

# AIA<sup>®</sup> Document B101<sup>T</sup> – 2017

## *Standard Form of Agreement Between Owner and Architect*

AGREEMENT made as of the 15th day of November in the year Two Thousand Eighteen  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

Denton Independent School District  
1307 North Locust Street  
Denton, TX 76201

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

Stantec Architecture Inc.  
5717 Legacy Drive, Suite 250  
Piano, TX 75024

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

Woodrow Wilson Elementary School  
1306 E. Windsor Drive  
Denton, TX 76209

The Owner and Architect 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.

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**ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1. The project consists of the replacement of the Woodrow Wilson elementary school with a new building [inclusive of a storm shelter] to be constructed on the current campus. The overall budget is 42,629,638 as set in the 2018 Bond Program to include, but not limited to, the cost of construction, furnishings and equipment, and all associated fees and miscellaneous costs.

§ 4.1.1 The Owner’s program for the Project:  
*(Paragraph deleted)*  
To be determined as part of the planning process between Denton ISD and Stantec Architecture Inc.

§ 1.1.2 The Project’s physical characteristics:  
*(Paragraph deleted)*  
To be determined as part of the planning process between Denton ISD and Stantec Architecture Inc.

§ 4.1.3 The Owner’s budget for the Cost of the Work, as defined in Section 6.1:  
*(Paragraph deleted)*  
An initial budget of 27,000,000 which will be evaluated and adjusted accordingly as approved and directed by Denton ISD at the end of each project phase.

§ 1.1.4 The Owner’s anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:

Unknown at the time of execution

.2 Construction commencement date:

The commencement of construction date shall be determined between the Owner, Architect, and Construction Manager at Risk.

.3 Substantial Completion date or dates:

The substantial completion date and the Final Completion Date shall be determined between the Owner, Architect, and Construction Manager at Risk

.4 Other milestone dates:

Unknown at the time of execution

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
Construction Manager at Risk

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
To provide sustainable design initiatives based the prototype design implemented at Union Park Elementary School

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™—2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204—2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204—2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information)

Paul Andress, Executive Director of Operations  
Denton Independent School District  
1307 North Locust Street  
Denton, Texas 76201

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

Garry Ryan, Executive Manager of Construction Planning and Growth  
Denton Independent School District  
1307 North Locust Street  
Denton, Texas 76201

§ 1.1.9 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

To be determined

.2 Surveying Services

To be Determined

- .3 Other, if any:  
(List any other consultants and contractors retained by the Owner.)

To be determined

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

Terry N. Hoyle, Principal  
Michael L. Elmore, Senior Project Manager  
Stantec Architecture Inc.  
5717 Legacy Drive, Suite 250  
Plano, Texas 75024

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
(List name, legal status, address, and other contact information.)

§ 4.I.I.J. Consultants retained under Basic Services:

- .1 Structural Engineer:

Stantec Architecture Inc.

- .2 Mechanical Engineer:

Stantec Architecture Inc.

- .3 Electrical Engineer:

Stantec Architecture Inc.

§ 1.1.14.2 Consultants retained under Supplemental Services:

- .1 Civil Engineer

To be determined

- .3 Acoustic I**

To be determined

- .3 Landscaping

Ramsey Landscape Architects

§ 1.1.12 Other Initial Information on which the Agreement is based:

NA

§ L2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect may mutually adjust the Architect's services, and the Architect's compensation in writing as deemed appropriate. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 In the event the parties decide to use building information modeling, the parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will cooperate to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in the Digital Project Execution Plan shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Standard of Care ordinarily exercised by members of the same profession currently practicing in the same or similar locality under the same or similar circumstances as of the date of the performance of the services shall apply to all obligations of the Architect under this Agreement. In compliance with 19 Texas Administrative Code ("TAC") Section 61.1036, Architect shall certify that he has reviewed the standards contained in the regulation and used the professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the construction documents. The Architect's or engineer's seal and signature on the Construction Documents shall indicate certification of compliance with this section. "Certify" means that the Architect has reviewed the standards contained in Texas Education Agency rules and used the professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the Construction Documents.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The representative shall be a registered professional architect licensed to practice in the state of Texas.

§ 2.4 Except with the Owner's knowledge and prior written consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

## § 2.5 INSURANCE

Prior to performing Architect's services under this Agreement, Architect shall procure, maintain and provide insurance certificates, policies and endorsements, in at least the following amounts, to protect Architect and Owner from claims arising out of the performance of the Architect's services under this Agreement and caused by any error, omission, negligent act or omission, or design defect by Architect, such insurance to be in a form approved by the Owner, with an effective date prior to the beginning date of design. Such insurance shall be written on an occurrence basis, if available, and on a claims-made basis, if occurrence basis insurance is not available. Architect shall maintain its insurance in full force and effect and uninterrupted during the term of this Agreement and after the completion of services under this Agreement until the completion of any applicable statute of limitations, such period to be not less than one year from Final Completion of all construction of this Project as to workers compensation, two years from the Final Completion of all construction of this Project as to comprehensive general liability, and comprehensive automobile liability, and not less than ten years from the Final Completion of all construction of this Project (or twelve years, as allowed by Texas Civil Practice and Remedies Code § 16.008), as to errors and omissions insurance. Architect shall furnish to Owner insurance certificates, policies and endorsements upon request at any time. Architect shall name Owner as an additional insured under his policies for comprehensive general liability and comprehensive automotive liability. Insurance shall be obtained from companies licensed to do business in the State of Texas by the Texas Department of Insurance. The policies shall include a waiver of subrogation in favor of the Owner. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Architect is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Architect shall provide

written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§3.5.) Commercial General Liability with policy limits of not less than One Million Dollars (\$ ,000,000 ) for each occurrence and Two Million Dollars (\$ 2,000,000 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000 ) combined single limit for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.4.1 Texas Workers Compensation Insurance Because Architect will be performing services on-site, a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Department of Insurance (TDI), or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the Architect or his employees providing services on a Project is required for the duration of the Project.

