have been issued before Substantial Completion can be achieved. The Work will not be considered suitable for Substantial Completion review until all required governmental inspections and certifications have been made and posted, all final finishes within the Contract Documents are in place as required by the Specifications, and there shall have been a completion of and acceptance by Owner of all major punch-list items and a majority of minor items of a cosmetic nature, so that the Owner could occupy or otherwise utilize the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under the Owner) normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days following the date of Substantial Completion. In the event substantial completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until substantial completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Documents.

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

§ 9.8.2.1 The Contractor's Project Manager or superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and Owner. Upon receipt, the Architect shall perform a spot review to determine the adequacy and completeness of the Contractor's punch list. Should the Architect determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned

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to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done.

§ 9.8.2.2 Upon receipt of an acceptable Contractor's punch list, the Contractor's Superintendent or Project Manager shall accompany the Architect, his Consultants and the Owner (at his discretion) during their inspections and the preparation of verbal or written additions to the Contractor's punch list. The Contractor's Project Manager or Superintendent shall record or otherwise take notes of all supplementary items and incorporate those notes into the Final Punch List. A typed, addition to the supplements to the punch list will be made by the Contractor. This procedure will produce a Final Punch List that has the Contractors, Architects, Consultants and Owner's comments incorporated in only one list.

§ 9.8.2.3 The Contractor's Project Manager or Superintendent shall have been in attendance during the inspections of the Architect and his Consultants and will have been expected to take his own notes for addition to the Final Punch List.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine dates of Substantial Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Substantial Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

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

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

§ 9.8.5.1 After the date of Substantial Completion of the project as evidenced by the Certificate of Substantial Completion, the Contractor will be allowed a period of thirty (30) days, unless extended by mutual agreement or provision of the Contract, within which to complete all work and correct all deficiencies contained in the punch list attached to the Certificate of Substantial Completion. Failure by the Contractor to complete such corrections within the stipulated time will be reported to the Contractor's surety. In the report of deficiency, the Contractor and surety will be informed that, should correction remain incomplete for thirty (30) additional days, the Owner will initiate action to complete corrective work out of the remaining contract funds in accordance with Article 14.2. Additional costs of the Owner, Architect, and other consultants incurred because of the Contractor's failure to complete the correction of deficiencies within thirty (30) days after the date of Substantial Completion, unless extended by mutual agreement or provision of the contract, will be deducted from the funds remaining to be paid to the Contractor. Should corrective work following Substantial Completion require more than one re-inspection after notification by the Contractor that corrections are complete; the cost of subsequent inspections shall also be deducted from funds remaining unpaid to the Contractor.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer, if such consent is necessary, and authorized by public authorities having jurisdiction over the

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Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect or Owner.

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

§ 9.9.3 Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner may rely on other provisions of the Contract Documents, as well as the Architect's Certificate, in determining the payment to be made to Contractor. Architect is obligated under the agreement between Owner and Architect to make only a limited number of site visits to determine Final Completion. Any fee which Owner incurs for additional site visits of Architect for determination of Final Completion will be at the expense of Contractor. Owner will deduct amount of Architect's compensation for re-inspection services from final payment or, at the Owner's discretion, may require the Contractor to reimburse the Owner for such costs directly.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Nothing in this subsection is intended to limit or reduce Owner's rights and remedies in the event of a Contractor default.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the
(Paragraphs deleted)
Owner.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 Contractor shall be responsible for providing such security on the Work site as necessary to protect against loss or damage to materials or the Work.

§ 10.1.3 Contractor shall be responsible for providing safe paths of travel for the public, or any employee, invitee, agent or representative of Owner who has the right to access the Project or any portion of the Project prior to completion of Contractor's construction activities. Contractor shall confer with Architect and Owner on the travel route or routes to be used. Unless otherwise agreed by the Owner and Contractor, the safe access route shall include access from parking areas and public sidewalks, and Contractor shall reroute such access as necessary during the progress of the construction to maintain safe access.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give Owner reasonable advance notice and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

§ 10.3.3 Intentionally Omitted.

