

City of Saginaw, Texas
Amendments to AIA Document
A201-2017 Edition
(General Conditions of the Contract for Construction)

Owner: City of Saginaw, Texas

Project: Saginaw Public Library + Senior Citizen Center

These Amendments to the standard form AIA Document A201-2017 are incorporated into the Agreement between PGAL, Inc. (“Architect”) and the CITY OF SAGINAW, TEXAS (“City” or “Owner”), dated September 7, 2021. The following amendments modify the “General Conditions of the Contract for Construction,” AIA Document A201-2017 applicable to the Project.

§1.1.2 The Contract Add the following after the second sentence:

“As a material consideration for the making of the Contract Documents, modification to this Contract shall not be construed against the maker of said modifications.”

§1.2 Correlation and Intent of the Contract Documents Add new Sections 1.2.4 and 1.2.5 to read as follows:

“§1.2.4 In case of discrepancy between two or more drawings (Architectural, Structural, Mechanical, etc.) or drawings and specifications, the Architect shall be the sole judge as to which takes precedence, but in any case it shall be assumed that bids are based on the most expensive procedure shown.”

§1.2.5 Dimensions found in error should be submitted to the Architect for resolution before proceeding with the Work.

§1.5.2 Add the following at the end of the Section 1.5.2:

“Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner’s Scope of the Work.”

§1.9 Add the following new section:

“§1.9 Property of Political Subdivision It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project 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 improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.”

§2.1.1 Delete the remainder of §2.1.1 after the first sentence, and replace it with the following:

“The Owner shall designate a representative with respect to the Project. Such representative shall not have authority to make final decisions on behalf of the Owner concerning Change Orders, changing the Guaranteed Maximum Price, extending the date of Substantial or Final Completion, or other items requiring City Council approval; however, the Owner or such authorized representative, shall render decisions in a timely manner in order to avoid unreasonable delay in the service or Work of the Contractor.”

§2.1.2 Delete this section in its entirety.

§2.2 Evidence of the Owner’s Financial Arrangements Delete this section in its entirety.

§2.3.4 Delete this section and replace it with the following:

“**§2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. Owner does not guarantee the accuracy of the survey as describing the site of the Project and Contractor should determine the sufficiency of same before beginning the work. The Owner does not guarantee the utility lines to be in the exact locations as shown on plans and surveys. Contractor shall verify with the utilities the location of utility lines. Any water, gas or sewer line, telephone, telegraph or electric wire, or cable broken or cut which had been previously identified and known by the Contractor or any of his workmen or subcontractors, shall be replaced by the Contractor at his own expense, or by the responsible subcontractor at its own expense, and will not be paid for by the Owner. Repairs shall be made immediately and no other work shall be done until breaks or damages have been repaired and service restored. Any delay caused by the cut or break of a previously identified line shall be solely attributed to the Contractor.”

§2.3.5 Add the following language at the end of the section:

“Absent such written request, any Claim based upon lack of such information or service shall be waived.”

§3.1.4 Add a new section to read as follows:

“**§3.1.4** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

.1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations

under the Contract Documents;

.2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and

.4 that the execution of the Contract and its performance thereof are within its duly authorized powers.”

§3.3.4 Add a new section to read as follows:

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

§3.4 Labor and Materials Add new Sections 3.4.4 and 3.4.5 to read as follows:

“§3.4.4 Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor and upon any subcontractor under him to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the Contract. No claims for additional compensation shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein.

§3.4.5 The Owner reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor’s Subcontractors, and of Sub-Subcontractors.”

§3.5 Warranty Add new Sections 3.5.3 and 3.5.4 to read as follows:

“§3.5.3 Except where otherwise stipulated in the Contract Documents, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under this Contract for a period of one (1) year after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time.

§3.5.4 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer’s or supplier’s approved forms at the time of Substantial Completion.”

§3.6 Taxes Add a new section to read as follows:

“**§3.6.1** This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that Contractor fulfills the requirements of State Tax Laws. For the purpose of establishing exemption, it is understood and agreed that Contractor will be required to segregate materials and labor costs at the time a Contract is awarded, and will accept an exemption certificate from the Owner. The Contractor shall pay any taxes otherwise assessed because of the Contractor’s failure to comply with the requirements of State Law to qualify for that tax exemption.”

§3.12.10.1 In the second sentence add the word “reasonably” before the word “rely”.

§3.12.11 Add a new section to read as follows:

“**§3.12.11** The Architect’s review of the Contractor’s submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional submittals.”