- .1 Duration of the Project includes the time from the beginning of the Work on the Project until the Architect's Work on the Project has been completed and accepted by the Owner.
- .2 Persons providing services on the Project include all persons or entities performing all or part of the services the Architect has undertaken to perform on the Project, regardless of whether that person contracted directly with the Architect and regardless of whether that person has employees. This includes, without limitation, independent Construction Manager at Risks, subConstruction Manager at Risks, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.
- .3 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- .4 The Architect 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 § 401.011(44) for all employees of the Architect providing services on the Project for the duration of the Project.
- .5 The Architect must provide a certificate of coverage to the Owner prior to being awarded the contract.
- .6 If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- .7 The Architect shall obtain from each person providing services on a project, and provide to the Owner:

- .1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2 No later than seven days after receipt by the Architect, 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.
- .8 The Architect shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- .9 The Architect shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Architect knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .10 The Architect shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, 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.
- .11 The Architect 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 § 401.011(44) for all of its employees providing services on the Project for the duration of the Project;
  - .2 Provide to the Architect, 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 Architect, 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 Architect:
    - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
    - .2 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 in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage for any person providing services on the Project; and
  - .7 Contractually require each person with whom it contracts to perform as required

by items 1-7, with the certificates of coverage to be provided to the person for whom they are providing services.

- .12 By signing this contract or providing or causing to be provided a certificate of coverage, the Architect is representing to the Owner that all employees of the Architect 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 Texas Department of Insurance's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Architect to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .13 The Architect's failure to comply with any of these provisions is a breach of contract by the Architect that entitles the Owner to declare the contract void if the Architect does not remedy the breach within ten days after receipt of notice of breach from the Owner.
- .14 The coverage requirement 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.

28 TAC §110.110(i).

§ 2.5.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars (\$ 500,000 ) each accident, Five Hundred Thousand Dollars (\$ 500,000 ) each employee, and Five Hundred Thousand (\$ 500,000 ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) per claim and Two Million Dollars (\$ 2,000,000 ) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.5.9 **INDEMNITY** Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subConstruction Manager at Risks, for Construction Documents which are sufficient for Owner to complete the construction of the Project, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any defect in the Construction Documents prepared by Architect, its agents, employees, subConstruction Manager at Risks, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. In this connection, ARCHITECT SHALL, **DURING THE CONSTRUCTION OF SAID PROJECT AND FOR A PERIOD OF TEN YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL TWO YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 16.008(C) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEY'S FEES, ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY OR ALL**



PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE OWNER, CONSTRUCTION MANAGER, ARCHITECT, OR SUBCONSTRUCTION MANAGER AT RISKS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, WHICH MAY DIRECTLY ARISE FROM OR BE CONNECTED WITH ANY ACT OF NEGLIGENCE ON THE PART OF ARCHITECT OR ANY BREACH OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT; provided and except, however, that this indemnification provision shall not be construed as requiring Architect to indemnify or hold Owner harmless for any loss, damage, liability, or expense on account of damaged property or injuries, including death to any person, which may arise out of or may be caused by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Architect.

#### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article and include usual and customary architectural services, including but not limited to structural, mechanical, plumbing, civil and electrical engineering services, architectural interior design, audio-visual, data, and telecommunications and technology design and distribution, traffic engineering, kitchen and food service equipment design, site feasibility design, programming for new schools, security planning services, graphics/way finding planning services, unless otherwise approved by Owner, accessibility services, professional renderings, design and construction database management, Texas Commission on Environmental Quality compliance services, if appropriate, and internal auditing and accounting services necessary for Architect to fulfill Architect's responsibilities under this Agreement and as necessary to complete the Project. Architect shall provide all plans and specifications for all site development necessary for the Project, which shall include locating any building on-site, and developing all plans and specifications for site drainage, parking, landscaping, walkways, irrigation, playgrounds, staging areas and portable buildings and accompanying infrastructure, when appropriate.

§ 3.1.1 The Architect shall perform and manage the Architect's services in accordance with this Agreement, and the General conditions of the Contract with Construction Manager at Risk, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner through the issuance of progress reports to Owner and Construction Manager at Risk. The Architect shall not be relieved of any obligation to perform in accordance with the standard of care applicable to licensed architects in the State of Texas under the same or similar circumstances, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, the accuracy and completeness of services and information furnished by the Owner in accordance with 19 TAC 61.1036, except to the extent that such is unreasonable or nonsensical information. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services, including the date of Architect's design services and the completion of documentation required by the Architect. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion and Final Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's and Construction Manager at Risk's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. The schedule shall also include commencement of construction, time sufficiently to achieve Owner's proposed dates of Substantial and Final completion, and within Owner's budget. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. The Architect shall assist the Construction Manager at Risk in the preparation and periodic update of the Project schedule.

§ 3.4.4 The Architect shall review, and be responsible for compliance with, laws, codes, and regulations applicable to the Architect's services, including, without limitation, school facility standards found in 19 TAC Section 61.1036, and Texas Health and Safety Code Chapter 341. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies,

regulations and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and fraud and financial impropriety. Architect shall certify that he has reviewed the standards contained in 19 TAC Section 61.1036, and used the best professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the Construction Documents. Architect shall also certify that the Construction Documents conform to the provisions of 19 TAC Section 61.1036, except as indicated on the certification. Architect's signature and seal on the Construction Documents shall certify compliance. Architect shall perform a building code search under applicable regulations that may influence the Project, and shall certify that the design has been researched before it is final, as required by 19 TAC Section 61.1036(c). Architect shall also certify that the facilities have been designed according to the provisions of 19 TAC Section 61.1036, based on the educational program, long-range school facility plan, educational specifications, building code specifications, and all documented changes to the Construction Documents provided by the District, as required by 19 TAC Section 61.1036. Architect shall complete the Texas Education Agency's Certification of Project Compliance, located at [www.tea.state.tx.us/school.finance/facilities/cert 2004.pdf](http://www.tea.state.tx.us/school.finance/facilities/cert%2004.pdf). In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the practice of architecture in the State of Texas and applicable law. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulation, and all applicable requirements or standards of the American National Standards Institute. If Owner is using instructional facilities allotment funds for the Project which are allotted to Owner under Subchapter A of Chapter 46 of the Texas Education Code, then Architect shall consider, in the design of the Project, the security criteria developed by the Texas School Safety Center under Texas Education Code Section 37.2051. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards which become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion shall be addressed by the Architect, and shall be compensated as an Additional Service pursuant to Section 3.1.

**§ 3.1.5** The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall comply with applicable design requirements imposed by those authorities and entities.