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

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

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner, to the extent permitted by applicable law, shall indemnify the Contractor for all reasonable remediation cost and expense thereby incurred, provided that Contractor shall first notify Owner of any claim made against Contractor by a governmental agency for remediation prior to commencing remediation. The Owner shall have the right, but not the obligation, to undertake such remediation at Owner's expense.

§ 10.3.7 Except as may be required by the Contract Documents, the Contractor agrees that it shall not transport to, use, generate, dispose of or install at the Project site any hazardous substance, except in accordance with applicable

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Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws or as required by the Contract Documents. In the event the Contractor engages in any of the activities prohibited in this Section 10.3 and its subparts, to the fullest extent permitted by law, the Contractor hereby indemnifies and holds harmless Owner and all of its respective officers, directors, agents and employees from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Section 10.3 and its subparts. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.3.8 For purposes of the Contract, the term "hazardous substance" shall mean and include, but shall not be limited to, any substances or materials named in Section 10.3 or any of its subparts and any element, constituent, chemical, substance, compound or mixtures, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, by-law or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including with limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), The Marine Protection Research and Sanctuaries Act ("MPRSA"), the Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes, including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with Section 10.3 and its subparts based on the law in effect at the time its services are rendered and to comply with any amendments to those laws, for all services rendered after the effective date of any such amendments.

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.0 INSURANCE GENERAL REQUIREMENTS

§ 11.0.1 No Work will be commenced and no equipment or materials can be shipped until all bond and insurance requirements required of Contractor in this Article 11 have been satisfied, satisfactory evidence of the bonds and insurance has been provided to and approved by the Owner, and all insurance is in full force and effect. Contractor shall notify Owner and Architect in writing of any proposed nonconformity with these requirements, and shall notify Owner and Architect in writing of any insurance changes which occur during the terms required under the Contract Documents. Any deviation from these requirements can only be approved by the Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract.

§ 11.0.2 All insurance required by this Article 11 of the Contractor and/or its Subcontractors shall be endorsed to reflect that the required insurance is primary over any other applicable insurance held by Owner. Any insurance maintained by the Owner shall be in excess of such insurance and shall not contribute with such primary insurance.

§ 11.0.3 All liability and warranty insurance that is required by this Article 11 of the Contractor and/or its Subcontractors, including, without limitation, the Commercial General Liability insurance, the Automobile Liability insurance, and the umbrella or excess insurance, shall name the Owner (including its officers, elected officials, employees, and volunteers), the Architect, and the Architect's consultants as Additional Insureds.

§ 11.0.4 Nothing contained in this Article 11 shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.0.5 The Contractor and its Subcontractors shall provide an endorsement to the Worker's Compensation policy which grants waiver of subrogation in favor of the Owner.

§ 11.0.6 If insurance required of the Contractor and/or its Subcontractors by this Article 11 is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions

in any payment made by the insurance carrier on claims paid by the insurance. If the Owner is damaged by the failure of the Contractor or any of its Subcontractors to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 11.0.7 The Contractor shall be responsible for verifying insurance coverage in the required amounts of all Subcontractors employed by or used by the Contractor.

§ 11.1 CONTRACTOR'S INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain (or cause to be purchased and maintained in the case of Subcontractors) in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's or any of its Subcontractors' operations and completed operations under the Contract and for which the Contractor or any of its Subcontractors may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required of the Contractor and its Subcontractors by Section 11.1.1 shall include, but not be limited to, the following types of insurance and coverages, and shall be written for not less than the following limits of liability or as otherwise specified in the Contract Documents or required by law, whichever coverage is greater;

TYPE OF INSURANCE	LIMIT OF LIABILITY
Commercial General Liability (CGL)	\$ General Aggregate
	\$ Each Occurrence
	\$ Products and Completed Operations
	\$ Damage to Rented Premises – each occurrence
	\$ Medical Expense (any one person)
	\$ Personal and Adv. Injury

For Bodily Injury and Property Damage, coverage to remain in place until Final Completion, however if Warranties are applicable, coverage shall remain in place until the expiration of the Warranties.

