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March 4, 2021

Fort Smith Public Schools  
3205 Jenny Lind Road  
Fort Smith, AR 72901  
ATTN: Dr. Doug Brubaker

Corgan, Inc.  
401 North Houston St.  
Dallas, TX 75202  
ATTN: Eric Horstman

Re: Lack of a Vapor Barrier Under the Slab at the Peak Innovation Center and  
Resulting Moisture Problems  
HJ&T File No.: 30,411 / 4707.002

Dear All:

I represent Turn Key Construction Management, Inc. ("Turn Key"). The purpose of this letter is to ensure that my client is not blamed if the efforts of the owner and architect to address the moisture problems resulting from the lack of a vapor barrier under the slab are ultimately insufficient to adequately address the issue.

For purposes of this letter, the following terms shall have the following meanings:

- "Owner" shall mean the Fort Smith Public Schools ("FSPS").
- "Contractor" shall mean Turn Key Construction Management, Inc. ("Turn Key").
- "Architect" shall mean Corgan.
- "Engineer" shall mean Morrison-Shipleigh Engineers, Inc.
- "HPM" shall mean Hoar Program Management.

**“New Addition”** shall mean the addition to the existing structure located at 5900 Painter Lane, Fort Smith, Arkansas, which was constructed in the early 1980s.

**“Existing Structure”** shall mean the building located at 5900 Painter Lane, Fort Smith, Arkansas, as it existed prior to the construction of the New Addition.

**“Peak Innovation Center”** shall mean the Career Technical Center, a/k/a Peak Innovation Center located at 5900 Painter Lane, Fort Smith, Arkansas.

**“Contract Documents”, “Work”, “Project”, “Drawings”, and “Specifications”** shall each have the meaning given to those terms in the contracts executed by the owner and contractor.

### Description of the Problem

It has now been established that when the New Addition was constructed in the early 1980s, a vapor barrier was not installed beneath the concrete slab. It has also been confirmed that existing improvements, including without limitation a loading dock, were filled in during the course of construction of the New Addition. It has also been confirmed that the surrounding subsurface conditions effectively channel water beneath the structure.

The exact mechanism by which the surrounding subsurface conditions are channeling water under the structure is not known at this time. It has been hypothesized that the subsurface conditions are due to water percolating downward to an impermeable horizontal strata, and then flowing laterally along the surface of the impermeable strata, as opposed to the source of the subsurface water being a spring or simply the water table in the surrounding area.

Turn Key has repeatedly informed the Owner, the Architect, and HPM of the existence of the moisture problem and the subsurface conditions which have been encountered as construction has progressed. The Owner and Architect have recently retained the services of the Engineer to evaluate the problem. The Engineer has designed a system of french drains to divert subsurface water around the perimeter of the building. At this time, it is not known whether the french drain system will satisfactorily resolve the problem, and it will be impossible to know whether the french drain system will satisfactorily resolve the problem until after the french drain system has been completed and has been operational for a period of several weeks, if not longer. Assuming the french drain system successfully resolves the moisture problem, it is also unknown whether and to what extent the removal of the source of water underlying the slab will have an impact on the integrity of the slab. It is now known that the materials underlying the slab include expansive clay soils. If the french drain system functions as intended, the expensive clay soils will dry out and shrink, which may in turn result in movement and cracking of the slab to an unknown extent.

The Owner has instructed Turn Key to proceed with construction notwithstanding the fact that the moisture problems have not been fully and finally resolved. Turn Key has informed the Owner and Architect that proceeding forward with construction prior to verifying that the moisture problems have been completely and finally resolved may result in a need to uncover and correct work performed by Turn Key at the direction of the Owner, or if not corrected, may adversely impact the health and welfare of persons using the building in future years. Turn Key

has further informed the Owner and Architect that if construction is to proceed prior to a complete and final resolution of the moisture issue it would be wise to proceed forward in a manner which assumes the french drains will not resolve the moisture problem. Specifically, Turn Key has suggested that installing a negative vapor barrier in the areas where the walls will be located prior to commencement of construction of the walls would be appropriate. The Owner and Architect have rejected Turn Key's suggestions, and have instructed Turn Key to proceed forward notwithstanding the fact that the Owner and Architect do not know whether the french drain system will fully resolve the moisture problem.