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction ("Regulatory Agencies") over the Project. The Owner acknowledges that some zoning and code requirements are subject to interpretation. The Architect will review such interpretations with Regulatory Agencies. The Regulatory Agencies may require changes to the Documents that may result in additional costs to the Project. The Architect may reasonably request Additional Services to make these changes which will require the Owner's approval in advance, which shall not be unreasonably withheld.

### **§ 3.2 Schematic Design Phase Services**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review and comply with laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project and to ascertain that Architects are consistent with the requirements of the Project. The Architect shall notify the Owner in writing of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its written preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach a written understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.I The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider and consult with the Construction Manager at Risk the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements outlined in the Agreement. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget. Owner shall consider Architect's recommendations, but shall decide, in its discretion, how to proceed.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work necessitated by Architect's redesign of the Project to comply with Owner's budget, and request the Owner's approval.

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. Construction Documents shall also include all Drawings, specifications, submittals, transmittals, deliverables, instructions to Construction Manager at Risk, including those in

electronic form, which shall set forth in detail the requirements for construction of the Project. The Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAX Section 61.1036, and the standards set forth in AIA Document B201-2007, as amended. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and shall comply with all applicable law, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager at Risk will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. As required by Texas Education Agency rule 19TAC Section 61.1036, Architect shall perform a building code search under applicable regulations that may influence the Project and shall certify that the design has been researched and satisfies the applicable building codes. The Architect's or engineer's seal and signature on the Construction Documents shall indicate certification of compliance with this section. "Certify" means that the Architect has reviewed the standards contained in Texas Education Agency rules and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) competitive bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Construction Manager at Risk; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect, after consultation with the Owner, shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding or proposal requirements and sample forms. As required by law, all bid or proposal documents and contracts shall include, if applicable, all required information related to trench excavation safety. Texas Health and Safety Code Section 756.021 *et seq.* All playground equipment designed by Architect, if any, shall comply with each applicable provision of ASTM Standard F1487-07a1, "Consumer Safety Performance Specifications for Playground Equipment for Public Use", published by ASTM International; have no unshielded horizontal bare metal platforms; and be accessible to individuals with disabilities in accordance with the Americans with Disabilities Act Accessibility Guidelines. All playground surfacing designed by Architect shall comply with each applicable provision of ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing" published by ASTM International, and paths shall be designed for accessibility by individuals with disabilities. Texas Health and Safety Code Section 756.061 *et seq.* All outdoor lighting fixtures designed by Architect, if any, shall meet the statutory energy conservation and light pollution standards established by the Texas Department of State Health Services. Texas Government Code Chapter 425. All ventilation and indoor air quality systems designed by Architect shall meet the indoor air quality voluntary guidelines established by the Texas Department of State Health Services. Texas Health and Safety Code Chapter 385. Architect shall also comply with 15 U.S.C. § 8003 (drain cover standards) if applicable. If applicable, Architect shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing and painting work in schools built before 1978 that involves lead-based paint.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work and shall comply with section 3.3.2 in the event the Cost of the Work exceeds Owner's budget for the Cost of the Work..

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective Construction Manager at Risk. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.6.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, when requested by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Competitive Sealed Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents, as described in section 3.4.1, and the Owner/Construction Manager at Risk Agreement, conditions of the Contract, as may be amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract, other documents listed in the Owner/Construction Manager at Risk Agreement and Modifications issued after execution of the Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to Construction Manager at Risk, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective Construction Manager at Risk;
- .3 preparing responses to questions from prospective Construction Manager at Risk and providing clarifications and interpretations of the Proposal Documents to the prospective Construction Manager at Risk in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, when requested by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective Construction Manager at Risk.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager at Risk as set forth below and in AIA Document A201\*\*—2017, General Conditions of the Contract for Construction, as may be amended.

§ 3.6.1.2 The Architect, as the Owner's representative, shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, quantity takeoffs, coordination with Construction Manager at Risk's subcontract work, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager at Risk's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager at Risk or of any other persons or entities performing portions of the Work. Any services by Architect made necessary due to Architect's failure to discover a construction defect or nonconforming Work shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design error or omissions shall be at no additional cost to Owner.

§ 3.6.1.3 jobsite Safety. Neither the professional activities of the Architect, nor the presence of the Architect, or its employees and consultants at a construction/project site, shall relieve the Construction Manager at Risk of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The Architect and its personnel have no authority to exercise any control over Construction Manager at Risk or its employees in connection with the work, nor over any health or safety programs or procedures.

The Owner agrees that the Construction Manager at Risk shall be solely responsible for jobsite safety and agrees that this intent shall be carried out in the Owner's contract with the Construction Manager at Risk. The Owner also agrees to require the Construction Manager at Risk to indemnify the Owner, the Architect, and the Architect's Consultants and to make the Architect and the Architect's Consultants additional insureds under the Construction Manager at Risk's policies of general liability insurance, as required in section 5.16 of this Agreement.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates at the earlier of the date the Architect issues the final Certificate for Payment or sixty (60) days after the date of Substantial Completion of the Work. Beyond the sixty-day period described herein, the Owner will require that any Construction Manager at Risk that has not completed its contractual obligations and applied for final payment shall be responsible for any additional architectural and engineering fees incurred by the Owner as a result of Construction Manager at Risk's failure to timely fulfill its contractual obligations, and the Owner shall include this language as part of the Contract Documents.

**§ 3.6.2 Evaluations of the Work**

§ 3.6.2.1 The Architect, as the Owner's representative, shall visit the site no less than once a week and at other intervals appropriate to the stage of construction, (1) to observe the progress, quantity and quality of the Work completed, (2) to reject any observed non-conforming Work, (3) to become generally familiar with the progress and quality of the portion of the Work completed, (4) to guard the Owner against defects and deficiencies in the Work, (5) and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents, and on time, and (6) to document progress of the Work, in written and photographic form. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect. Architect shall inform Owner's Executive Director of Operations and Director of Construction of the dates Architect intends to appear at the job site. Architect will provide on-site inspections prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect, and will assist Owner in development of Requests for Proposals or other solicitations for any required testing services approved by Owner. On the basis of the site visits, observations and inspections by Architect, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and shall promptly orally report to the Owner and the Construction Manager at Risk (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager at Risk, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect may recommend that the Owner reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect notify the Owner of the necessity to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. Architect shall promptly notify Owner and Construction Manager at Risk, orally and in writing, of any observed fault or defect in the Project or nonconformance with Construction Documents or Contract Documents, upon discovery of the defect or nonconformance, and shall notify Owner of all corrective actions taken or recommended. The testing or inspections required by this Section are subject to the requirements of Chapter 44 of the Texas Education Code.