For Products and Completed Operations, coverage is to be maintained through annual renewals for a period of 5 years after Final Payment; Contractor shall continue to provide evidence of such coverage to Owner on an

annual basis during this period.

Automobile Liability		\$	Combined Single Limit (ea. accident)
Excess/Umbrella Liability		\$	Each Occurrence
		\$	Aggregate
Workers Compensation	Statutory		
		\$1,000,000.00	E.L. Each Accident
		\$1,000,000.00	E.L. Disease – Ea. Employee
		\$1,000,000.00	E.L. Disease – Policy Limit

§ 11.1.2.1 Coverages required of the Contractor and its Subcontractors by this Article 11, whether written on an occurrence or claims-made basis, shall, at a minimum, be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. Coverages written on a claims made basis shall be continuously maintained (by renewal or extended reporting period) for not less than thirty-six (36) months following the date of final payment or the Work is accepted by Owner, whichever maintains the coverage for the longest time. With respect to the Contractor's completed operations coverage, coverage shall be continuously maintained until the expiration of the period for maintenance of completed operations coverage as specified above.

§ 11.1.2.2 The insurance required by this Article 11 shall contain no specific limitations on the coverage afforded the Additional Insureds.

§ 11.1.3 Certificates of insurance in a form acceptable to the Owner and naming the Owner (including its officers, elected officials, employees, and volunteers), the Architect, and their respective consultants as Additional Insureds shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Article 11 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Contractor understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirement of this Article shall be a cause for termination of this Contract, under the provisions of the termination clause.

Satisfactory evidence of insurance required in this Article 11 shall be provided to Owner not later than five (5) business days after execution of the Contract by Owner.

§ 11.1.4 The Contractor shall, in addition to other requirements of the Contractor contained in this Article 11 or elsewhere in the Contract Documents, cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's or any of its Subcontractors' negligent acts or omissions during the Contractor's and/or Subcontractors' operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's or any of its Subcontractors' negligent acts or omissions during the Contractor's and/or Subcontractors' completed operations.

§ 11.1.5 If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of paragraph 11.1.6 hereof shall apply.

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§ 11.1.6 Contractor and its subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its subcontractors are in force and the necessary certificates and statements required of this Article 11 have been received by Owner and the Architect, and a written notice to proceed has been issued.

§ 11.1.7 As an alternative and at Owner's option, Owner may elect to furnish or to arrange for Contractor any part or all of the insurance required this Article 11. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefore, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§11.1.8 WORKERS' COMPENSATION INSURANCE COVERAGE

A. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's of entity's employees providing services on a project, for the duration of the project.

Duration of the project – includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the Owner.

Persons providing services on the project ("subcontractor" in 406.096) – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes without limitations, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the Owner and Construction Manager, if any, prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner and Construction Manager, if any, showing that coverage has been extended.
- E. The Contractor shall obtain from each person providing services on a project, and provide to the Owner and Construction Manager, if any:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the Owner and Construction Manager, if any, will have on file certificates of coverage showing coverage for all persons providing services on the project: and
 - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for

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one year thereafter.

- G. The Contractor shall notify the Owner and Construction Manager, if any, in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the Owner and Construction Manager, if any, in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner and Construction Manager, if any, that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the

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Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

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

§ 11.1.9 Nothing contained herein shall limit or waive Contractor's legal or contractual responsibilities to Owner or others.

§ 11.2 Intentionally Omitted.

§ 11.3 CONTRACTOR'S BUILDER'S RISK INSURANCE

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

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

§ 11.3.1.2 Intentionally Omitted.