#### Article 3 Notification and Article 15 Claim

Articles 3.2, 3.3 and 3.7 of the general conditions of the Contract Documents make it clear that the contractor is not responsible for the design. Rather, the Contractor is only responsible for building what the Owner and Architect tell the Contractor to build. At the same time, Articles 3.2, 3.3 and 3.7 impose on the Contractor a responsibility to speak up if the Contractor is concerned that the design agreed upon by the Owner and Architect may not achieve the Owner's desired result. To put it in layman's terms, "if you think it ain't gonna work, you need to tell us". Although Turn Key has provided the Owner and Architect with notice of its concerns on multiple occasions in multiple ways, in order to avoid all dispute, please consider this letter formal notification pursuant to Articles 3.2, 3.3 and 3.7 that Turn Key is concerned about the adequacy and sufficiency of the plans of the Owner, Architect, and Engineer to address the moisture problem, and that Turn Key is further concerned about the wisdom of proceeding forward with construction before it is certain that the moisture problem has been addressed and resolved, absent a contingency plan for addressing the moisture problems if it should subsequently be determined that the french drain system will not fully resolve the moisture problem.

This letter will further serve as a notice of claim pursuant to Article 15 of the contract, to the extent there is perceived to be any need to submit a notice of claim at this point. Specifically, Turn Key hereby gives notice of its claim that:

- (a) Turn Key shall not have any liability or responsibility in the event the proposed french drain system does not fully and finally resolve the moisture problem.
- (b) Turn Key will not be liable or responsible for any consequences of proceeding forward with construction prior to confirming that the moisture problem has been fully and finally resolved, and specifically shall not be liable or responsible in the event Turn Key is instructed to proceed with construction as if the moisture problem did not exist and it turns out that the proposed french drain system does not satisfactorily resolve the moisture problem.
- (c) Turn Key will not be liable or responsible for uncovering and correcting work necessitated by any failure or insufficiency of efforts to address the moisture issue.
- (d) Turn Key shall not have any liability or responsibility for third party claims which may result from any failure or insufficiency of efforts to address the moisture issue.

March 4, 2021

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Conclusion

My client looks forward to receiving your prompt response, confirming that my client has fulfilled its responsibilities under Articles 3.2, 3.3, 3.7, and 15 of the general conditions. My client also proposes that the parties execute a zero dollar change order for the purpose of documenting their respective responsibilities with respect to the moisture problems. A proposed zero dollar change order is enclosed with this letter.

Very truly yours,

HARDIN, JESSON & TERRY, PLC

A handwritten signature in black ink, appearing to read "Robert M. Honea", with a long horizontal flourish extending to the right.

Robert M. Honea

RMH / ah

Enclosure

cc: Marshall Ney (via email)  
Phil Walters (via email)



# AIA Document G701™ – 2017

## Change Order

**PROJECT:** *(Name and address)*  
Peak Innovation Interior/Site  
5900 Painter Lane

**CONTRACT INFORMATION:**  
Contract For: General Construction  
Date: October 14, 2020

**CHANGE ORDER INFORMATION:**  
Change Order Number: 001  
Date: 3/3/2021

**OWNER:** *(Name and address)*  
Fort Smith Public Schools  
3205 Jenny Lind Road  
Fort Smith, AR 72901

**ARCHITECT:** *(Name and address)*  
Corgan, Inc.  
401 North Houston Street  
Dallas, TX 75202

**CONTRACTOR:** *(Name and address)*  
Turn Key Construction Management  
3732 Rogers Avenue  
Fort Smith, AR 72903

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

- (a) Turn Key shall not have any liability or responsibility in the even the proposed french drain system does not fully resolve the moisture problem.
- (b) Turn Key will not be liable or responsible for any consequences of proceeding forward with construction prior to confirming that ht emoisture problem has been fully and finally resolved, and specifically shall not liable or responsible in the event Turn Key is instructed to proceed with construction as if the moisture problem did not exist and it turns out that the proposed french drain system does not satisfactorily resolve the moisture issue.
- (c) Turn Key will not be liable or responsible for uncovering and correcting work necessitated by any failure or insufficiency of efforts to address the moisture issue.
- (d) Turn Key shall not have any liability or responsibility for third party claims which may result from any failute or insufficiency of efforts to address the moisture issue.

The original Guaranteed Maximum Price was	\$ 7,774,012.85
The net change by previously authorized Change Orders	\$ 0.00
The Guaranteed Maximum Price prior to this Change Order was	\$ 7,774,012.85
The Guaranteed Maximum Price will be unchanged by this Change Order in the amount of	\$ 0.00
The new Guaranteed Maximum Price including this Change Order will be	\$ 7,774,012.85

The Contract Time will be unchanged by Zero (0) days.  
The new date of Substantial Completion will be

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

_____ ARCHITECT <i>(Firm name)</i>	_____ CONTRACTOR <i>(Firm name)</i>	_____ OWNER <i>(Firm name)</i>
_____ SIGNATURE	_____ SIGNATURE	_____ SIGNATURE
_____ PRINTED NAME AND TITLE	_____ PRINTED NAME AND TITLE	_____ PRINTED NAME AND TITLE
_____ DATE	_____ DATE	_____ DATE