§ 3.6.2.3 The Architect shall interpret, and advise the Owner regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager at Risk. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and recommendations of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and recommendations, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager at Risk, and shall not be liable for results of interpretations or recommendations rendered in good faith. The Owner's decisions on matters relating to aesthetic effect shall be final.

§ 3.6.2.5 The Architect shall promptly render initial written recommendations or interpretations on Claims, disputes or other matter in question between the Owner and Construction Manager at Risk as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Construction Manager at Risk

§ 3.6.3.1 The Architect shall inspect the progress of the Work, carefully evaluate, review and certify the amounts due the Construction Manager at Risk and shall sign and issue certificates in such amounts, if such amounts are valid, correct and deemed due and owing, in Architect's professional opinion, within seven (7) days of receipt of Construction Manager at Risk's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's Inspections, observations and/or evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager at Risk's Application for Payment, that, in the Architect's professional opinion and to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Construction Documents and the Contract Documents, and that the Architect has carefully evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. The foregoing representations are subject to (1) an inspection and evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed in writing by the Architect to the Owner.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect, except as required by this agreement 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 Construction Manager at Risk and suppliers and other data unless requested by the Owner to substantiate the Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the Construction Manager at Risk has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain all records of the Applications and Certificates for Payment.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall critically review the Construction Manager at Risk's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with such reasonable promptness so as to cause no delay in the Work or in the activities of the Owner or Construction Manager at Risk while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager at Risk's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents, and all laws, statutes, codes, regulations, ordinances, and requirements applicable to Architect's design services. Review of such submittals is not for the purpose of determining the general accuracy and completeness of other information such as dimensions, quantities, and substantiating instructions for the installation of equipment or systems. Specific dimensions, quantities, installation and performance of equipment and systems remain the Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or 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. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Construction Manager at Risk to come into compliance. The Architect shall promptly report in writing to the Construction Manager at Risk and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples. The Architect is not

authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials, or mechanical equipment without Owner's prior written consent.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager at Risk to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager at Risk's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce, distribute and issue supplemental Drawings and Specifications in response to the requests for information by the Construction Manager at Risk..

§ 3.6.4.5 The Architect shall maintain all records of submittals and copies of submittals supplied by the Construction Manager at Risk in accordance with the requirements of the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.6.1 The Architect shall timely review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents, accompanied by all supporting documentation with prior written notice to the Owner. The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified. Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain all records relative to changes in the Work.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

1. conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
2. issue Certificates of Substantial Completion;
3. forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager at Risk; and,
4. issue a Certificate of Final Completion, a Certificate of Project Compliance as described in section 3.1.4 herein, and a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Construction Documents and the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager at Risk of Work to be completed or corrected. The Architect's inspections shall continue until Final Completion is achieved.

§ 3.6.6.3 When Substantial Completion has been achieved, and again when the Work is found to be finally complete, the Architect shall inform the Owner in writing about the balance of the Contract Sum remaining to be paid the



Construction Manager at Risk, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager at Risk: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of claims or liens, or bonds indemnifying the Owner against claims or liens; and (3) any other documentation required of the Construction Manager at Risk under the Contract Documents.

§ 3.6.6.5 Prior to the expiration of six (6) months from the date of Substantial Completion, and again, prior to the expiration often (10) months from the date of Substantial Completion, and upon request of the Owner at any other time within one (1) year from the date of Substantial Completion, the Architect shall, without additional compensation, inspect the Work and conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 OPTIONAL AND ADDITIONAL SERVICES

§ 4.1 Optional Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Optional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Optional Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Optional Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§4.1.1.1 Programming [Basic Services]	Owner/Architect
§4.1.1.2 Multiple preliminary designs [Basic Services]	Not Provided
§4.1.1.3 Measured drawings	Not Applicable
§ 4.1.1.4 Existing facilities surveys	Not Applicable
§4.1.1.5 Site evaluation and planning [Basic Services]	Architect
§4.1.1.6 Building Information Model management responsibilities [Basic Services]	Architect
§4.1.1.7 Development of Building Information Models for post construction use	Not Provided
<b>§ 4.1.1.8</b> Civil engineering	Architect
§4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design [Basic Services]	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Owner’s CM
§ 4.1.1.13 Full time on-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings [Basic Services]	Architect
§ 4.1.1.16 As-constructed record drawings	Owner’s CM
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided

Optional Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.4.20 Architect's coordination with TD Industries for access, lighting and HVAC controls only [Basic Services]	Not Provided
<i>(Row deleted)</i>	
§ 4.1.1.21 Telecommunications/data design [Basic Services]	Architect [Backbone Only]
§ 4.1.1.22 Security evaluation and planning [Basic Services]	Architect
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Applicable
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Third Part Tornado Shelter Review	Owner
<i>(Row deleted)</i>	
§ 4.1.4.31 Acoustical Design Architect as required	Not Provided

§ 4.1.2 Description of Optional Services

§ 4.1.2.1 A description of each Optional Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Optional Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Optional Services.)*

When the Owner requires Constructed Record Drawings, the Owner will require the Construction Manager at Risk to maintain and update a marked-up set of the Construction Drawings reflecting changes made to the Project during construction and to provide the marked-up Construction Drawings to the Architect. The Architect will prepare Constructed Record Drawings for the Owner, relying on the marked-up construction Drawings supplied by the Contractor. It is understood that the information in the marked-up set will not be independently verified by the Architect and that the Constructed Record Drawings will not be sealed or warranted by the Architect as accurate. The Architect is entitled to note in the drawings that neither the Architect nor the Owner are warranting their accuracy, and any user of the Constructed Record Drawings has its own obligation to independently verify the information contained on them.

§ 4.1.2.1.1 Civil Engineering. The Architect shall provide all Owner-required onsite and offsite civil engineering related to grading, paving, retaining walls, and utilities (storm water, sanitary, fire protection, and domestic water).

§ 4.1.2.1.2 Landscape Design. The Architect shall provide all Owner-required planting, natural turf, and irrigation.