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

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

§ 11.3.1.5 In the event of partial or full occupancy by the Owner prior to substantial completion of the project, the Contractor shall notify the insurance carrier and obtain a "Use and Occupancy" waiver to prevent invalidation of such insurance by occupancy. Certificates of endorsements for this waiver shall be furnished to the Owner and the Architect.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 Intentionally Omitted.

§ 11.3.4 Intentionally Omitted.

§ 11.3.5 Intentionally Omitted.

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§ 11.3.6 Intentionally Omitted.

§ 11.3.7 WAIVER OF SUBROGATION

The Contractor waives all rights against (1) the Owner and any of the Owner's subcontractors, sub-subcontractors, officers, elected officials, agents and employees, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained by the Contractor pursuant to this Section 11.3 or other property insurance applicable to the Work. The Contractor will notify the issuing insurance company or companies or trust administrator of the waiver set forth in this Section and will cause the policies to provide such waivers of subrogation by endorsement or otherwise, and will take all steps necessary to prevent invalidation of coverage and to waive the insurer's rights of subrogation against the parties enumerated herein. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 The Contractor shall pay all appropriate parties their just shares of insurance proceeds received by the Contractor, and by appropriate agreements shall require Subcontractors to make payment to all appropriate parties in similar manner.

§ 11.3.9 Intentionally Omitted.

§ 11.3.10 Intentionally Omitted.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor, prior to proceeding with any work hereunder, shall furnish Owner with statutory payment and performance bonds covering faithful performance of the Contract and payment obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum with a surety or sureties authorized to conduct an insurance business in the State of Texas and licensed, listed, and approved by the State of Texas to issue surety bonds in the State, and otherwise acceptable to the Owner. The surety or sureties shall be listed as an approved surety by the U.S. Treasury Department. Notwithstanding anything herein to the contrary, all bonds shall conform to the requirements of Chapter 2253, Texas Government Code, as amended. The bonds shall be written on forms approved for use by Owner and shall be attached to and made a part of the Contract. The surety or sureties shall provide on request such other information as necessary to document net worth, stability, total bonding capacity, and projects under coverage, to demonstrate adequate financial capacity for this Project. If the Contract Sum exceeds the underwriting limitation of the Surety on the most recent list of acceptable sureties, the Contractor shall provide the Owner with evidence that the excess is protected by re-insurance or co-insurance in a form and amount acceptable to the Owner. Owner reserves the right to approve the surety or sureties proposed by Contractor. If any surety on any bond becomes insolvent or is unable to perform its obligations thereunder, the Contractor shall immediately furnish replacement bonds, or if such bonds cannot be obtained, equivalent security reasonably acceptable to Owner to protect the interests of Owner and persons furnishing labor and materials to the Project. Proof of valid payment and performance bonds shall be provided to the Owner prior to execution of the Contract or, if applicable and if the Owner in its sole discretion permits, at the time the Construction Manager executes the Amendment to this Agreement which establishes the Guaranteed Maximum Price.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the Contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 11.4.4 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

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§ 11.4.5 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.6 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 11.4.7 The Contractor's failure to abide by the requirements of this Section 11.4, including its subparts, shall be a material breach of the Contract.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 and/or its subparts, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under the Contract Documents, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so by repairing or replacing it, as reasonably determined by the Owner, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within the time specified herein or, if no deadline to complete the corrective action is specified, a reasonable time after receipt of notice from the Owner or Architect, or if the Contractor fails to make the written response to an Owner's notice within the time specified herein in this §12.2.2.1 and its subparts, the Owner may correct it and all costs for doing so will be assessed against the Contractor, and Owner's actions to correct the nonconforming Work will not constitute a waiver of any warranties or rights the Owner might possess. Any provision in the Contract Documents to the contrary notwithstanding, the Contractor's obligations under this Section 12.2.2 and/or its subparts, are in addition to any other warranty obligations or corrective action obligations provided by the Contract Documents, this Agreement or law, including warranties provided by subcontractors, suppliers and manufacturers. Contractor shall assign all assignable subcontractor, supplier and manufacturer's warranties affecting the Work or any portion to Owner as a condition to final payment. Owner may enforce any warranty obligations or any corrective action obligations separately, concurrently or successively. The deadlines for certain actions required herein of the Contractor are as follows:

- .1 The Contractor shall make written response to the Owner acknowledging receipt of the Owner's notice of defect and providing the proposed schedule to conduct corrective work within twenty-four (24) hours of receipt of the Owner's written notice. Corrective work shall not interfere with the Owner's normal operation and use of the Work, unless expressly approved by the Owner.
- .2 For corrective work which is not a life/safety issue or which will not, by the nature of the defect, cause subsequent damage to the building or other Work, corrective work shall be completed within fourteen (14) days.
- .3 For corrective work which by its nature may cause subsequent damage to the building or other Work, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days. The Contractor shall appropriately complete all corrective work relative to subsequent damage caused by a defect.
- .4 For corrective work related to a life/safety issue or which affects services to, and ordinary use of the Building, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) days.
- .5 The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents. The corrective remedies set forth in this Section 12.2 are not exclusive and shall not deprive the Owner of any action, right or remedy otherwise available to it for breach of any of the provisions of the Contract Documents.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

Contractor shall pay all costs and expenses incurred by Owner in the evaluation of and determination to accept such defective Work, as well as the amount by which the value of the Work is diminished by the defect. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating Owner for the costs described above and the diminished value of the defective Work. If acceptance occurs after final payment, Contractor will pay to Owner the appropriate amount within 30 days after demand.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW AND VENUE

§ 13.1.1 Governing Law.

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The Agreement, the Contract, and the Contract Documents shall be governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflict of laws or choice of law principles, Texas law being the choice of law for the Agreement, the Contract, and all Contract Documents.

§ 13.1.2 Venue.

To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of [] County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in [] County, Texas.

§ 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, and correctly addressed to the party at the address provided in the Agreement. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Architect must be copied on notices sent to the Owner.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 and other portions of the Contract Documents reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest as provided in the Agreement.

§ 13.7 Intentionally Omitted.

§ 13.8 CONTRACTOR'S RECORDS

Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons, which are the sole grounds for termination under this Subparagraph 14.1.1:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, subject to any right of Owner to withhold funds or suspend payment under the Contract.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work actually executed to the date of termination, including reasonable overhead and profit for Work actually executed. In any event, the amount paid to the Contractor under this § 14.1.3 shall not exceed the amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional

days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials to complete the Work in a diligent, efficient, workmanlike or timely manner;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instructions of the Architect or the Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 fails to perform the Work in accordance with the Contract Documents or makes fraudulent statements;
- .6 makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any receiver or any trustee for the Contractor or any substantial part of its property, commences any action relating to the Contractor under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if there is commenced against the Contractor any such action or the Contractor by any act indicates its consent to or approval of any trustee for the Contractor or any substantial part of its property or suffers any receivership or trustee to continue undischarged;
- .7 repudiates the Contract; or
- .8 otherwise is guilty of substantial breach of a provision of the Contract Documents or does not fully comply with a material obligation under the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient, including, but not limited to, making demand on the surety to perform the Work.

§ 14.2.3 When the Owner terminates the Contract or the Contractor's right to perform the Work under the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If Owner performs or finishes the Work in whole or in part, and such costs and damages incurred by Owner, including compensation for Architect's services, attorneys' fees, and expenses made necessary by the Contractor's default or the termination, exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner within 30 days after demand by Owner. If Owner (rather than the surety) performs or finishes the Work, the amount to be paid to the Owner for the cost of the Work and the Architect's compensation (but not the other items of expense or damages) shall be certified by the Architect, upon request by Owner. The Contractor's obligation for payment shall survive termination of the Contract and/or termination of Contractor's right to perform the Work under the Contract.

