



AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 19 day of March in the year 2024
(In words, indicate day, month and year.)

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

Ector County Independent School District
802 North Sam Houston
Odessa, Texas 79761

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

PBK Architects
6300 Bridge Point Parkway
Building 2, Suite 115
Austin, Texas 78730

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

New Middle School
Situating in Ector County, Texas at Sections 34&35 of Block 43, Odessa, TX
Legally described as: 40 Acres out of T-2-S, BLK 43, SEC 34 (Card #1) WH McCollum
undivided in 640 acres.

WHEREAS Ector County Independent School District (hereinafter referred to as "Owner")
and PBK (hereinafter referred to as "Architect") desire to enter into a contract under which
Architect will perform construction services relating the above referenced Project(s) on
behalf of Owner;

WHEREAS Owner and Architect have agreed to enter into AIA Document B101™ 2017
Contract ("Contract") as the basic form for that contract; and

WHEREAS certain terms and conditions of the contract must be modified to comply with
applicable laws and policies affecting Owner and Architect on this project, Owner and
Architect hereby agree to the following amendments to the Contract:

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.

The Owner and Architect agree as follows.

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User Notes:

(1749699415)

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit A

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Middle School Property: Situated in Ector County, Texas at Sections 34&35 of Block 43, Odessa, TX
Legally described as: 40 Acres out of T-2-S, BLK 43, SEC 34 (Card #1) WH McCollum undivided in 640 acres.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Construction Cost : Ninety Million (\$90,000,000.00)

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

.1 Design phase milestone dates, if any:

Schematic Design / Design Development : 04/01/2024 – 06/30/2024

.2 Construction commencement date:

01/01/2025

.3 Substantial Completion date or dates:

06/30/2026

.4 Other milestone dates:

Construction Documents : 07/01/2024 – 11/15/2024

Bidding : 11/15/2024 – 12/31/2024

Construction Administration : 01/01/2025 – 06/30/2026

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Construction Manager-At-Risk (CMAR)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

None

§ 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.)

Dr. Scott Muri, Superintendent of Schools, or his designee Dr. Anthony Sorola.
Ector County Independent School District Associate Superintendent
Athletics / Human Capital / Operations
802 North Sam Houston
Odessa, Texas 79761
Telephone: 432-456-9509

§ 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:

(List name, address, and other contact information.)

None

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

(Paragraphs deleted)

(List any consultants and contractors retained by the Owner.)

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

Darrell Pearson
PBK Architects
6300 Bridge Point Parkway
Building 2, Suite 115
Austin, Texas 78730
Telephone: 512-340-0676
Email: darrell.pearson@pbk.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2 and shall select such consultants based on the qualification-based selection process established in Texas Government Code, Chapter 2254.:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Kubala Engineers
11 Greenway Plaza
Houston, Texas 77046
Telephone: 1-800-248-3674

John Kubala, President & CEO
Office: 713-940-3343
Mobile: 713-907-8385
Email: John.Kubala@kubalaengineers.com

.2 Mechanical Engineer:

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-940-3300
Fax: 713-961-4571

Don Richards, Vice President
Office: 713-940-3326
Mobile: 713-499-9173
Email: Don.Richards@leafengineers.com

.3 Electrical Engineer:

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-940-3300
Fax: 713-961-4571

Don Richards, Vice President
Office: 713-940-3326
Mobile: 713-499-9173
Email: Don.Richards@leafengineers.com

.4 Geotechnical Engineer

To be identified by the Owner at a later time.

.5 Civil Engineer

Dunaway Associates
5707 Southwest Parkway, Building 2, Suite 250
Austin, Texas 78735
Telephone: 512-306-8252

Tim Hair, Regional Manager
Mobile: 210-241-6939
Email: Thair@dunawayassociates.com

Consultants not governed by Texas Occupations Code Chapter 1001 shall be licensed or registered as required by applicable law.

§ 1.1.11.2 Consultants retained under Supplemental Services:

None.

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

Whenever a statute, regulation, or code is cited in this Agreement, it shall refer to that statute, regulation, or code or its successor at the time the Agreement is signed or, a revised statute, regulation, or code if it becomes effective at a later time and compliance is required for completion and approval of the Project.

§ 1.2 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 shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. 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 The parties may agree upon protocols, in writing governing the transmission and use of Construction Documents or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

(Paragraph deleted)

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect shall provide professional services as set forth in this Agreement. The Architect shall also comply with all provisions in Texas Administrative Code, Title 19 Section 61.1040, pertaining to services and actions required of the Architect. Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances and as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect, as set out in Texas Local Government Code Section 271.904(d) and Texas Civil Practices and Remedies Code Section 130.0021, hereinafter referred to as the "Standard of Care." The Architect shall further, and to the extent required by 19 Texas Administrative Code Section 61.140, provide all certifications required by Section 61.140(f), and otherwise perform its services and obligations required of it by applicable laws, codes, and ordinances in accordance with the Standard of Care. Owner's approval, acceptance, use of, or payment for all or any of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The identified Architect shall be the prime design professional for the Project.

§ 2.4 Except with the Owner's knowledge and 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 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 commercial general liability, and comprehensive automobile liability, and not less than eight years from the Substantial Completion of all construction of this Project (or ten 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 commercial general liability and comprehensive automotive liability. All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation. Deductibles or self-insured retention limits for all policies (except Architect's Errors or Omissions insurance) shall not exceed \$25,000 for a project budgeted at \$4 million or less, or \$50,000 for a project budgeted at more than \$4 million. 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. 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. Any nonconformity may be grounds for termination or modification of the Contract. Such policies shall be primary and non-contributory. The limits of liability for such insurance shall be in at least the following amounts:

§ 2.5.1 Worker' Compensation

.1	State:	Statutory Benefits
.2	Employer's Liability:	\$1,000,000 per accident \$1,000,000 disease, policy limit \$1,000,000 disease, each employee

§ 2.5.2 Commercial General Liability with policy limits if not less than One Million (\$ \$1,000,000)

.1	Each Occurrence:	\$1,000,000 each occurrence \$2,000,000 aggregate
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- .2 Medical Expense (per person) \$10,000 each occurrence
- .3 Products & Completed Operations: \$2,000,000 aggregate (to be maintained for a period of two years after Final Payment; Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during this period and Owner shall be named by endorsement as an Additional Insured for such coverage)
- .4 Personal & Advertising Injury \$1,000,000 aggregate
- .5 Must include explosion, collapse, and underground (X, C, and U) coverage.
- .6 Must include Completed Operations coverage
- .7 Must Include Contractual Liability Coverage
- .8 Must Include General Aggregate Per Project Endorsement.

§ 2.5.3 Contractual Liability:

- .1 Property Damage shall be included in Commercial General Liability Coverage.
- .2 Insurance sufficient to cover Architect's contractual indemnities.

§ 2.5.4 Business Automobile Liability (including owned, non-owned, hired, or any other vehicles):
Combined single limit policy in the amount of at least \$1,000,000.

- .1 Bodily Injury (per person) \$
- .2 Bodily Injury (per accident) \$
- .3 Property Damage \$

§ 2.5.5 Professional Liability (E&O) Coverage in at least in the following amounts:

\$5,000,000 per occurrence
\$10,000,000 per aggregate

Deductibles or self-insured retention amounts shall not exceed \$25,000 for a project budgeted at \$4 million or less, or \$50,000 for a project budgeted at more than \$4 million.

- .1 Architectural and engineering consultants shall carry Professional Liability (errors and omissions) insurance in an amount not less than five million (\$5,000,000).

(Note: amount specified should be sufficient to cover any potential damages which could result from that consultant's negligence).

§ 2.5.6 Umbrella Excess Liability coverages shall be:

- .1 \$5,000,000 each occurrence
- .2 \$5,000,000 aggregate
- .3 \$ aggregate Per Project Endorsement

§ 2.5.7 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 contractors, subcontractors, 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 Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .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 Commission'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).

(Paragraph deleted)

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission. The Architect's Basic Services consist of those described in Article 3 and Article 4 and include usual and customary architectural services, structural, mechanical, plumbing, civil, and electrical engineering services; landscape design; architectural interior design; audio-visual, data, and telecommunications and technology design and distribution; kitchen and food service equipment design; acoustical engineering and design; site feasibility design; programming for new schools and/or scope of work verification for renovations of existing schools; security planning services; graphics/way-finding planning services; roofing consultant services unless otherwise approved by Owner; accessibility services; estimating by the Architect's independent estimating consultant; record drawings; 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. The District will not waive any services recommended by the Architect that are required by law.

Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall perform and manage the Architect's services and administer the Project, in accordance with this Agreement as amended for this Project, and with the AIA Document A201-2017, General Conditions of the Contract for Construction, as amended for this Project, 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 Contractor, as more specifically defined hereafter. 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.

- .1 Upon request of the Owner's representative, the Architect shall make presentations to Owner's representatives to review the design of the Project. In addition, upon request of the Owner's representative, the Architect shall make monthly presentations to Owner's Board of Trustees.
- .2 The Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Board of Trustees, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Board of Trustees in the further development of the design, provided that nothing herein shall relieve Architect of responsibility or liability for its failure to provide its services in accordance with the Standard of Care.

§ 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, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants in accordance with 19 TAC Section 61.140. 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. Architect shall also promptly respond in writing to notices from Owner regarding Owner's discovery of errors, omissions, or inconsistencies, and, if requested, shall promptly meet with Owner regarding same. Owner's notice or lack of notice shall not relieve Architect of any responsibility or liability for performance of Architect's contracted services.