**§ 4.1.2.1.3 Acoustical Design. Should Acoustical design service be required, Stantec Architect Inc. shall identify the services and locations where the design is to be provided.**

§ 4.1.2.2 A description of each Optional Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

NA

*(Paragraph deleted)*

**§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement, if agreed by Owner in writing, prior to commencement of the services. In the absence of Owner's prior agreement in writing, the Owner shall have no obligation to pay for any Additional Services performed. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 may result in either an upward or downward adjustment in the compensation due to an appropriate adjustment in the Architect's schedule. The Architect shall not be entitled to an upward adjustment in compensation or Reimbursable Expenses due to the fault or error of the Architect or Architect's consultants, but may be subject to a downward adjustment in compensation.

§4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method after Construction Documents are complete, except when said changes are due to Architect's error or OMISSIONS;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Construction Documents necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Construction Documents when those Construction Documents were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

*(Paragraphs deleted)*

Evaluation of the qualifications of entities providing bids or proposals;

- .6 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .7 Required by municipal or other local building codes, fire, safety, and other inspectors after the municipality or other authority has issued a building permit or otherwise approved drawings, specifications or other documents as conforming with applicable municipal or other local regulations.

Services not listed above shall be considered Basic Services.

**§ 4.2.2**

*(Paragraphs deleted)*

The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager at Risk
- .2 Minimum once per week visits to the site by the Architect during construction
- .3 Two (2) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspection for any portion of the Work to determine final completion.

*(Paragraphs deleted)*

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. Such Additional Services will be reflected in the Architect's staff time records, in addition to time spent in excess of items 4.2.3.1 through 4.2.3.4.

§ 4.2.5 If the services covered by this Agreement have not been completed within ninety (90) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, when required, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; **systems**; and site requirements. The Owner shall furnish the educational program and educational specifications approved by Owner's Board of Trustees, per 19 TAC Section 61.1036. The Architect shall review the program and specifications furnished by Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with Owner. Architect shall include all components of Owner's program in the Project, unless specific written agreement to delete a component is received from Owner.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect in writing. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. The Owner's designated representative is Paul Address, Executive Director of Operations. Owner represents and acknowledges that Owner's Designated Representative is qualified to and shall carry out the duties and responsibilities of Owner's Designated Representative. The Owner's Designated Representative is authorized to act on the Owner's behalf with respect to the project and the Architect is entitled to rely on the decisions and instructions of the Owner's Designated Representative. The Owner's Designated Representative shall be reasonably available and present at scheduled meetings in order to provide information and decisions in a timely manner so as to not negatively impact the Architect's schedule and/or the construction schedule. In the event that the Owner's Designated Representative fails to carry out his/her duties and/or changes a previous decision or instruction and/or fails to inform the Architect of the decision in a timely manner and such failure causes the Architect to incur costs, including but not limited to redoing work, the Owner shall reimburse the Architect for all time spent on the rework on an hourly basis.

§ 5.4 The Owner shall furnish surveys it has in its possession and which describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Optional Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204\*—2017, Sustainable Projects Exhibit.

§5.8 The Owner shall coordinate the services of its own Consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect or Owner requests such services are approved by Owner and are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided. Architect remains obligated to thoroughly review any and all documentation to insure such composts with the requirements of this Agreement, and shall notify Owner, in writing, of any failure of the documents to comport with professional standards and this Agreement.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.40 Unless otherwise provided in the Agreement the Owner may, at its sole discretion, furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Construction Documents. Architect acknowledges that he is the leader of the design team and is responsible for the design of the Project. Therefore, Owner shall be entitled to rely on the Construction Documents, services and information furnished by the Architect. This Section shall not relieve Architect of any responsibility or liability for the performance of Architect's contracted services on the Project.

§ 5.12 The Owner shall include the Architect in all communications with the Construction Manager at Risk that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager at Risk otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager at Risk to provide the Architect and Owner access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

§ 5.16. The Owner shall include in its contract with the Construction Manager the following provision:

"The Construction Manager at Risk, to the extent permissible under law, shall hold harmless, indemnify and defend the Owner and its representatives, including the Architect and the Architect's Consultants and their employees, from and against all costs, suits and damages arising out of the Construction Manager at Risk's Work, including claims of breach of contract, breach of warranty, negligence, misrepresentation, or other tort, or otherwise."

"The Construction Manager at Risk shall obtain an endorsement to its insurance policies naming the Owner and its representatives, including the Architect and the Architect's Consultants and their employees, as additional insureds on the Construction Manager at Risk's General Liability and Excess or Umbrella Liability Insurance, and the insurance shall be primary coverage for the additional insureds. The Construction Manager at Risk shall provide to the Architect a copy of the endorsement and the certificate of insurance protecting the Architect and the Architect's Consultants."

"In claims against any person or entity indemnified under this section by an employee of the Construction Manager at Risk, its subcontractor(s), anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Construction Manager at Risk or its subcontractor(s) under workers' compensation acts, disability benefit acts or other employee benefit acts."

§ 5.41 The services, information, surveys and reports required by Sections 5.4 thru 5.10 shall be furnished at the Owner's expense, and the Architect complying with their Professional Standards and after their critical review of such may rely up on the accuracy and completeness thereof.

#### ARTICLE 6 COST OF THE WORK

§ G.1 For purposes of the Architect's compensation, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and constructed by the Owner and shall include Construction Manager at Risk's general conditions costs, overhead and profit. To the extent that the Project is not completed or constructed, the Cost of the Work shall include the estimated cost to the Owner of all elements of the Project designed by the Architect and accepted by the Owner but not constructed by the Owner. The Cost of the Work does not include elements of the Project designed by Architect but not accepted by the Owner. To be deemed accepted by the Owner a **construction element of the Project requested by the Owner must first be analyzed by the Architect and who shall prepare an estimation of the costs of construction of such element, and timely submit all such information to the Owner for consideration by the Owner's Board of Trustees. It is only after Owner's Board of Trustees has considered and approved Architect's timely submitted information regarding the construction element and Architect's estimate of the costs that such element shall be considered accepted by Owner.** The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work alternate designs of the Architect that are not constructed or accepted by the Owner, or other costs that are the responsibility of the Owner. For purposes of the Architect's compensation, the Cost of the Work shall not include the fee for management and supervision of construction or installation provided by a separate Owner representative. For purposes of the Architect's compensation, the Cost of the Work shall include the Owner's cost of labor and materials furnished by the Owner in constructing portions of the Project, if the Work is designed and construction is overseen by Architect. For purposes of the Architect's compensation, the Cost of the Work shall only include the Owner's cost of fixtures, furnishing and equipment designed by the Architect, at the request of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as allowed under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Construction Manager at Risk's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 The Architect, and the Construction Manager at Risk, if applicable, shall prepare a preliminary estimate of the Cost of the Work, which shall incorporate Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and, if applicable, the Construction Manager at Risk, shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with Owner and, if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the