§ 14.2.5 Partial or Whole Termination for Cause. In addition to Owner's right to remove Contractor from any part of the Work pursuant to the Contract Documents, Owner may, at any time, terminate any part of the Work or any subcontract for any reason whatsoever by giving written "Notice of Termination" to Contractor specifying the Work or subcontract to be terminated and the effective date of termination. Contractor shall continue to prosecute the part of the Work not terminated. If a part of the Work or any subcontract is so terminated, Owner shall incur no liability to Contractor by reason of such termination, except that Contractor shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract), and to reasonable and necessary costs incurred by Contractor for

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demobilization of Contractor's personnel as a direct result of such early termination, which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such termination, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the scheduled Date of Substantial Completion and/or other Contract Sum. The Contract Sum shall be equitably adjusted to a sum which equitably compensates Contractor for all work completed and all actual costs incurred in part performance of the incomplete portions of the Work, net of salvage and profits on the incomplete portion of the Work. No amount shall be allowed the Contractor hereunder unless, within ninety-one (91) days after all compensable costs of Contractor shall have become liquidated and determinable, and not thereafter, Contractor shall submit in writing to the Owner claim in the amount stated with such supporting particulars as the Owner may request. Upon receipt of such "Notice of Termination," Contractor shall cooperate fully with the Owner in minimizing the cost to the Owner of such termination and shall, as directed by the Owner, protect the Work accomplished and properties acquired for performance of the Work, terminate or cancel incomplete subcontracts and purchase orders, and dispose of surplus materials and other properties.

§ 14.2.6 It is recognized that (i) if any order for relief is entered on behalf of or against the Contractor pursuant to Title 11 of the United States Code, (ii) if any other similar order is entered under any other debtor relief laws, (iii) if the Contractor makes a general assignment for the benefit of its creditors, or (iv) if a receiver is appointed for the benefit of credits, or (v) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate the Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, the Owner, in addition to other rights and remedies hereunder, shall be entitled to request the Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days after delivery of the request shall entitle the Owner to terminate the Contract or Contractor's right to perform thereunder and to the accompanying rights set forth above in Sections 14.2.1 through 14.2.5 hereof. In all events, pending receipt of adequate assurance of performance and actual performance in accordance therewith, the Owner shall be entitled to make demand on the surety or proceed with the Work with its own forces by assignment of the subcontractors or with other contractors on a time and material or other appropriate basis, the cost of which will be back-charged against the Contract Sum. If Owner performs the Work in whole or in part, and such costs and damages incurred by Owner, including compensation for Architect's services, attorneys' fees, and expenses made necessary by the Contractor's default or the termination, exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days after demand by Owner. If Owner (rather than the surety) performs the Work the amount to be paid to the Owner for the cost of the Work and the Architect's compensation (but not the other items of expense or damages) shall be certified by the Initial Decision Maker, upon request by Owner. The Contractor's obligation for payment shall survive termination of the Contract and termination of Contractor's right to perform the Work under the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be subject to equitable adjustment for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1 lasting more than 90 consecutive days. Adjustment of the Contract Sum shall include profit, but only to the extent and to the degree that is a component of the Contract Sum provided in the Agreement. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract, any part of the Work, or any subcontract for the Owner's convenience and without cause.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work actually executed, to the date of termination in accordance with the payment terms set out in the Agreement, and reasonable and necessary costs incurred by Contractor for demobilization of Contractor's personnel as a direct result of such early termination, which are established to the reasonable satisfaction of Owner, but Owner shall not be responsible for the payment of any portion of Contractor's unearned fee, overhead or profit, or any other amounts. Contractor's right to payment and Owner's obligation to pay Contractor are subject to the terms and provisions of the Contract.