§ 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 dates of Architect's design services and the

completion of documentation required of 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 Contractor'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, timed sufficiently to achieve Owner's proposed dates of Substantial Completion and Final Completion as stated in this Agreement, as amended, 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. With the Owner's prior written approval for reasonable cause, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If Contractor is a Construction Manager-at-Risk, then the Architect shall assist the Construction Manager-at-Risk in the preparation and periodic update of the Project schedule.

§ 3.1.3.1 Architect shall also review and search all building codes applicable to the Project, and shall reasonably comply with all applicable codes in the design and construction of the Project, as required by 19 TAC § 61.1040(e)(5)(C), and (j)(1) and (2), including without limitation, design of storm shelters, and use of a third-party code compliance officer where code compliance will not be enforced by a state or local authority having jurisdiction ("building code official"). Architect shall coordinate and prepare a proposed statement of any special inspections or testing required in accordance with the required construction codes, customizing the proposed statement based on knowledge about the project regardless of whether the statement requires testing and inspection to be less than the default requirements of the required construction codes, including materials testing, project-specific requirements for special inspections and testing, specific wind and seismic requirements, frequency of the special inspections, or tests to be performed in accordance with the referenced standard defining the inspection. 19 TAC Section 61.1040(e)(6)(D). Architect shall ensure that the Construction Documents are of sufficient clarity to indicate the timing, location, nature, and extent of specific inspections and tests required to be performed by the Owner through the local authority having jurisdiction, the third-party code compliance officer, any third-party special inspector or inspection agency, or the Architect if qualified as a special inspector and specified as a contractual term. 19 TAC Section 61.1040(e)(6)(E). A building permit issued by a local authority having jurisdiction or a third-party code compliance officer shall be considered by the Owner to indicate that the proposed statement of special inspections is approved and constitutes the code-required inspections and tests. 19 TAC Section 61.1040(e)(6)(F). The Contractor, before beginning construction, shall submit to the Owner, Architect, and the building code official or third-party code compliance officer an acknowledgement of the Contractor's responsibility to notify quality assurance personnel that will be performing inspections and tests when the Project is ready for those specific inspections and tests and the Contractor's responsibility to request and obtain a final report from each quality control person performing the code-required inspections and tests before requesting a certificate of occupancy. 19 TAC Section 61.1040(e)(6)(G). Third-party inspectors who perform the code-required inspections and tests shall submit inspection and testing reports to the Owner and the Architect, and shall submit a final report to the Owner, Architect, building code official or third-party code compliance officer, and Contractor, upon request by the Contractor, indicating any known deficiencies discovered during the Project that have not yet been addressed at the time of the request. 19 TAC Section 61.1040(e)(6)(H). Special inspections and testing reports shall be submitted to the building code official and the Architect, and any discrepancies shall be brought to the attention of the Contractor, and if not corrected, to the attention of the building code official, the Architect, and the Owner. 19 TAC Section 61.1040(e)(6)(I). The Architect shall comply with 19 TAC Section 61.1040(j) and (k) in the design of this Project.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval. 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 61.1040, and Texas Health and Safety Code Chapter 341, in accordance with the Standard of Care. 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 61.1040, and used reasonable care in accordance with the Standard of Care. Architect shall also certify that the Construction Documents are in reasonable accordance with the provisions of 19 TAC Section 61.1040, except as indicated on the certification. 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 61.1040. Architect shall also certify that the facilities have been designed according to the provisions of 19 TAC Section 61.1040, 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 61.1040 and shall certify the Project has been designed in reasonable compliance with Owner's long-range facility plan, educational specifications, school facility standards, and facility space as determined by Owner's Qualitative or Quantitative evaluation of compliance for space standards. Architect shall complete the Texas Education Agency's Certification of Project Compliance, located at www.tea.state.tx.us. In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the Standard of Care. 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. 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, if applicable to the Project and required for Final Completion.

§ 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 over the Project. When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201-2017, as amended for this Project as of the date of this Agreement, and Architect herein agrees to abide by same. Architect agrees that the AIA Document A201-2017 may be subject to subsequent amendments based upon negotiations between Owner, Architect and Contractor. As a condition of further service, Architect shall provide to Owner a signed statement stating Architect's agreement to adhere to any such negotiated amendments.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall assist the Owner with the provision of the educational program and educational specifications, which shall be approved by Owner's Board of Trustees, per 19 Texas Administrative Code Section 61.1040. 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..

§ 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 they 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. The Architect shall visit the Owner's Project site and shall provide to Owner a written report evaluating the feasibility of the Owner's site for the Project based on site conditions, and the Owner's program, schedule and budget for the Cost of the Work. The Architect shall include, in the written report, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall address with the Owner any existing easements or rights-of-way which may interfere with Owner's 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 in writing with the Owner, the Architect shall prepare and present, for the Owner's approval, a written preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design and Owner's schedule and budget for the Work, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall establish the conceptual design of the Project and illustrate the scale and relationship of the Project components. 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.

(Paragraph deleted)

§ 3.2.5.2 The Architect shall consider and discuss with Owner 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 Work. The Owner may, but shall not be required to, consider and approve any sustainable design alternatives recommended by Architect so long as such alternatives do not increase the cost of the Work..

§ 3.2.6 When the Project requirements have been sufficiently identified, including Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities, the Architect, and, if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3. This estimate may be based on current area, volume or similar conceptual estimating techniques.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Architect shall not proceed to the Design Development Document Phase without the approval of Owner's Board of Trustees, or the Board's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required 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, shall refine the Project design, 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 elements outlined in this 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. 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 prepare a 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 the 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 the equipment and facilities. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget, 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 as provided in § 3.3.3, 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, and the Owner shall cooperate with the Architect in making such adjustments, with Owner having the right to approve or reject such recommendations..

§ 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, *redesign the Project to comply with Owner's budget*, and request the Owner's approval. Architect shall not proceed to the Construction Documents Phase without the approval of Owner's Board of Trustees, or Board's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without Board approval.

§ 3.3.4 The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted.

§ 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. Construction Documents" means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth in detail the requirements for construction of the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1040 and the standards set forth in Section 3.1.4 of this Agreement. 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. The Architect shall provide Construction Documents which are sufficient for the Owner to complete construction of the Project, are free from material defects or omissions, and comply with all applicable laws, 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 Contractor 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. Owner and Owner's authorized representatives shall be given the opportunity to review all Construction Documents prior to release of the Construction Documents for bidding, proposal or negotiation purposes. Architect's bid specifications and any subsequent contract shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code Section 2269.054. Architect shall also add the following language in any document issued to solicit bids or competitive sealed proposals on the Project:

By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, and their respective employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract.

§ 3.4.1.1 Errors and Omissions

§ 3.4.1.1.1 Completed plans and specifications are expected to be comprehensive and free of material errors and omissions, except minor discrepancies or other items that can be corrected by minor change at no cost to the Owner, in accordance with the Standard of Care.

§ 3.4.1.1.2 Procedures and meetings in schematic and design development phases allow for adequate interaction between Owner and Architect to minimize oversights in Project requirements. It is incumbent upon the Architect to thoroughly review his work product, in accordance with the Standard of Care, to detect errors and omissions before they become costly additions to the Project during construction.

§ 3.4.1.1.3 Professional services and costs, if any as required to correct errors in construction documents, are the responsibility of the Architect, including addenda during bidding to rectify errors in the contract documents.

§ 3.4.1.1.4 Deductive change orders may be applied to offset the change order cost applicable to the Architect only to the extent that such deductive change order resulted from an oversight in the Contract Documents that was not required by the Building Program or requested by the Owner. All other deductive change orders due to Owner scope modifications or other value engineering items and unused Allowances shall not apply to this offset provision.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents and 19 Texas Administrative Code section 61.1031, and Texas Health and Safety Section 341.065. Architect shall certify that he/she has reviewed the standards contained in 19 Texas Administrative Code Section 61.1040 and Section 61.1031, and performed its services in accordance with the Standard of Care in executing the construction documents, and Section 61.1031. Architect shall also certify that the facilities have been designed and constructed in reasonable accordance with the provisions of 19 Texas Administrative Code Section 61.1040 and Section 61.1031, based on the educational program, long-range school facility plan, educational specifications, building code specifications, any and all required safety and security directions approved by Owner, and all documented changes to the Construction Documents provided by the District, as required by 19 Texas Administrative Code, Section 61.1040 and Section 61.1032. Architect shall complete the Texas Education Agency's (TEA's) Certification of Project Compliance. In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the Standard of Care. 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 and Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, the Pump Act (29 USC Section 218(c)), 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. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards that 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 a Change in Service..

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner *and the Owner's attorney* in the development and preparation of (1) *bidding competitive purchasing*, 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 Contractor *or Construction Manager at Risk*; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) as amended for the Project. After consultation with the Owner, the Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Project 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 outdoor lighting fixtures designed by Architect, if any, shall meet the statutory energy conservation and light pollution standards established by the Texas Department of Health. All ventilation and indoor air quality systems designed by Architect shall meet the indoor air quality voluntary guidelines established by the Texas Department of Health. Texas Health and Safety Code Chapter 385. All playground equipment designed by Architect, if any, shall comply with each applicable provision of ASTM Standard F1487-07ae1, "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; Americans with Disabilities Act. 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. 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.

§ 3.4.3.1 As required by law, any bid or proposal document shall contain prevailing wage rates, which Architect may request from the Owner.