program and scope of the Project with the prior consent of the Owner's Board of Trustees; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work may be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget. Owner shall consider Architect's recommendations, but shall decide, in its discretion, what adjustments to make.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal prior to the commencement of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4 or 6.6.6, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions or because of inaccuracy of a cost estimate provided by the Owner or its consultants, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents before commencement of the Work shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Construction Documents, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Construction Documents, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, but the copyright shall jointly belong to both Architect and Owner, and Architect and Architect's consultants shall not use the Construction Documents on another project without Owner's prior written permission. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 1.3 The Architect grants to the Owner a nonexclusive, irrevocable, royalty-free license to use, reproduce and distribute the Architect's Construction Documents solely and exclusively for purposes of constructing, using, maintaining, altering, renovating, and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager at Risk, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate Construction Manager at Risk, to reproduce applicable portions of the Construction Documents, subject to any protocols established

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pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. This nonexclusive license shall survive termination of this Agreement, and Architect hereby grants permission to Owner to use the Construction Documents for future renovations, repairs, additions or alterations to the Project. The Architect shall retain a permanent, irrevocable, non-exclusive, royalty-free license to use any such documents, concept, product or process produced by or resulting from the Services rendered by the Architect.

§ 7.3.1 The Construction Documents may be used as a prototype for other facilities by the Owner. The Owner may elect to use the Architect to perform the site adaptation and other professional services involved in reuse of the Construction Documents. If so, then the Architect agrees to perform the work for an additional compensation that will fairly compensate the Architect and its consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Agreement. If the Owner elects to employ a different architect to perform the site adaptation and other professional services involved in reuse of the Construction Documents, then that architect may use Architect's consultants on the same basis that the Architect would have been entitled to use them for the work on the reuse of the Construction Documents, and such architect will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the Construction Documents, approved shop drawings and calculations, and "as built" in performing its work. The Architect will not be responsible for errors and omissions of a subsequent architect. The Architect shall endeavor to commit its consultants to the terms of this Section and shall notify Owner in writing if Architect is unable to do so. In the event of termination of this Agreement for any reason, the Owner shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

§ 7.3.2 In the event the Owner uses the Construction Documents without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.3.3 The Owner shall be free to use said Construction Documents for Owner's purposes, but shall not assign, delegate, sublicense, pledge or otherwise transfer said Construction Documents, including any underlying copyright or license granted herein, to another party for use by any party other than on behalf of Owner. The Owner may use the Construction Documents for future additions or alterations to this Project or for other projects constructed by Owner. The Owner's privilege to use said Construction Documents extends to their use with and by other architects on Owner's projects only.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. Neither Owner nor Architect shall assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Owner and Architect. Any unauthorized use of the Instruments of Service shall be at the Architect's or Owner's sole.

§ 7.5 The Owner and the Architect agree that the attached Exhibit B, Agreement for Delivery of Documents in Electronic Form, shall form part of this Agreement.

§ 7.6 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, in accordance with the terms of this Agreement and in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by Texas law, but in any case not more than 12 years after the date of Final Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

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§ 8.1.1.1 All claims, disputes, or matters in controversy between Owner and Architect shall be discussed by the parties in good faith, in an attempt to resolve the claim, dispute, or controversy. In the event such claim, dispute, or controversy cannot be resolved by good faith discussion between the parties, any such claim, dispute or matter in controversy shall be subject to the Owner's grievance policy [GF (LEGAL) and (LOCAL) or other policy as designated by Owner] and the timelines established in the policy. If Architect is dissatisfied with the outcome of Owner's grievance process, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 8.1.1.2 Architect stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and/or 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.

§ 8.1.2 Only to the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the Construction Manager at Risk, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201—2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager at risk, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect waives consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages Owner's termination of this Agreement. In any litigation arising under this Agreement, the types and amounts of damages recoverable shall be subject to subchapter 1 of the Texas Local Government Code, Chapter 271.

§ 8.1.4 Betterment. In the event of a claim against the Architect, the Architect shall not be responsible for the costs the Owner would have incurred originally had the services been performed in accordance with the applicable professional standard of care, or for costs of betterments, upgrades or additional enhancement to the value of the Project.

## § 8.2 Mediation

The Owner and Architect agree that any dispute relating to the services of the Architect and its Consultants will be decided through direct negotiations between the parties involved prior to mediation, as described in this Article 8.

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other judicial pleading but, in such event, mediation shall proceed in advance of litigation, 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. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas. The mediation shall be held within the geographical boundaries of Owner, unless Owner agrees otherwise.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

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USer Notes:

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(Check the appropriate box.)

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Litigation in a court of competent jurisdiction

Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Intentionally deleted

(Paragraphs deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments to the Architect for undisputed sums in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination if not cured after ten (10) days' written notice to Owner of the delinquency or, at the Architect's option, cause for suspension of performance of services under this Agreement. Architect shall be allowed to suspend Architect's performance of services under this Agreement for nonpayment by Owner only after the provision of ten (10) days' written notice, in accordance with Texas Government Code, section 2251.051 *et seq.*

§ 9.2 If the Owner suspends the Project for more than thirty (30) days, the Architect shall be compensated for services performed prior to notice of such suspension. The Architect's fees for the remaining services and the time schedules may be equitably adjusted.

§ 9.3 If the Owner suspends the Project for *more* than 90 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than twenty-one (21) days' written notice and opportunity to cure should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. The Owner may also terminate this Agreement on seven (7) days written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest Guaranteed Maximum Price proffered by the Construction Manager at Risk.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

(Paragraphs deleted)

§ 9.8 This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law related to or relevant to the Project, including but not limited to, the laws 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.