§ 14.4.3.1 **Partial Termination for Convenience.** In the event of partial termination or the termination of a subcontract for convenience, no payment shall be made by Owner, however, to the extent that such Work or subcontract is, was or could have been terminated under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such partial termination or the termination of a subcontract, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the scheduled Date of Substantial Completion and/or other Contract Sum. The Contract Sum shall be equitably adjusted to a sum which equitably compensates Contractor for all work completed and all actual costs incurred in part performance of the incomplete portions of the Work, net of salvage and profits on the incomplete portion of the Work. No amount shall be allowed the Contractor hereunder unless, within ninety-one (91) days after all compensable costs of Contractor shall have become liquidated and determinable, and not thereafter, Contractor shall submit in writing to the Owner claim in the amount stated with such supporting particulars as the Owner may request. Upon receipt of written notice from the Owner of such partial termination or termination of a subcontract for the Owner's convenience, Contractor shall cooperate fully with the Owner in minimizing the cost to the Owner of such termination and shall, as directed by the Owner, protect the Work accomplished and properties acquired for performance of the Work, terminate or cancel incomplete subcontracts and purchase orders, and dispose of surplus materials and other properties.

§ 14.5 TERMINATION BY THE OWNER FOR INADEQUATE FUNDING

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

CONTRACTOR MUST NOTIFY OWNER AND ARCHITECT IN WRITING (A) WITHIN TWENTY-ONE DAYS (OR SUCH LATER PERIOD AS MAY BE REQUIRED BY LAW) AFTER OCCURRENCE OF THE EVENT GIVING RISE TO A CLAIM OR (B) WITHIN TWENTY-ONE DAYS (OR SUCH LATER PERIOD AS MAY BE REQUIRED BY LAW) AFTER THE CONTRACTOR FIRST RECOGNIZES, OR SHOULD HAVE RECOGNIZED, THE CONDITION GIVING RISE TO A CLAIM, WHICHEVER IS LATER. WITHIN A REASONABLE PERIOD OF TIME, BUT NOT LATER THAN TWENTY-ONE (21) DAYS AFTER SUBMITTING A CLAIM, CONTRACTOR MUST PROVIDE COMPLETE AND DETAILED DOCUMENTATION CONCERNING THE NATURE AND AMOUNT OF THE CLAIM, TO THE EXTENT SUCH INFORMATION IS REASONABLY AVAILABLE. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION 15.1.2 CONSTITUTES A WAIVER OF CONTRACTOR'S CLAIM.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14 or other provisions of the Contract Documents, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments that are not in dispute in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the final decisions of the Owner concerning a Claim.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

§ 15.1.5.2 Claims for increase in the contract time shall set forth in detail the circumstances that form the basis for the claim, the date upon which each cause of delay began to affect the progress of the work, the date upon which each cause of delay ceased to affect the progress of the work and the number of days increase in the contract time claimed as a consequence of each such cause of delay. Additionally, any Claim for additional time based on adverse weather conditions shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. Claims for an extension of time pursuant to this Subparagraph shall be submitted to the Architect and Owner not later than the fifteenth day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives all Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

(Paragraphs deleted)

damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims by the Contractor against the Owner, excluding those arising under Sections 10.3 and 10.4, shall be referred to the Initial Decision Maker for initial decision/recommendation to the Owner. The Architect will serve as the Initial Decision Maker unless otherwise agreed-upon in writing by the parties following the submission of a Claim. An initial decision/recommendation shall be required as a condition precedent to mediation or litigation of all Claims by the Contractor arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide or make recommendations concerning disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within 10 days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Initial Decision Maker is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the expense of the party making the Claim.

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§ 15.2.4 Intentionally Omitted.