§ 3.4.3.2 Architect shall insert in the Project Specifications the requirement that all bonds comply with the requirements of Texas Insurance Code Section 3503.001 et seq. and Texas Government Code Chapter 2253 or their successors and that all insurance companies be licensed to do business in the State of Texas and, if bond amounts exceed \$100,000, hold a certificate of authority from the U.S. Secretary of the Treasury or reinsurance for liability in excess of \$100,000 from a reinsurer authorized and admitted as a reinsurer in the State of Texas and that is a holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. Owner and Architect reserve the right to rely on the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement.

§ 3.4.4 The Architect shall update the estimate for 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 as provided herein, 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. Owner shall not be able to waive any services or direct any changes where recommended or required by an applicable design professional.

§ 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. Architect shall not proceed to the Bidding or Negotiation Phase without the approval of Owner's Board of Trustees, or Board designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions, in accordance with the Standard of Care. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

§ 3.4.6 The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted.

§ 3.4.7 Architect shall submit the Construction Documents for review and approval to the Texas Department of Licensing and Regulation any time the renovation, modification, or alteration of the Work has an estimated construction cost of \$50,000 or more, and shall notify Owner of same. Architect shall not allow Contractor to file an application with any local governmental entity for a building construction permit until after Architect's submission to the Texas Department of Licensing and Regulation.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Such assistance shall include, if necessary, testifying in any bid or proposal dispute. Architect shall disclose in writing to Owner any prior or current relationships which Architect may have had with any bidders or proposers. 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. The Architect shall cooperate with the Owner's legal counsel in the preparation of all Contract Documents and the General Conditions of the Contract for Construction, as amended or supplemented for the Project, to be used in the bidding or proposal documents. Architect shall ensure that its Supplementary or other Conditions of the Contract, if any, shall not contradict the provisions of Owner's AIA Document A201, as amended, except with Owner's prior written consent.

§ 3.5.2 Competitive Bidding or Purchasing

§ 3.5.2.1 Bidding Documents shall consist of bidding or competitive proposal requirements and proposed Contract Documents. The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Architect (hereinafter the Owner/Architect Agreement) and consist of the Owner/Architect Agreement, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract.

§ 3.5.2.2 If requested by the Owner, the Architect shall assist the Owner in bidding or competitively purchasing the Project by:

- .1 procuring at Owner's cost the reproduction of Bidding Documents for distribution to prospective bidders, and distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned 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, evaluating the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 In consultation with the Owner, the Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders and Owner. The Architect shall review, in conjunction with the Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project and the quality of the construction within Owner's overall budget for the Project.

§ 3.5.3 Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents. Proposal Documents shall consist of proposal requirements and proposed Contract Documents. The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Architect (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract, as 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 Agreement and Modifications issued after execution of the Contract.

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

- .1 procuring at Owner's cost the reproduction of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective proposers;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 evaluating proposals, participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 In consultation with the Owner, the Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective contractors and Owner. The Architect shall review, in conjunction with the Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction within Owner's overall budget for the Project.

§ 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 Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, *as amended for the Project, and as specified in Section 3.1.6 herein*. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. While on Owner's property and throughout Architect's services under this Agreement, 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 prohibitions against fraud and financial impropriety."

§ 3.6.1.2 The Architect shall be a representative of, and 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, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor'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 Contractor 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 in accordance with the Standard of Care shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions in accordance with the Standard of Care shall be at no additional cost to Owner.

§ 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 on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, or his authorized representative, as a representative of the Owner, shall visit the site at least twice per week (or more per week when deemed necessary by the Owner's Superintendent or when necessary to protect Owner's interest), and at other intervals appropriate to the stage of the Contractor's operations (1) to inspect the progress, quantity and quality of the Work completed; (2) to reject any observed nonconforming Work; (3) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed; (4) to guard the Owner against defects and deficiencies in the Work; (5) 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. Attendees will include Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction that, 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, on-site observations, or inspections by the Architect, Architect shall keep Owner and Owner's Contractor informed of the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Architect shall guard Owner against defects and deficiencies in the Work, and shall promptly notify Owner and Contractor orally regarding the defect or nonconforming Work, which notice shall be followed by notice in writing of defects and nonconforming work noted and corrective actions taken or recommended. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. 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 errors or omissions shall be at no additional cost to Owner.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to Owner additional 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. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Construction Manager at Risk, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with 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 2269 of the Texas Government Code.

§ 3.6.2.3 The Architect shall interpret and make recommendations to Owner regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. 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 Contractor and shall not be liable for results of interpretations or recommendations rendered in good faith. The Owner's recommendations 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 matters in question between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall observe the progress of the Work, critically evaluate, review and certify the amounts due the Contractor and shall sign and issue Certificates for Payment 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 Contractor's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations and/or evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, and in Architect's professional opinion, the quality of the Work is in accordance with the Construction Documents and the Contract Documents and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. If Architect disputes the Contractor's payment application in whole or in part, Architect shall provide in writing to Owner and Contractor a detailed statement of the Architect's reason for withholding certification in accordance with Texas Government Code §2251.042(a) and as provided in §§9.4.1 and 9.5.1 of the AIA A201 for the project. The foregoing representations are subject to (1) an 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 by the Architect in writing to Owner.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with the Contract Documents and all laws, statutes, codes and requirements applicable to Architect's design services. 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 reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor 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.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in

the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor 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 Contractor'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, accuracy, and completeness 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. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information 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 appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 With notice and consent of Owner, the Architect may authorize 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. Subject to Section 4.2, the 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 records relative to changes in the Work.

§ 3.6.5.3 The Architect shall accept requests by the Owner, and shall review properly-prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly-prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, then the Architect may issue an order for a minor change in the Work, with prior written notice to the Owner, or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, then the Architect shall make a recommendation to approve or deny the requested change to the Owner. Based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to Additional Services of the Architect. If the Architect recommends approval, then the Architect shall incorporate those estimates into a proposed Change Order or other appropriate documentation for the Owner's Board of Trustees' approval and execution.

§ 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 and of Final Completion, using Owner's or State forms, and ensure Contractor gives its notarized signature on its Certification of Substantial or Final Completion;
- .3 receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.
- .5 For any Work that exceeds \$50,000, Architect shall schedule and ensure completion of inspections with the Texas Department of Licensing and Regulation as required by Texas Government Code Section 469.105.
- .6 Owner, Architect, Contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable school facility standards required in 19 TAC Section 61.1040 subsections (d) and (g)-(k). 19 TAC Section 61.1040(f).
- .7 (B) Architect certifications. Architect shall certify the following, as required by 19 TAC 61.1040(f)(1)(B):
 - (i) Certifications related to educational adequacy under subsection (d) of 19 TAC 61.1040(d). The Architect for a capital improvement project shall certify compliance that the project has been designed in reasonable accordance with the long-range facility plan and educational specifications, if applicable.
 - (ii) Certifications related to standards for space for instructional facilities under subsection (g) of 19 TAC Section 61.1040 and to standards associated with the method of compliance approved by the Owner's board of trustees for instructional facility space under subsection (h) of 19 TAC Section 61.1040 related to the quantitative method of compliance or under subsection (i) of 19 TAC Section 61.1040 related to the qualitative method of compliance. To provide adequate instructional spaces and adequate space in instructional facilities, the Architect shall certify compliance that the Project has been designed in reasonable accordance with the standards for space in subsection (g) of 19 TAC Section 61.1040 and with the standards associated with the method of compliance approved by the Owner's board of trustees under subsection (h) or (i) of 19 TAC Section 61.1040.
 - (iii) Certifications related to safety and security standards under subsection (k) of 19 TAC Section 61.1040. A design professional of record shall certify compliance that the Project has been designed in reasonable accordance with any required safety and security directives approved by the Owner in accordance with subsection (k) of 19 TAC Section 61.1040.

§ 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 Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, 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 Contractor: (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 liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Prior to the expiration of six months from the date of Substantial Completion, prior to the expiration of ten months from the date of Final Completion, and upon request of the Owner at any other time within one year of Final

Completion, the Architect shall meet with the Owner and the Owner's Designated representative to review the facility operations and performance; to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are included in Basic Services. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. The Architect shall not be entitled to additional compensation for Services listed below unless otherwise indicated, or if such services are not required for this Project or approved by Owner.

(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.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Architect
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect
§ 4.1.1.13 On-site project representation	Architect
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Not Provided
§ 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
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Architect
§ 4.1.1.23 Commissioning	Architect
§ 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	
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Not Provided

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

(Paragraphs deleted)

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 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, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 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)

- .3 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .4 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification.

(Paragraphs deleted)

§ 4.2.3 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 Five (5) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Two (2) visits to the site by the Architect per week during construction as required by § 3.6.2.1
- .3 Five (5) inspections for each 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 Five (5) inspections for each portion of the Work to determine final completion.

(Paragraphs deleted)

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, including a written program, as required by 19 Texas Administrative Code Section 61.1040. 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 and update the Owner's budget for the Project, when required, 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 significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 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. Owner's Board of Trustees, is the only representative of Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's Board of Trustees may designate one or more representatives with authority to sign documents after Board approval and/or to advise and consult with Architect for day-to-day operations under the agreement.

Owner's designated representative to sign contracts:

Name: Dr. Scott Muri Title: Superintendent, or designee

Owner's designated representative for day-to-day operations:

Name: Dr. Scott Muri Title: Superintendent, or his designee

§ 5.4 Upon written request of the Architect, the Owner shall furnish surveys known to the Owner describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. Other than the metes and bounds noted in the legal description of the site, the Architect shall not be entitled to rely on the accuracy of information furnished by the Owner, but shall exercise proper precautions relating to the safe performance of the Work. Other than the metes and bounds noted in the survey if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines or the presence or absence of easements. Architect shall review this information and shall provide to Owner a written request for additional information needed, if any, for Architect to adequately perform services hereunder. Upon receipt of this request, the Owner will procure and provide to the Architect the information requested.