§ 9.9 Intentionally Deleted

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201—2017, General Conditions of the Contract for Construction. The term "Work" shall refer to the work designed by the Architect under this Agreement.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. To the fullest extent permitted by law, the Owner shall waive all claims, indemnify, defend and hold harmless the Architect and its Consultants from all claims, damages, and losses to the extent caused by the existing hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 The Owner agrees, to the fullest extent permitted by law and hold harmless the Architect, its officers, directors and employees (collectively, Architect) against all damages, liabilities or costs, to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its Construction Manager at Risk, subcontractors or consultants or anyone for whom the Owner is legally liable.

§ 10.12 Neither the Owner nor the Architect shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

§ 40.43 Section 179D Deduction Allocation. Government-owned buildings qualify for tax deductions relating to energy efficient property under the IRS code section 179D and IRS notices 2006-52 and 2008-40. Under this provision, it is permissible for the governmental Owner to transfer these tax deductions to the Architect after the Project is placed in service. If the Services contained in the Agreement are eligible, then upon execution of this Agreement the Owner of a government-owned building agrees to allocate the 179D tax deduction to the Architect.

§ 10.14 Texas Board of Architectural Examiners Notice The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas. Its address and phone number are 333 Guadalupe St #2, Austin, TX 78701 ; (512)305-9000.

#### ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
(Insert amount)
- .2 Percentage Basis  
(Insert percentage value)

Six ( 6 ) % of the Final Cost of the Work, as calculated in accordance with Section 11.6.

- .3 Other  
(Describe the method of compensation)

§ 11.2 For the Architect's Optional Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect in the amount agreed upon by the Owner and the Architect prior to the provision of such Additional Services and said agreement shall be in writing and attached to this Agreement. Furthermore, the Architect shall be compensated for all alternate construction elements Architect was requested to design by the Owner's Board of Trustees, but were not accepted to be included in the Cost of Work during Bidding & Negotiations phase. The Architect's fee for such construction elements shall be a fixed amount calculated at its 4.80% fee on the construction value determined at the end of the bidding phase times 80% (the % of the architectural services provided at the end of the Bidding & Negotiations Phase).

For civil engineering and landscape design services, the Architect shall only be paid the direct cost of the consultants' services provided and any related reimbursable expenses.

§ 11.3 For Time-Basis Basic Services, Optional Services, or Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect in the amount agreed upon by the Owner and the Architect prior to the provision of such Additional Services and said agreement shall be in writing and attached to this Agreement..

To be provided prior to services rendered.

§ 11.4 Compensation for Basic Services, Optional Services, or Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10%), or as follows:

*(Insert amount/ Of, or basis for computing, Architect 's consultants ' compensation for Supplemental or Additional Services.)*

Not applicable

§ 11.6 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty-Five	percent (	25	%)
Construction Documents Phase	Thirty-Five	percent (	35	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Eighteen	percent (	18	%)
Closeout	Two	percent (	2	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage or stipulated-sum basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage or stipulated-sum basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced, except as may be provided in Article 9 of this Agreement.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's *(Paragraphs deleted)*

Consultants shall be agreed upon prior to providing services.

*(Table deleted)*

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Teleconferences, Project web sites outside of Stantec, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Intentionally deleted.
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;

- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 14.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

#### § 11.10 Payments to the Architect

##### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$ 0.00 ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

##### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for undisputed services shall be made monthly in proportion to services performed. Payments are due and payable upon the second (2<sup>nd</sup>) Thursday, if not a school holiday after receipt of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after the invoice is received by the Owner shall bear interest at the rate specified by Texas Government Code, Section 2251.25 or its successor.

*(Insert rate of monthly or annual interest agreed upon.)*

§ 11.10.2.1 For projects compensated on a percentage of construction cost or lump sum fee basis, the Architect will prepare and submit for the Owner's approval a Monthly Basic Services Fee Billing Schedule based on the anticipated Project cost, schedule, and on the provisions of this Agreement.

§ 11.10.2.2 The Owner may withhold payments to the Architect for the purposes of reimbursing Owner for any damages caused by Architect, for changes in the Cost of the Work which result in Architect's compensation being reduced, or for Architect's failure to comply with the provisions of any part of this Agreement. The Owner may also withhold payments to the Architect to secure performance of Architect's services and obligations under any part of this Agreement.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be provided to the Owner upon presentation of Architect's progress payment applications.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

*(Include other terms and conditions applicable to this Agreement.)*

§ 12.1 Purchase Order. If the Owner issues a purchase order related to the Architect's services, it is understood and agreed that such purchase order is for the Owner's internal accounting purposes only and shall not modify, add to, or delete any of the terms and conditions of this Agreement. When a purchase order is issued, it is understood and agreed that the Architect shall indicate the purchase order number on the invoices sent to the Owner.

§ 12.2 LEED. If the AIA form E-204 is not included in this Agreement, this section 12.2 shall be included. The LEED Green-Building Rating System and similar environmental guidelines are subject to interpretation, and achieving levels of compliance involves all parties and includes the Owners use, operation and maintenance of the completed project and the Construction Manager at Risk's performance during construction. The Architect does not warrant that the Project will achieve LEED certification or guarantee a certain level of energy savings but is required to use reasonable care consistent with the professional standard of care exercised by like Architects on like projects in interpreting LEED standards and in designing in accordance with LEED. The Architect may reasonably request an Additional Service if the Owner elects a certification that is different from the LEED Certification described herein and it results in an expansion of the Architect's scope of services.

§ 42.3 Fast Track. In the event the design and construction of this project shall be performed on a fast-track basis wherein the design and construction will occur in an overlapping manner rather than the normal sequence in order to expedite the Owner's early occupancy of the project, the design of all aspects of this project may be modified, revised and otherwise affected by the fact-track portion of this project, and additional costs are often the result. It is agreed that the additional costs that may result are an anticipated risk of fast-track construction and do not constitute errors or omissions of the Architect or its consultants.

When corrections or adjustments to the drawings, specifications or other documentation become necessary because the Owner has chosen to proceed in a fast-track manner, to coordinate or change the documents, provide adequate clearances or otherwise meet program requirements, the Architect shall be compensated for such corrections or adjustments as an additional service in accordance with its standard hourly billing rates.