§ 15.2.5 The Initial Decision Maker's initial decision/recommendation shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any recommended change in the Contract Sum or Contract Time or both. The initial decision shall serve as the Initial Decision Maker's *recommendation* for the resolution of a Claim but shall not be final and binding on the parties. Upon receipt of the initial decision, the Owner will make its final decision concerning the Claim. The Owner may take any action with regard to the Claim and the initial decision as it deems appropriate, including but not limited to rejecting, approving, or modifying the Initial Decision Maker's recommendation. If an affected party disagrees with the Owner's final decision, the party may request non-binding mediation of the Claim and, if the parties fail to resolve their dispute through mediation, proceed to litigation.

§ 15.2.6 Either party may file for mediation of an Owner's final decision of a Claim at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 An affected party may, within 30 days from the date of the Owner's final decision concerning a Claim, request in writing that the other party agree to non-binding mediation within 60 days after the initial decision. If such a request is made and the party receiving the request fails to provide written notice within 10 days to the requesting party stating the recipient's agreement to submit to mediation within the time required, then the party requesting mediation may proceed to litigation.

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

§ 15.2.8 Waiver of Lien. It is distinctly understood that by virtue of this Contract, no mechanic, Contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 15.3 MEDIATION

§ 15.3.1 Any and all of Contractor's claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to non-binding mediation as a condition precedent to litigation.

§ 15.3.1.1 Notwithstanding any provision in the Contract Documents to the Contrary, the Owner may, at any time and with no conditions precedent, assert a Claim, dispute, or other matter in controversy against the Contractor or contend that the Contractor has committed a material breach of this Agreement and request mediation as provided by this Section 15.3, or, at the Owner's sole discretion, proceed directly to litigation against the Contractor. Claims that the Owner may possess against the Contractor are not required to be submitted to the Initial Decision Maker.

§ 15.3.2 A request for mediation shall be made in writing, delivered to the other party to the Contract. If the parties have not selected a mutually-acceptable mediator at the time the request for mediation is made, then the requesting party may suggest a mediator. The non-requesting party has 10 days after receipt of the request to respond to the requesting party in writing either accepting the mediator identified by the requesting party, or suggesting a different mediator. If such notice is not timely made, then the mediator suggested by the party requesting mediation will be deemed the selected mediator. If a different mediator has been suggested by the non-requesting party, and the parties are unable to agree on a mediator within 10 days after the notice suggesting a different mediator is given, *then* the parties shall request the Initial Decision Maker to select a mediator, and this selection will be binding on both parties. The request for mediation may be made concurrently with the filing of litigation proceedings but, in such event, mediation shall proceed in advance of the litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 The parties shall share the mediator's fee equally, unless the parties agree otherwise. The mediation shall be held in the place where the Project is located or the nearest City to the Project, unless another location is mutually

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agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 INTENTIONALLY DELETED

§ 15.5 LITIGATION

§ 15.5.1 For any Claim or other dispute of any kind between the parties, the method of "binding dispute resolution" shall be litigation in the exclusive venue described in § 13.1.

§ 15.5.2 All references to "arbitration" in the General Conditions or in any other Contract Document shall be considered as deleted, rendered null and void, and shall be given no effect.

ARTICLE 16 ADDITIONAL PROVISIONS

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

§ 16.2 The Architect may appoint an employee or other person to assist him during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed work not in accordance with the Contract Documents shall not prevent the Architect or the Owner from insisting that the faulty work be corrected to conform with the Contract Documents and the Contractor shall correct same.

§ 16.3 The Contractor and its employees, agents, consultants, suppliers and subcontractors shall abide by all Owner policies and procedures regarding campus access.

§ 16.4 The Contractor shall indemnify and hold Owner harmless from any liens, claims, security interests, encumbrances, statutory or common law claims filed by the Contractor, suppliers, subcontractors, or anyone claiming by, through, or under the Contractor, suppliers or subcontractors for items covered by payments made by the Owner to Contractor.

[] INDEPENDENT SCHOOL DISTRICT

[NAME OF CONTRACTOR]

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)

(Paragraphs deleted)

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