§ 5.5 The Owner may 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.

(Paragraphs deleted)

§ 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 requests such services and demonstrates that they 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.

§ 5.9 The Owner shall furnish tests, inspections and reports that are required by law or the Contracts to be furnished by the Owner. To the extent that tests, inspections and reports are not required by law or the Contract Documents to be furnished by Owner, but are deemed necessary by the Architect or Owner, then they shall be furnished by Architect, unless Architect receives Owner's written permission to charge Owner for the services or Owner agrees to separately contract for the services..

§ 5.10 Unless otherwise provided in this Agreement, the Owner may, in its sole discretion, furnish legal 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 Instruments of Service and Architect shall have the reasonable amount of time required by Texas Government Code Chapter 2272 to cure its errors, omissions, or inconsistencies as a precondition to any dispute resolution proceeding involving Owner and Architect. 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, in accordance with the Standard of Care.

§ 5.12 The Owner shall endeavor to include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor 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 Contractor, 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 Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 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 contractors' 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. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect or the Architect's consultants; 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 Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, if the Architect's design is determined to exceed Owner's budget, then Architect agrees to redesign the Project, at Architect's expense and as a part of Architect's Basic Services, to meet Owner's budget."

§ 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, in accordance with the Standard of Care, 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 Owner's Board of Trustees or designee; 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 elements of the Project, without the Owner's knowledge and written consent. 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 recommendation, 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 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, and/or authorize a different construction procurement method, consistent with State law;
- .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;
- .5 implement any other mutually acceptable alternative; or,
- .6 direct the Architect to redesign the Project to meet the Owner's budgetary, programmatic and quality needs.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4 or 6.6.5, the Architect, without additional compensation, 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. 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.

§ 6.8 If, after commencement of the Work, the Cost of the Work is exceeded due to the negligent errors or omissions of the Architect, in accordance with the Standard of Care, then the Architect shall bear financial responsibility to Owner for the increases in the Cost of the Work, except for all materials, labor, and overhead related to the betterment obtained by the Owner. By way of example, the Architect shall bear responsibility for the difference between what would have been the original cost of that portion of the Work, but for Architect's negligent error or omission, in accordance with the Standard of Care, and the actual cost of that portion of the Work performed to remedy the negligent error or omission. Further, Architect shall not be entitled to Architect's fee for the excess Cost of the Work. Unless Architect disputes the amounts due pursuant to the alternative dispute resolution process provided in Article 8 of this Agreement, as amended, Owner shall be entitled to withhold from sums due to Architect the amounts detailed above.

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 Architect shall provide to Owner, as a "Work Made for Hire," all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor of Architect and Architect's consultants (including the necessary number of paper copies and electronic format copies), and other documents hereinafter "Construction Documents," that are within Architect's scope of services and are sufficient for Owner to complete construction of the Project and are free from material defects or omissions. The Construction Documents for this Project are the property of the Owner whether or not the Project is completed and whether or not Architect's Agreement is terminated. The Owner shall be furnished and permitted to retain reproducible copies and electronic versions of the Construction Documents. Only the signature details, standard details and form specifications of the Construction Documents relating to this Project may be used by the Architect on other projects, but they shall not be used as a whole without written authorization by the Owner. Owner-furnished forms, conditions, and other written documents shall not be used on other projects by the Architect without written authorization by the Owner. Owner hereby owns all common law, statutory, or other reserved rights, including copyrights, pertaining to the Construction Documents; provided, however, Owner hereby assigns to Architect the right to enforce Owner's copyright in the Construction Documents and agrees to reasonably cooperate with Architect in any proceedings related to such enforcement.

§ 7.3 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 prototype. 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 prototype, 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 prototype, 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.

§ 7.3.1 In the event the Owner uses the Instruments of Service 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.

§ 7.4 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.

§ 7.5 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, whether in contract, tort, or otherwise, in accordance with the requirements of the dispute resolution method selected in this Agreement and within the period specified by this Agreement and by Texas law, but

in any case not more than 8 years after the date of Substantial Completion of the Work unless extended in accordance with Texas Civil Practice and Remedies Code Section 16.008. The Owner and Architect waive all causes of action not commenced in accordance with this Section 8.1.1.

§ 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 any other applicable policy and regulations as designated by Owner, and the timelines established in the policy. Level I of the grievance process will be conducted by the Superintendent's designee or the Superintendent, as appropriate. Level II shall be heard by the Superintendent, unless he heard Level I. If the Superintendent heard Level I, then the grievance will proceed to the Owner's Board of Trustees at Level III. 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 fully covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, 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, as amended for this Project, and if applicable. The Owner or the Architect, as appropriate, shall require of the contractors, 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 due to 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 I of Texas Local Government Code Chapter 271.*

§ 8.1.4 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

§ 8.2 Mediation

§ 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 the institution of legal or equitable proceeding, unless the filing deadlines under applicable statutes of limitation and/or repose would otherwise expire. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the parties agree to submit the matter to mediation as soon as reasonably possible. Claims for injunctive relief shall not be subject to this Section s.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the mutually-acceptable person or entity administering the mediation. In the event the parties are unable to agree on a mediator, then the mediation shall be conducted by either the Center for Public Policy Dispute Resolution at the University of Texas School of Law or by a mediator selected by a local district court judge upon the joint request of the parties. The request shall be made within 30 days after the completion of Owner's grievance process. In no event shall the request for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in controversy would be barred by applicable statutes of limitation.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where Owner's main administrative office is located, unless another location is mutually agreed upon. 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' authorized representatives, if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the parties shall submit the dispute or claim(s) to a court of competent jurisdiction.:
(Check the appropriate box.)

[X] Litigation in a court of competent jurisdiction

(Paragraphs deleted)

The parties agree that any claim, dispute, or other matter in controversy between them shall not be subject to mandatory arbitration. The parties may, however, mutually agree in writing to submit such claims, disputes, or matters in controversy to nonbinding arbitration. However, neither party may compel the other to arbitrate any claim, dispute, or matter in controversy between them.

§ 8.2.5 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."

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

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make timely payments to the Architect for undisputed sums in accordance with this Agreement and Texas law, such failure shall be considered substantial nonperformance and cause for termination. 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. Before resuming services, the Owner may pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than ninety (90) consecutive 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 days' written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest bona fide bid or negotiated proposal.

§ 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, together with Reimbursable Expenses then due..

§ 9.7

(Paragraphs deleted)

The parties hereby agree that: 1) if an order for relief is entered on behalf of the Architect, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Architect makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is

appointed for the benefit of its creditors; 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Architect's performance. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Architect adequate assurance of future performance in accordance with the terms and conditions of this Agreement. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Architect's services in accordance with this Section.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Final Completion.

§ 9.9 The Owner's rights to use the Architect's Construction Documents in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

§ 9.10 This Agreement may be terminated by Owner at any time if Architect engages in conduct that would constitute a violation of state or federal criminal law, 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.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Texas. Mandatory and exclusive forum and venue for any dispute resolution arising out of or related to this Agreement shall be in the state district courts of Ector County.

§ 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 as amended for the Project. As a material consideration of the making of this Agreement, the Modifications to this Agreement shall not be construed against the drafter of said Modifications.

§ 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.

§ 10.4 If the Owner requests the Architect to execute certificates, the language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall execute certificates or consents consistent with the Architect's standard of care pursuant to 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 Unless otherwise required in this Agreement, the Architect 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, unless Architect knew, directed, or specified that, or allowed such hazardous materials be used in the Project. Architect shall promptly disclose in writing to Owner any hazardous materials specified for the Project or discovered on site, regardless of the date of discovery or the date on which Architect learns of the hazardous nature of the materials.

§ 10.7 With prior written consent of the Owner, the Architect may 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, but may not photograph students without prior written parental consent. 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. Owner provides notice that confidential and proprietary information shall include, but shall not be limited to, all items listed in Section 10.8.

§ 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 to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate

the law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar written agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. Owner herein designates the following as confidential information: security measures; security access codes; pending real estate purchases, exchange, lease or value; any information pertaining to litigation; student likenesses and student record information; employee information; and any other information deemed confidential by law. As to Owner, the parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Chapter 552 et seq. and the Texas Open Meetings Act, Texas Government Code, Chapter 551 et. seq.

§ 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, 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 NO LIENS. The parties agree that no architect, engineer, mechanic, contractor, materialman, artisan, laborer or subcontractor, whether skilled or unskilled, shall ever, in any manner have, claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas, or upon any funds of Owner.

§ 10.11 APPLICABLE LAW. This Agreement is subject to all applicable federal and State of Texas laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 10.12 CONFLICT OF DOCUMENTS. To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

§ 10.13 RELATIONSHIP OF PARTIES. It is understood and agreed that the relationship of Architect to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Architect the servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Architect. Any direction or instruction by Owner or any of its authorized representatives in respect to the Architect's services shall relate to the results the Owner desires to obtain from the Architect, and shall in no way affect the Architect's independent contractor status.

§ 10.14 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 10.15 Pursuant to Texas Education Code Section 44.034, Architect must give advance written notice to the Owner if the Architect or an owner or operator of the Architect has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Architect failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 10.16 CHILD SUPPORT. By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid,

or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

§ 10.17 By executing this Agreement, Architect verifies that Architect does not boycott Israel or any Israeli-controlled territory, and will not boycott Israel or any Israeli-controlled territory during the term of this Agreement. Pursuant to Texas Government Code, Chapter 2271, as amended, if Architect is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement."