§ 12.4 Texas Board of Architectural Examiners Notice. The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas. Its address and phone number are 333 Guadalupe St #2, Austin, TX 78701; (512) 305-9000.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 43.4 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™—2017, Standard Form Agreement Between Owner and Architect

*(Paragraphs deleted)*

Intentionally deleted

- .3 Exhibits:

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

AIA Document E204™—2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*

Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

*(Paragraphs deleted)*

Exhibit B —Agreement for Delivery of Documents in Electronic Form

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

\_\_\_\_\_  
OWNER *(Signature)*

Mia Price, Board President  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
ARCHITECT *(Signature)*

Terry N. Hoyle, Principal  
\_\_\_\_\_  
*(Printed name, title, and license number, if required)*



**CeXification of Document's Authenticity**  
**AIA\* Document D401<sup>o</sup> — 200J**

I, Terry N. Hoyle, Principal, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:21:40 ET on 11/07/2018 under Order No. 4966188737 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA\* Document B101\*\* —2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*

# Exhibit B

## AGREEMENT FOR DELIVERY OF DOCUMENTS IN ELECTRONIC FORM

In connection with the Agreement to which this agreement is an Exhibit, Architect will provide Owner with certain Instruments of Services in electronic machine readable format. These documents shall hereinafter be referred to as the "Electronic Documents." It is understood and agreed that it may become desirable for the Architect to make certain Electronic Documents available to other parties related to the Project. It is the intent of this agreement to govern all circumstances under which Electronic Documents are made available by the Architect. This agreement shall be incorporated into the General Conditions of the Contract for construction and shall become binding on all parties who wish to use Electronic Documents. The Architect shall have sole discretion in connection with any release of Electronic Documents. Any individual or entity, including the Owner, to whom Architect releases any Electronic Documents shall be referred to in this agreement as the "recipient."

In consideration of the Architect's agreement to release Electronic Documents, the Recipient agrees as follows:

1. It is understood and agreed that all drawings, specifications, or other documents of any kind prepared by Architect or its subconsultants, whether in hard copy or in electronic or machine readable format including Electronic Documents (collectively the "Architect's Documents"), are instruments of their services prepared solely for use in connection with the single project for which they were prepared and that Architect and its subconsultants retain all common law, statutory and other reserved rights, including the copyright. This agreement is not intended in any way to alter the respective interests of the parties in the Instruments of Service as set forth in the Owner/Architect Agreement, notwithstanding Architect's agreement to release the Electronic Documents to Recipient.
2. The Electronic Documents are provided as a convenience to the Recipient for informational purposes only in connection with the Recipient's performance of its responsibilities and obligations relating to the Project. The Electronic Documents do not replace or supplement the paper copies of the Drawings and Specifications which are, and remain, the contract Documents for the Project. In all instances it is the responsibility of the Recipient to ensure that the Electronic Documents are consistent with the Contract Documents.
3. The parties agree that the Electronic Documents are not, nor shall they be construed to be, a product. It is expressly agreed by the Recipient that there are no warranties of any kind in such Electronic Documents or in the media in which they are contained, either express or implied.
4. It is further understood and agreed that only printed copies of the Instruments of Services shall be signed and sealed in accordance with the laws of the state in which the project is built.
5. If any differences exist between printed Instruments of Service and Electronic Documents, the information contained in the printed documents shall be presumed to be correct and take precedence over the Electronic Documents.
6. Recipient agrees not to add to, modify or alter in any way, or to allow others to add to, modify or alter in any way, the Electronic Documents or any printed copies thereof.
7. The Electronic Documents are supplied in the following format: .dgn format, translatable to .dxf and .dwg.

Any conversion of the format is solely the responsibility of the Recipient. Recipient understands and agrees that the conversion of hard copies of Instruments of Service into electronic or machine readable format or the

conversion of Electronic Documents from the machine readable formats used by Architect to some other format may introduce errors or other inaccuracies. Recipient therefore agrees to confirm the accuracy of the Electronic Documents before using them. Recipient agrees to accept all responsibility for any errors or inaccuracies and to release Architect, and its subconsultants from any liability or claims for recovery of damages or expenses arising as the result of such errors or inaccuracies.

1. Where the Recipient has received specific permission to use the Electronic Documents in connection with the Recipient's obligation to prepare certain documents for Project, Recipient shall, in addition to the other obligations set forth therein, be obligated to remove Architect's or Architect's Consultant's title block from the copy of the Electronic Documents used by Recipient. It is understood and agreed that, without the separate express written permission of the Architect to do so, the Electronic Documents are not to be used by any contractor or any of its subcontractors of any tier or any material supplier or vendor as a shop drawing or any other type of submittal or as the basis for preparing such shop drawing or submittal. The sole exception to this prohibition shall be that the Recipient may use the Electronic Documents as backgrounds upon which to prepare its shop drawing or other submittal.
2. All transmittal of Electronic Documents whether by disk, cd-rom, e-mail, Internet, or any other methods shall require that the file name, size, along with the date and time of the transmission (if by electronic means) and the identity of the sender and recipient.
3. Recipient further agrees that the Architect's Documents were prepared for use in connection with this project only and that the Electronic Documents are supplied to Recipient for the limited purpose stated above only. Recipient agrees not to use, or allow others to use, the Electronic Documents, in whole or in part, for any purpose or project other than as stated above.
4. Recipient agrees to waive any and all claims and liability against Architect and its subconsultants resulting in any way from any failure by Recipient to comply with the requirements of this Agreement for the Delivery of Documents in Electronic Format.
5. The Recipient agrees that no third party beneficiary status or any other right of action is created in favor of any contractor, subcontractor, materialmen or any other third party against the Architect by virtue of this Agreement or in connection with its delivery of Electronic Documents, and no third party beneficiary status is intended.
6. Recipient further agrees to indemnify and save harmless the Architect and its subconsultants and each of their partners, officers, shareholders, and directors and employees from any and all claims, judgments, suits, liabilities, damages, costs or expenses (including reasonable defense and attorneys fees including claims asserted in breach of contract, breach of warranty, negligence, or any other tort) arising as the result of either: 1) Recipient's failure to comply with any of the requirements of Agreement for the Delivery of Documents in Electronic Format; or 2) a defect, error or omission in the Electronic Documents or the information contained therein, which defect, error or omission was not contained in the Contract Documents as defined in Paragraph 2 or where the use of such Contract Documents would have prevented the claim, judgment, suit, liability, damage, cost, or expense.