§3.16 Access to Work Add the following to the end of Section 3.16:

“The 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 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. The Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy. The presence of the Owner, the Architect or their representatives does not constitute acceptance or approval of the Work.”

§3.17 Royalties, Patents and Copyrights Delete the last sentence and replace it with the following:

“However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.”

§4.2.2.1 Add a new section to read as follows:

“**§4.2.2.1** The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.”

§4.2.13 Delete existing section and replace it with the following:

“**§4.2.13** The Owner’s decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. The Architect shall be the sole interpreter of the design intent with respect to such matters, but the Architect’s authority with respect thereto shall not contravene any other rights of the Owner ascribed to the Owner by other provisions of the Contract.”

§§5.3.1 and 5.3.2 Add the following new Sections 5.3.1 and 5.3.2:

“**§5.3.1** Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

§5.3.2 In the event of any termination of the Contract in accordance with Article 14, Owner shall not be liable to any subcontractor. Contractor shall be responsible for any claim of a subcontractor for Work executed under the Contract.”

§5.4.4 Add a new Section 5.4.4 as follows:

“**§5.4.4** Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable. Owner shall only be responsible for compensating subcontractors for Work performed or material furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner’s written notice of acceptance.”

§7.4 Minor Changes in the Work In both the third and fourth sentences, add the words “and the Owner” after the word “Architect”.

§9.5.5 Add a new Section 9.5.5 to read as follows:

“**§9.5.5** Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damage. The Owner shall not be deemed in default by reason of withholding such payment.”

§9.6.7 Delete this section in its entirety and replace with the following language:

“**§9.6.7** Payments received by the Contractor for Work properly performed by Subcontractors or materials properly provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed the Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.”

§9.6.8 Delete the phrase “Provided the Owner has fulfilled its payment obligations under the Contract Documents,” from the beginning of this section.

§9.7.1 Add a new Section 9.7.1 to read as follows:

“**§9.7.1** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to the Owner, or the Owner incurs any costs and expense 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, in the Owner’s sole discretion and without waiving any other remedies, may elect either to:

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

§9.8.3.1 Add a new Section 9.8.3.1 to read as follows:

“**§9.8.3.1** The Architect will perform no more than **one (1)** inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.”

§9.8.5.1 Add a new Section 9.8.5.1 to read as follows:

“**§9.8.5.1** The application for payment to release retainage will not be approved by the Architect until the completed and corrected closeout documents are provided to the Architect by the Contractor. Closeout documents shall be delivered to the Architect under conditions and times set forth in the contract documents and specifications.”

§9.8.6 Add a new Section 9.8.6 to read as follows:

“**§9.8.6** Notwithstanding any provision contained within this Article, if the work has not attained Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Owner may withhold any further payment to Contractor

to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved.”

§9.10.1.1 Add a new Section 9.10.1.1 to read as follows:

“**§9.10.1.1** The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.”

§9.10.4 Delete this section in its entirety and replace it with the following language:

“**§9.10.4** The making of final payment shall not constitute a waiver of any Claims by the Owner.”

§9.11 Add a new Section 9.11 to read as follows:

“**§9.11** The time of completion is the essence of this Contract. Should the Contractor fail to reach Substantial Completion of the Project within the time required by the Contract Documents, plus any additional time allowed by the Owner, Contractor shall pay, or there shall be deducted from any amounts due and owing to Contractor, liquidated damages for each day that any Work shall remain uncompleted after the time for Substantial Completion of the Project, plus any additional time allowed by the Owner. The liquidated damages sum shall be \$ 500 per day. The liquidated damage sum for such delay, failure or non-completion is fixed and agreed upon between Owner and Contractor as the most reasonable estimate of Owner's actual damages because of the impracticability and extreme difficulty of fixing and ascertaining the Owner's true actual damages.”

§11.1 Contractor’s Insurance and Bonds Add new Sections 11.1.5, 11.1.6 and 11.1.7 to read as follows:

“**§11.1.5** By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor for administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.6 The Contractors' failure to comply with any of these provision 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.

§11.1.7 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, or volunteers.”

§11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance Delete this section in its entirety and replace with the following:

“§11.4 Contractor’s Bonds

§11.4.1 With the execution and delivery of the Contract, the Contractor shall furnish and file with the Owner, the surety bonds specified in this Section. Without exception, the Owner's bond forms must be used, and exclusive venue for any lawsuit in connection with the bonds shall be Tarrant County. The surety bonds shall be in accordance with the provisions of Chapter 2253, Government Code, Vernon's Texas Codes Annotated. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract Sum with or without notice to the surety, but in no event shall a change which reduces the Contract Sum reduce the penal amount of such bonds.