§ 10.18 Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

§ 10.19 The Architect verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

§ 10.20

1. By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Architect agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Architect and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Architect that Architect provide that information to the District.
2. The Architect must:
 1. Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;
 2. Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Architect upon request of the District; and,
 3. On completion of the Contract, either:
 1. Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Architect; or
 2. Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.
 4. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Architect agrees that the contract can be terminated if the Architect knowingly or intentionally fails to comply with the requirements of that subchapter.
 5. Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
 6. If an Architect fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Architect in writing of the failure and allow 10

business days to cure the violation. District may terminate the Contract if Architect fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

7. If Architect is not a sole proprietorship, has ten (10) or more employees, and the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the Owner, unless excepted from that law.
8. As required by Texas Government Code Ann. Chapter 2274, if Contractor has ten (10) or more employees, is not a sole proprietorship, and if the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner, unless excepted by that law.

§ 10.21 CRIMINAL HISTORY RECORD CHECKS:

§ 10.21.1 So that Owner can obtain the national criminal history record information required by Texas Education Code Section 22.0834 on all "covered employees" (as defined in Section 10.21) of Architect, its subcontractors, or any subcontracting entities who will perform the Work, Architect shall submit to Owner the name and all necessary identifying information necessary to enable Owner to obtain the national criminal history information on those covered employees before they begin the Work. Architect's submission will include the employee's written authorization for Owner to obtain such criminal history information. Owner may, in its sole discretion, prohibit the use of any employee to perform the Work after its review of the criminal history information, but cannot disclose the criminal history information to Architect. Architect shall reimburse Owner for Owner's costs incurred in obtaining the criminal history information.

§ 10.21.2 Architect will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Architect receives information that a covered employee has a reported disqualifying criminal history, then Architect will immediately remove the covered employee from the Project and notify the Owner in writing within three business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Architect agrees to immediately discontinue using that covered employee to provide services on Owner's Project. If Architect has taken precautions or imposed conditions to ensure that the employees of Architect and any subconsultant will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.21.3 For the purposes of this Section, "covered employees" means employees, agents, or applicants of Architect who have or will have continuing duties related to the services to be performed on Owner's Project and have or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. The definition of "covered employees" does not include individuals working on the Work if the Work: (1.) does not involve the construction, alteration, or repair of an instructional facility as defined herein; (2.) involves construction of a new instructional facility and the person's duties related to other contracted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3.) involves an existing instructional facility and: (a.) the work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and (b.) the contracting entity adopts a policy prohibiting employees, contractors, and subconsultants from interacting with students or entering areas used by students, informs employees, contractors, and subconsultants of the policy, and enforces the policy at the work area. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060, and 19 Texas Administrative Code Section 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state; or a felony violation of Texas Penal Code Section 43.24 related to the sale,

distribution or display of harmful material to a minor. The term "instructional facility" means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under the state curriculum for kindergarten through grade 12.

§ 10.21.4 Architect's violation of this section shall constitute a substantial failure under Article 14.

§ 10.21.5 Architect shall assume all expenses associated with the background checks.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect for all undisputed payments set forth below. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured, in accordance with Texas Government Code Chapter 2251. Owner shall further have the right to withhold payments as specified in Sections 6.8 and 11.10.2.2 of this Agreement.

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
Compensation for all the services described above is based on our understanding of the scope of work as presented by Ector County ISD will be billed at 6.5% of the construction value for the scope of the project.

.3 Other
(Describe the method of compensation)

NONE

(Paragraphs deleted)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

As agreed between the parties in writing, executed prior to the Architect beginning performance of the Additional Services.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.3, shall be the amount invoiced to the Architect, or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Additional Services.)

There will be no additional services without the prior written authorization of the Owner. We do not anticipate that additional service fees will apply as the scope of work is understood by PBK.

§ 11.5 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	ten	percent (	10	%)
Design Development Phase	twenty	percent (	20	%)
Construction Documents	thirty-five	percent (	35	%)

Phase				
Procurement Phase	five	percent (	5	%)
Construction Phase	thirty	percent (	30	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage 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.

(Paragraph deleted)

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
Partner	\$350.00
Principal	\$305.00
Associate Principal	\$270.00
Project Manager/Associate	\$245.00
Architect	\$225.00
Intern	\$135.00
Field	\$125.00
Office	\$95.00

§ 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 Permitting and other fees required by authorities having jurisdiction over the Project;

(Paragraphs deleted)

- .2 Printing, and reproductions, plots, and standard form documents of Construction Documents, other than those required to be provided by Architect under this Agreement;
- .3 Postage, handling, and delivery of Construction Documents, other than those required to be provided by Architect under this Agreement;
- .4 Expense of overtime work requiring higher than regular rates, if authorized in advance in writing by the Owner;
- .5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner after Architect's provision of one artist's rendering and one model or mock-up of each building in the Project;

(Paragraphs deleted)

- .6 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective.

§ 11.8.2 For Reimbursable Expenses the compensation shall be only the actual the expenses incurred by the Architect and the Architect's consultants.

§ 11.9

(Paragraphs deleted)

Compensation For Use Of Architect's Construction Documents. The parties agree that Architect's compensation for Basic Services includes all licensing fees for Owner's use of the Construction Documents, including use after termination of this Agreement, to the extent allowed by this Agreement.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

(Paragraphs deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments for undisputed amounts are due and payable within thirty (30) days after receipt of the Architect's invoice by Owner's designated representative. Undisputed amounts unpaid more than 30 days after Owner's receipt of the invoice shall bear interest at the rate entered

(Paragraphs deleted)

below specified by Texas Government Code § 2251.025 or its successor. (NOTE: Per Texas Government Code Section 2251.025, these blanks should be filled in with "30" if the school board meets more often than once per month and with "45" if the school board meets once per month.)

§ 11.10.2.2 The Owner may withhold payments after appropriate notice as to the reasons for the withholding to the Architect for the purposes of reimbursing Owner for any damages caused by the Architect, for changes in the Cost of the Work which result in Architect's compensation being reduced, for Architect's failure to comply with the provisions of any part of this Agreement, if a claim has been filed against Architect, or 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.

§ 11.11 Architect shall reasonably cooperate with Owner, at no additional cost to Owner, in connection with a legal proceeding against Owner that relates to the Project

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 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 subcontractors, for Construction Documents which are sufficient for Owner to complete the construction of the Project and are free from material defects or omissions, 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, subcontractors, 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 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, INCURRED BY OWNER 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 SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY THE ARCHITECT, OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL; 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.

§ 12.2 THE PROVISIONS OF SECTION 12.1 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT."

§ 12.3 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 12.1, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary

to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect."

§ 12.4 It is understood and agreed that Article 12 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended

§ 12.5 RECORDS RETENTION. Architect shall keep all accounting and construction records on the Project for a period of at least ten years after Final Completion of the Project, and thereafter shall offer the records to the Owner in writing, in order for Owner to comply with its records retention requirements, per the Texas Government Code section 441.158 et seq. and the Texas Library and Archives Commission's Local Schedule GR (Government Records). In the alternative, Architect may provide such records to Owner for retention at any time if Owner agrees in writing to accept such records in lieu of Architect's retention under this Section.

§ 12.6 COMPLAINTS. The Texas Board of Architectural Examiner has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas under the Architects Registration Law. Texas Occupations Code Chapter 1051. The Texas Board of Architectural Examiners can be reached at Mailing address: PO Box 12337, Austin, TX 78711; Physical: 505 E. Huntland Dr., Ste. 350, Austin, TX 78752; Telephone: 512.305.9000; Fax 512.305.8900; or on the web at <https://www.tbae.texas.gov>.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 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 unless specifically provided for otherwise in this Agreement, as amended. This Agreement may be amended only by written instrument approved by the Owner's Board of Trustees and signed by both the Owner's designated representative 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)

, as amended for this Project;

(Paragraph deleted)

.2 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.)

[X] 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.)

Exhibit A: Owner's Program for the Project
Exhibit B: PBK Fee Proposal Letter dated February 27, 2024
Exhibit C: Hourly Billing Rates
Exhibit D: Insurance Requirements

.3 Other documents:
(List other documents, if any, forming part of the Agreement.)

AIA Document A 201-2017, General Conditions of the Contract for Construction, as amended for this Project.

This Amendment to AIA Document is entered into as of the day and year first written above.

OWNER *(Signature)*

Scott Muri, Ed. D. ECISD Superintendent of
Schools

(Printed name and title)

ARCHITECT *(Signature)*

Darrell Pearson, Partner

(Printed name and title)



Init.

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User Notes:

(1749699415)

[Exhibit A Placeholder]

6300 Bridge Point Parkway
Suite 2-115
Austin, Texas 78730
Phone: 512-340-0676
www.pbk.com

February 27, 2024

VIA EMAIL DELIVERY



Dr. Scott Muri
Superintendent
Ector County Independent School District
802 N. Sam Houston
Odessa, Texas 79761

RE: Professional Services Fee Proposal – Ector County ISD New Middle School

Dear Dr. Muri:

Thank you for allowing PBK the opportunity to provide Architectural and Engineering Services for the Ector County ISD New Middle School project located in Odessa, Texas. The following is our proposal to provide services for your project.

BASIC SCOPE OF WORK

Working in concert with the Ector County Independent School District personnel, PBK will provide comprehensive planning, schematic design, design development, construction documents, and construction administration services for the development of the district's middle school project in accordance with an Agreement between Owner and Architect as established by the Council of School Attorneys. PBK will work in conjunction with the Ector County ISD team to properly coordinate the organization and development of the site and the scope of services will include Programming, Site Evaluation/ Planning, Architecture, MEP, Structural, Interior Design, Envelope/Roof Design, and Construction Administration services for the district's new middle school.

COMPENSATION

Compensation for all the services described above is based on our understanding of the scope of work as presented by Ector County ISD will be billed at 6.5% of the construction value for the scope of the project. We understand that the construction budget for this project is \$90,000,000. PBK will submit monthly invoices in accordance with the completion of services for every project milestone.

PBK will submit monthly invoices in accordance with the completion of services. All invoices and supporting documentation will be addressed to:

C/O – Anthony Sorola, Ed.D.
Associate Superintendent
Athletics / Human Capital / Operations
Ector County ISD

6300 Bridge Point Parkway
Suite 2-115
Austin, Texas 78730
Phone: 512-340-0676
www.pbk.com



Architecture
Engineering
Planning
Technology
Facility Consulting

CONSULTANTS

PBK will be responsible for all necessary consultants. PBK will engage Geotechnical Engineering, Materials Testing, Surveying, and Traffic Analysis/ Design (if necessary) as a reimbursable at cost with no additional fee. If desired, PBK will engage any other owner provided consultants and pass through their fee as a reimbursable expense with no mark up.

REIMBURSABLE EXPENSES

Reimbursable expenses for reproduction of bid documents and permit application fees will be billed at cost without additional fee. Additional reimbursable expenses for special studies/consultants as requested by Ector County ISD will be reimbursable at cost without additional fee. PBK will limit our reimbursable travel related expenses for the entire duration of the middle school project to \$12,000. Any additional travel expenses will be absorbed by PBK.

ADDITIONAL SERVICE FEES:

There will be no additional services without the prior written authorization of the Owner. We do not anticipate that additional service fees will apply as the scope of work is understood by PBK.

We thank you for this incredible opportunity to continue to serve the Ector County ISD on this important project. Please let us know if the terms of this proposal are acceptable and we will move forward in the preparation of a contract. Should you have any questions or additional requests, please do not hesitate to contact me at any time on my mobile phone at 512-557-4857.

Sincerely,

A handwritten signature in black ink, appearing to read "Darrell Pearson", written over a horizontal line.

Darrell Pearson
PBK Architects, Inc.
Partner, LEEP AP BD+C

Agreed to by:

Dr. Scott Muri
Ector County Independent School District
Superintendent

Date
Cc: Mackenzie Rufrano, PBK



Effective January 1, 2022 (Public)

HOURLY BILLING RATES

Architecture

Partner	\$350.00
Principal	\$305.00
Associate Principal	\$270.00
Project Manager/Associate	\$245.00
Architect	\$225.00
Intern	\$135.00
Field	\$125.00
Office	\$95.00

MEP

Engineer Partner	\$350.00
Engineer Principal	\$305.00
Engineer Director	\$270.00
Electrical Engineer	\$245.00
Electrical Designer	\$220.00
Electrical Draftsman	\$160.00
Mechanical Engineer	\$245.00
Mechanical Designer	\$215.00
Mechanical Draftsman	\$160.00
Plumbing Engineer	\$235.00
Plumbing Designer	\$215.00
Plumbing Draftsman	\$160.00
IT Director	\$305.00
IT Engineer	\$245.00
IT Designer	\$215.00
IT Draftsman	\$145.00
Office	\$95.00

Civil

Civil Partner	\$350.00
Civil Principal	\$305.00
Civil Director	\$265.00
Civil Engineer	\$240.00
Civil Designer	\$215.00
Civil Draftsman	\$135.00
Office	\$ 95.00

INSURANCE REQUIREMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/27/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, LLC 2618 E Broadway Pearland TX 77581		CONTACT NAME: PHONE (A/C, No, Ext): 281-485-7500 FAX (A/C, No): 281-485-6933 E-MAIL ADDRESS:	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: Continental Casualty Company	20443
		INSURER B: LM Insurance Corporation	33600
		INSURER C: Liberty Insurance Corporation	42404
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1040722694 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC ☐ OTHER:			TB5-Z91-472898-023	4/25/2023	4/25/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
C	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY			AS7-Z91-472898-033	4/25/2023	4/25/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			TH7-Z91-472898-053	4/25/2023	4/25/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC5-Z91-472898-013	4/25/2023	4/25/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability Claims Made Form			AEH591912035	8/1/2023	8/1/2024	Each Claim Aggregate \$5,000,000 \$10,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 The General Liability and Auto policy includes a Blanket additional insured endorsement that provides additional insured status only when there is a written contract, agreement or permit between the named insured and the certificate holder that requires such status.
 The General Liability, Auto, Professional Liability and Workers Compensation policy includes a Blanket waiver of subrogation endorsement that provides this feature only when there is a written contract, agreement or permit between the named insured and the certificate holder that requires such status.
 General Liability is primary & non-contributory when required by written contract, agreement or permit.
 See Attached...

CERTIFICATE HOLDER Sample	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2016/03)

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Additions and Deletions Report for

AIA® Document B101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:39:42 ET on 03/19/2024.

PAGE 1

AGREEMENT made as of the 19 day of March in the year 2024

...

Ector County Independent School District
802 North Sam Houston
Odessa, Texas 79761

...

PBK Architects
6300 Bridge Point Parkway
Building 2, Suite 115
Austin, Texas 78730

...

(Name, location and detailed description)

New Middle School
Situated in Ector County, Texas at Sections 34&35 of Block 43, Odessa, TX
Legally described as: 40 Acres out of T-2-S, BLK 43, SEC 34 (Card #1) WH McCollum undivided in 640 acres.

WHEREAS Ector County Independent School District (hereinafter referred to as "Owner") and PBK (hereinafter referred to as "Architect") desire to enter into a contract under which Architect will perform construction services relating the above referenced Project(s) on behalf of Owner;

WHEREAS Owner and Architect have agreed to enter into AIA Document B101™ 2017 Contract ("Contract") as the basic form for that contract; and

WHEREAS certain terms and conditions of the contract must be modified to comply with applicable laws and policies affecting Owner and Architect on this project, Owner and Architect hereby agree to the following amendments to the Contract:

PAGE 2

See Exhibit A

...

Middle School Property: Situated in Ector County, Texas at Sections 34&35 of Block 43, Odessa, TX
Legally described as: 40 Acres out of T-2-S, BLK 43, SEC 34 (Card #1) WH McCollum undivided in 640 acres.

...

Construction Cost : Ninety Million (\$90,000,000.00)

PAGE 3

Schematic Design / Design Development : 04/01/2024 – 06/30/2024

...

01/01/2025

...

06/30/2026

...

Construction Documents : 07/01/2024 – 11/15/2024

Bidding : 11/15/2024 – 12/31/2024

Construction Administration : 01/01/2025 – 06/30/2026

...

Construction Manager-At-Risk (CMAR)

...

None

...

Dr. Scott Muri, Superintendent of Schools, or his designee Dr. Anthony Sorola.

Ector County Independent School District Associate Superintendent

Athletics / Human Capital / Operations

802 North Sam Houston

Odessa, Texas 79761

Telephone: 432-456-9509

...

None

...

.1 — Geotechnical Engineer:

.2 — Civil Engineer:

~~3~~ Other, if any:

(List any ~~other~~ consultants and contractors retained by the Owner.)

PAGE 4

Darrell Pearson
PBK Architects
6300 Bridge Point Parkway
Building 2, Suite 115
Austin, Texas 78730
Telephone: 512-340-0676
Email: darrell.pearson@pbk.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and ~~1.1.11.2~~ 1.1.11.2 and shall select such consultants based on the qualification-based selection process established in Texas Government Code, Chapter 2254.:

...

Kubala Engineers
11 Greenway Plaza
Houston, Texas 77046
Telephone: 1-800-248-3674

John Kubala, President & CEO
Office: 713-940-3343
Mobile: 713-907-8385
Email: John.Kubala@kubalaengineers.com

.2 Mechanical Engineer:

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-940-3300
Fax: 713-961-4571

Don Richards, Vice President
Office: 713-940-3326
Mobile: 713-499-9173
Email: Don.Richards@leafengineers.com

.3 Electrical Engineer:

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-940-3300
Fax: 713-961-4571

Don Richards, Vice President

Office: 713-940-3326
Mobile: 713-499-9173
Email: Don.Richards@leafengineers.com

.4 Geotechnical Engineer

To be identified by the owner at a later time.

.5 Civil Engineer

Dunaway Associates
5707 Southwest Parkway, Building 2, Suite 250
Austin, Texas 78735
Telephone: 512-306-8252
Tim Hair, Regional Manager
Mobile: 210-241-6939
Email: Thair@dunawayassociates.com

Consultants not governed by Texas Occupations Code Chapter 1001 shall be licensed or registered as required by applicable law.

PAGE 5

None.

...

Whenever a statute, regulation, or code is cited in this Agreement, it shall refer to that statute, regulation, or code or its successor at the time the Agreement is signed or, a revised statute, regulation, or code if it becomes effective at a later time and compliance is required for completion and approval of the Project.

...

§ 1.3 The parties ~~shall may~~ agree upon ~~protocools-protocols~~, in writing governing the transmission and use of ~~Instruments of Service-Construction Documents~~ or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, 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 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, 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.