§11.4.2 The Contractor shall provide a good and sufficient performance bond in an amount not less than one hundred (100) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with the Contract Documents, including any extensions, for the protection of the Owner. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one year from the date of completion and acceptance of the improvement by the Owner or such lesser or greater period as may be designated in the Contract Documents.

§11.4.3 The Contractor shall provide a good and sufficient payment bond in an amount not less than one hundred (100) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and proper protection of all claimants supplying labor and material in the execution of the Work provided for in this Contract and for the use of each claimant.

§11.4.4 No sureties shall be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the Owner. All bonds shall be made on forms furnished by the Owner, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Owner. Each bond shall be executed by the Contractor and surety. Each surety shall designate an agent resident in the Owner's jurisdictional area acceptable to the Owner to

whom any requisite notices may be delivered and on whom service of process may be obtained in matters arising out of the suretyship.

§11.4.5 If at any time the Owner determines that the Contractor's surety has experienced financial losses such that the Owner's ability to enforce the bond obligations is substantially at risk, the Contractor shall within thirty (30) days after notice from the Owner to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bonds shall be paid by the Contractor without recourse to the Owner. No further progress payments under the contract shall be deemed due or payable until the substitute or additional bonds shall have been furnished and accepted by the Owner; however, in such event, final payment shall be due and payable as provided in this Contract whether or not such additional bonds are obtained, to the extent that the project is complete and the Owner is not exposed to liability for payment bond claims."

§12.2.2 Add a new Section 12.2.2.4 to read as follows:

“§12.2.2.4 Upon request by the Owner or prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.”

§13.5 Interest Delete this section in its entirety and replace with the following:

“§13.5 Interest Payments due and unpaid under the Contract Documents shall bear interest from the date payment is overdue, at the rate provided by Section 2251.025, Texas Government Code.”

§13.6 Add a new Section 13.6 to read as follows:

“§13.6 Equal Opportunity

§13.6.1 The Contractor shall maintain policies of employment as follows:

§13.6.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

§13.6.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.”

§13.7 Add a new Section 13.7 to read as follows:

“§13.7 Immunities Contractor stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.”

§14.1.3 Delete the phrase “as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination” at the end of Section 14.1.3, and replace it with the phrase “through the date of termination.”

§14.2.1 Add the following subsections to Section §14.2.1:

“.5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor’s ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner’s ethics or conflict of interest policies; or

.7 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents.”

§14.3.2 Delete “shall” and replace it with “may” after the words “Contract Time”.

§14.4.1 Delete this section in its entirety and replace with the following:

“14.4.1 The Owner may, at any time, terminate the Contract, or any part or portion thereof, for the Owner’s convenience and without cause.”

§14.4.3 Delete this section in its entirety and replace with the following:

“§14.4.3 In the case of such termination for the Owner’s convenience, the Contractor shall only be entitled to receive payment for work properly executed through the date of termination.”

§14.4.4 Add a new Section 14.4.4 to read as follows:

“§14.4.4 Owner shall be entitled to delete or terminate any portion of the Contract bid as an alternate component, at any time at the Owner’s convenience and without cause. In the event of such termination, the Contractor shall only be entitled to receive payment for Work executed on the alternate component, if any, through the date of termination.”

§5.1.2 Time Limits on Claims Delete this section in its entirety.

§15.1.6 Claims for Additional Time Add new Sections 15.1.6.3, 15.1.6.4, and 15.1.6.5 to read as follows:

“**§15.1.6.3** 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. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§15.1.6.4 Extension of time for completion of the work on account of weather or other circumstances beyond the Contractor’s control will be subject to submission of verifiable data. Request for extension of time shall be submitted in writing with each Request for Payment. If the Contractor fails to submit a timely request, time extension will not be approved for the pay period.

§15.1.6.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of the Contractor or the Contractor’s Subcontractors or under the Contractor’s control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of the Owner and/or under the Owner’s control, but only to the extent that Substantial Completion of the Project is adjusted beyond the original Substantial Completion date. City Council approval shall be required for any extension of time. No damages shall be paid for delays. The Contractor shall only be entitled to time extensions per the terms of the Contract Documents.”

§15.3.3 Delete this section in its entirety.

§15.4 Arbitration Delete this section in its entirety.

EXECUTED this _____ day of _____, 2021.

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____