§ 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.~~ shall provide professional services as set forth in this Agreement. The Architect shall also comply with all provisions in Texas Administrative Code, Title 19 Section 61.1040, pertaining to services and actions required of the Architect. Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable

cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect, as set out in Texas Local Government Code Section 271.904(d) and Texas Civil Practices and Remedies Code Section 130.0021, hereinafter referred to as the "Standard of Care." The Architect shall further, and to the extent required by 19 Texas Administrative Code Section 61.140, provide all certifications required by Section 61.140(f), and otherwise perform its services and obligations required of it by applicable laws, codes, and ordinances in accordance with the Standard of Care. Owner's approval, acceptance, use of, or payment for all or any of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The identified Architect shall be the prime design professional for the Project.

PAGE 6

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9. 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 commercial general liability, and comprehensive automobile liability, and not less than eight years from the Substantial Completion of all construction of this Project (or ten 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 commercial general liability and comprehensive automotive liability. All insurance required herein shall be obtained from a company licensed to do business in the State of Texas by the Texas Department of Insurance, and shall be underwritten by a company rated not less than A-X in A.M. Best's Key Rating Guide, Property-Casualty, according to the latest posted ratings available on A.M. Best's website, www.ambest.com, and that permits waivers of subrogation. Deductibles or self-insured retention limits for all policies (except Architect's Errors or Omissions insurance) shall not exceed \$25,000 for a project budgeted at \$4 million or less, or \$50,000 for a project budgeted at more than \$4 million. 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. 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. Any nonconformity may be grounds for termination or modification of the Contract. Such policies shall be primary and non-contributory. The limits of liability for such insurance shall be in at least the following amounts:

§ 2.5.1 Commercial General Liability with policy limits of not less than —(\$ —) for each occurrence and —(\$ —) in the aggregate for bodily injury and property damage. Worker's Compensation

.1	State:	Statutory Benefits
.2	Employer's Liability:	\$1,000,000 per accident
		\$1,000,000 disease, policy limit
		\$1,000,000 disease, each employee

§ 2.5.2 ~~Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$) per accident 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.~~ Commercial General Liability with policy limits if not less than One Million (\$ \$1,000,000)

.1	Each Occurrence:	\$1,000,000 each occurrence \$2,000,000 aggregate
.2	Medical Expense (per person)	\$10,000 each occurrence
.3	<u>Products & Completed Operations: \$2,000,000 aggregate (to be maintained for a period of two years after Final Payment; Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during this period and Owner shall be named by endorsement as an Additional Insured for such coverage)</u>	
.4	Personal & Advertising Injury	\$1,000,000 aggregate
.5	Must include explosion, collapse, and underground (X, C, and U) coverage.	
.6	Must include Completed Operations coverage	
.7	Must Include Contractual Liability Coverage	
.8	Must Include General Aggregate Per Project Endorsement.	

§ 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.~~ Contractual Liability:

.1	Property Damage shall be included in Commercial General Liability Coverage.	
.2	Insurance sufficient to cover Architect's contractual indemnities.	

§ 2.5.4 ~~Workers' Compensation at statutory limits. Business Automobile Liability (including owned, non-owned, hired, or any other vehicles):~~
Combined single limit policy in the amount of at least \$1,000,000.

.1	Bodily Injury (per person)	\$
.2	Bodily Injury (per accident)	\$
.3	Property Damage	\$

§ 2.5.5 ~~Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.~~ Professional Liability (E&O) Coverage in at least in the following amounts:

	\$5,000,000	per occurrence
	\$10,000,000	per aggregate

Deductibles or self-insured retention amounts shall not exceed \$25,000 for a project budgeted at \$4 million or less, or \$50,000 for a project budgeted at more than \$4 million.

.1	<u>Architectural and engineering consultants shall carry Professional Liability (errors and omissions) insurance in an amount not less than five million (\$5,000,000).</u>	
----	---	--

(Note: amount specified should be sufficient to cover any potential damages which could result from that consultant's negligence).

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than — (\$ —) per claim and — (\$ —) in the aggregate. ~~Umbrella Excess Liability coverages shall be:~~

.1	\$5,000,000	each occurrence
.2	\$5,000,000	aggregate
.3	\$	aggregate Per Project Endorsement

§ 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.~~ 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 contractors, subcontractors, 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 Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .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 Commission'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).

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

§ 3.1 Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission. The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services; Article 3 and Article 4 and include usual and customary architectural services, structural, mechanical, plumbing, civil, and electrical engineering services; landscape design; architectural interior design; audio-visual, data, and telecommunications and technology design and distribution; kitchen and food service equipment design; acoustical engineering and design; site feasibility design; programming for new schools and/or scope of work verification for renovations of existing schools; security planning services; graphics/way-finding planning services; roofing consultant services unless otherwise approved by Owner; accessibility services; estimating by the Architect's independent estimating consultant; record drawings; 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. The District will not waive any services recommended by the Architect that are required by law.

Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall ~~manage the Architect's services,~~ perform and manage the Architect's services and administer the Project, in accordance with this Agreement as amended for this Project, and with the AIA Document A201-2017, General Conditions of the Contract for Construction, as amended for this Project, 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 Contractor, as more specifically defined hereafter. 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.

- .1 Upon request of the Owner's representative, the Architect shall make presentations to Owner's representatives to review the design of the Project. In addition, upon request of the Owner's representative, the Architect shall make monthly presentations to Owner's Board of Trustees.
- .2 The Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Board of Trustees, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Board of Trustees in the further development of the design, provided that nothing herein shall relieve Architect of responsibility or liability for its failure to provide its services in accordance with the Standard of Care.

§ 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, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's ~~consultants~~. ~~consultants in accordance with 19 TAC Section 61.140.~~ 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. ~~Architect shall also promptly respond in writing to notices from Owner regarding Owner's discovery of errors, omissions, or inconsistencies, and, if requested, shall promptly meet with Owner regarding same. Owner's notice or lack of notice shall not relieve Architect of any responsibility or liability for performance of Architect's contracted services.~~

§ 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~~. ~~services including the dates of Architect's design services and the completion of documentation required of 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 Contractor'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, timed sufficiently to achieve Owner's proposed dates of Substantial Completion and Final Completion as stated in this Agreement, as amended, 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, Architect. With the Owner's prior written approval for reasonable cause, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If Contractor is a Construction Manager-at-Risk, then the Architect shall assist the Construction Manager-at-Risk in the preparation and periodic update of the Project schedule.

§ 3.1.3.1 Architect shall also review and search all building codes applicable to the Project, and shall reasonably comply with all applicable codes in the design and construction of the Project, as required by 19 TAC § 61.1040(e)(5)(C), and (j)(1) and (2), including without limitation, design of storm shelters, and use of a third-party code compliance officer where code compliance will not be enforced by a state or local authority having jurisdiction ("building code official"). Architect shall coordinate and prepare a proposed statement of any special inspections or testing required in accordance with the required construction codes, customizing the proposed statement based on knowledge about the project regardless of whether the statement requires testing and inspection to be less than the default requirements of the required construction codes, including materials testing, project-specific requirements for special inspections and testing, specific wind and seismic requirements, frequency of the special inspections, or tests to be performed in accordance with the referenced standard defining the inspection. 19 TAC Section 61.1040(e)(6)(D). Architect shall ensure that the Construction Documents are of sufficient clarity to indicate the timing, location, nature, and extent of specific inspections and tests required to be performed by the Owner through the local authority having jurisdiction, the third-party code compliance officer, any third-party special inspector or inspection agency, or the Architect if qualified as a special inspector and specified as a contractual term. 19 TAC Section 61.1040(e)(6)(E). A building permit issued by a local authority having jurisdiction or a third-party code compliance officer shall be considered by the Owner to indicate that the proposed statement of special inspections is approved and constitutes the code-required inspections and tests. 19 TAC Section 61.1040(e)(6)(F). The Contractor, before beginning construction, shall submit to the Owner, Architect, and the building code official or third-party code compliance officer an acknowledgement of the Contractor's responsibility to notify quality assurance personnel that will be performing inspections and tests when the Project is ready for those specific inspections and tests and the Contractor's responsibility to request and obtain a final report from each quality control person performing the code-required inspections and tests before requesting a certificate of occupancy. 19 TAC Section 61.1040(e)(6)(G).

Third-party inspectors who perform the code-required inspections and tests shall submit inspection and testing reports to the Owner and the Architect, and shall submit a final report to the Owner, Architect, building code official or third-party code compliance officer, and Contractor, upon request by the Contractor, indicating any known deficiencies discovered during the Project that have not yet been addressed at the time of the request. 19 TAC Section 61.1040(e)(6)(H). Special inspections and testing reports shall be submitted to the building code official and the Architect, and any discrepancies shall be brought to the attention of the Contractor, and if not corrected, to the attention of the building code official, the Architect, and the Owner. 19 TAC Section 61.1040(e)(6)(I). The Architect shall comply with 19 TAC Section 61.1040(j) and (k) in the design of this Project.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval substitution made without the Architect's approval. 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 61.1040, and Texas Health and Safety Code Chapter 341, in accordance with the Standard of Care. 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 61.1040, and used reasonable care in accordance with the Standard of Care. Architect shall also certify that the Construction Documents are in reasonable accordance with the provisions of 19 TAC Section 61.1040, except as indicated on the certification. 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 61.1040. Architect shall also certify that the facilities have been designed according to the provisions of 19 TAC Section 61.1040, 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 61.1040 and shall certify the Project has been designed in reasonable compliance with Owner's long-range facility plan, educational specifications, school facility standards, and facility space as determined by Owner's Qualitative or Quantitative evaluation of compliance for space standards. Architect shall complete the Texas Education Agency's Certification of Project Compliance, located at www.tea.state.tx.us. In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the Standard of Care. 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. 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, if applicable to the Project and required for Final Completion.

§ 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 respond to 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 over the Project. When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201-2017, as amended for this Project as of the date of this Agreement, and Architect herein agrees to abide by same. Architect agrees that the AIA Document A201-2017 may be subject to subsequent amendments based upon negotiations between Owner, Architect and Contractor. As a condition of further service, Architect shall provide to Owner a signed statement stating Architect's agreement to adhere to any such negotiated amendments.

PAGE 12

§ 3.2.1 The Architect shall ~~review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services~~ assist the Owner with the provision of the educational program and educational specifications, which shall be approved by Owner's Board of Trustees, per 19 Texas Administrative Code Section 61.1040. 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..

§ 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 they are consistent with the requirements of the Project. The Architect shall notify the ~~Owner~~ 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. The Architect shall visit the Owner's Project site and shall provide to Owner a written report evaluating the feasibility of the Owner's site for the Project based on site conditions, and the Owner's program, schedule and budget for the Cost of the Work. The Architect shall include, in the written report, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall address with the Owner any existing easements or rights-of-way which may interfere with Owner's 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 ~~an a~~ written understanding with the Owner regarding the requirements of the Project.

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

§ 3.2.5 Based on the Owner's approval of the preliminary ~~design, design~~ and Owner's schedule and budget for the Work, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall establish the conceptual design of the Project and illustrate the scale and relationship of the Project components. 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.

§ 3.2.5.1 ~~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 ~~the value of alternative materials, building systems and equipment, and discuss with Owner sustainable design alternatives, such as material choices and building orientation, 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, schedule and budget for the Cost of the Work. Work. The Owner may, but shall not be required to, consider and approve any sustainable design alternatives recommended by Architect so long as such alternatives do not increase the cost of the Work..~~

§ 3.2.6 ~~The Architect shall submit to the Owner an~~ When the Project requirements have been sufficiently identified, including Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities, the Architect, and, if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work prepared in accordance with ~~Section 6.3.~~ Section 6.3. This estimate may be based on current area, volume or similar conceptual estimating techniques.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Architect shall not proceed to the Design Development Document Phase without the approval of Owner's Board of Trustees, or the Board's designee; provided, however, this approval shall not relieve Architect of Architect's

responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

PAGE 13

§ 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, shall refine the Project design, 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~~ elements outlined in this 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 ~~prepared in accordance with Section 6.3. Work~~. 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 prepare a 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 the 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 the equipment and facilities. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget, 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 as provided in § 3.3.3, 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, and the Owner shall cooperate with the Architect in making such adjustments, with Owner having the right to approve or reject such recommendations..

§ 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, *redesign the Project to comply with Owner's budget*, and request the Owner's approval. Architect shall not proceed to the Construction Documents Phase without the approval of Owner's Board of Trustees, or Board's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without Board approval.

§ 3.3.4 The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted.

PAGE 14

§ 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. Construction Documents" means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth in detail the requirements for construction of the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standards in 19 TAC Section 61.1040 and the standards set forth in Section 3.1.4 of this Agreement. 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. The Architect shall provide Construction Documents which are sufficient for the Owner to complete construction of the Project, are free from material defects or omissions, and

comply with all applicable laws, 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 Contractor 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. Owner and Owner's authorized representatives shall be given the opportunity to review all Construction Documents prior to release of the Construction Documents for bidding, proposal or negotiation purposes. Architect's bid specifications and any subsequent contract shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code Section 2269.054. Architect shall also add the following language in any document issued to solicit bids or competitive sealed proposals on the Project:

By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, and their respective employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract.

§ 3.4.1.1 Errors and Omissions

§ 3.4.1.1.1 Completed plans and specifications are expected to be comprehensive and free of material errors and omissions, except minor discrepancies or other items that can be corrected by minor change at no cost to the Owner, in accordance with the Standard of Care.

§ 3.4.1.1.2 Procedures and meetings in schematic and design development phases allow for adequate interaction between Owner and Architect to minimize oversights in Project requirements. It is incumbent upon the Architect to thoroughly review his work product, in accordance with the Standard of Care, to detect errors and omissions before they become costly additions to the Project during construction.

§ 3.4.1.1.3 Professional services and costs, if any as required to correct errors in construction documents, are the responsibility of the Architect, including addenda during bidding to rectify errors in the contract documents.

§ 3.4.1.1.4 Deductive change orders may be applied to offset the change order cost applicable to the Architect only to the extent that such deductive change order resulted from an oversight in the Contract Documents that was not required by the Building Program or requested by the Owner. All other deductive change orders due to Owner scope modifications or other value engineering items and unused Allowances shall not apply to this offset provision.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Documents and 19 Texas Administrative Code section 61.1031, and Texas Health and Safety Section 341.065. Architect shall certify that he/she has reviewed the standards contained in 19 Texas Administrative Code Section 61.1040 and Section 61.1031, and performed its services in accordance with the Standard of Care in executing the construction documents, and Section 61.1031.

Architect shall also certify that the facilities have been designed and constructed in reasonable accordance with the provisions of 19 Texas Administrative Code Section 61.1040 and Section 61.1031, based on the educational program, long-range school facility plan, educational specifications, building code specifications, any and all required safety and security directions approved by Owner, and all documented changes to the Construction Documents provided by the District, as required by 19 Texas Administrative Code, Section 61.1040 and Section 61.1032. Architect shall complete the Texas Education Agency's (TEA's) Certification of Project Compliance. In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the Standard of Care. 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 and Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, the Pump Act (29 USC Section 218(c)), 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. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards that 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 a Change in Service..

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner and the Owner's attorney in the development and preparation of (1) bidding competitive purchasing, 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 ~~Contractor~~; Contractor or Construction Manager at Risk; and (3) the Conditions of the Contract for Construction (General, Supplementary and other ~~Conditions~~). The Conditions as amended for the Project. After consultation with the Owner, the Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Project 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 outdoor lighting fixtures designed by Architect, if any, shall meet the statutory energy conservation and light pollution standards established by the Texas Department of Health. All ventilation and indoor air quality systems designed by Architect shall meet the indoor air quality voluntary guidelines established by the Texas Department of Health. Texas Health and Safety Code Chapter 385. All playground equipment designed by Architect, if any, shall comply with each applicable provision of ASTM Standard F1487-07ae1. "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; Americans with Disabilities Act. 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. 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.

§ 3.4.3.1 As required by law, any bid or proposal document shall contain prevailing wage rates, which Architect may request from the Owner.

§ 3.4.3.2 Architect shall insert in the Project Specifications the requirement that all bonds comply with the requirements of Texas Insurance Code Section 3503.001 et seq. and Texas Government Code Chapter 2253 or their successors and that all insurance companies be licensed to do business in the State of Texas and, if bond amounts exceed \$100,000, hold a certificate of authority from the U.S. Secretary of the Treasury or reinsurance for liability in excess of \$100,000 from a reinsurer authorized and admitted as a reinsurer in the State of Texas and that is a holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. Owner and Architect reserve the right to rely on the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3-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 as provided herein, 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. Owner shall not be able to waive any services or direct any changes where recommended or required by an applicable design professional.

§ 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. Architect shall not proceed to the Bidding or Negotiation Phase without the approval of Owner's Board of Trustees, or Board designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from

material defects or omissions, in accordance with the Standard of Care. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

§ 3.4.6 The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted.

§ 3.4.7 Architect shall submit the Construction Documents for review and approval to the Texas Department of Licensing and Regulation any time the renovation, modification, or alteration of the Work has an estimated construction cost of \$50,000 or more, and shall notify Owner of same. Architect shall not allow Contractor to file an application with any local governmental entity for a building construction permit until after Architect's submission to the Texas Department of Licensing and Regulation.

PAGE 16

The Architect shall assist the Owner in establishing a list of prospective contractors. Such assistance shall include, if necessary, testifying in any bid or proposal dispute. Architect shall disclose in writing to Owner any prior or current relationships which Architect may have had with any bidders or proposers. 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. The Architect shall cooperate with the Owner's legal counsel in the preparation of all Contract Documents and the General Conditions of the Contract for Construction, as amended or supplemented for the Project, to be used in the bidding or proposal documents. Architect shall ensure that its Supplementary or other Conditions of the Contract, if any, shall not contradict the provisions of Owner's AIA Document A201, as amended, except with Owner's prior written consent.

§ 3.5.2 Competitive Bidding or Purchasing

§ 3.5.2.1 Bidding Documents shall consist of bidding or competitive proposal requirements and proposed Contract Documents. The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Architect (hereinafter the Owner/Architect Agreement) and consist of the Owner/Architect Agreement, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract.

§ 3.5.2.2 The If requested by the Owner, the Architect shall assist the Owner in bidding or competitively purchasing the Project by:

- .1 facilitating the distribution of Bidding Documents procuring at Owner's cost the reproduction of Bidding Documents for distribution to prospective bidders, and distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;

PAGE 17

- .4 organizing and conducting the opening of the bids, evaluating the bids, and subsequently documenting and distributing the bidding results, as directed 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 In consultation with the Owner, the Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders-bidders and Owner. The Architect shall review, in conjunction with the Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project and the quality of the construction within Owner's overall budget for the Project.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents. Proposal Documents shall consist of proposal requirements and proposed Contract Documents. The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Architect (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract, as 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 Agreement and Modifications issued after execution of the Contract.

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

- .1 ~~facilitating the distribution~~ procuring at Owner's cost the reproduction of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation ~~process;~~ process and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective proposers;

...

- .4 ~~evaluating proposals,~~ participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed 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 ~~In consultation with the Owner, the Architect shall~~ consider requests for substitutions, if the Proposal Documents permit substitutions, and prepare and distribute addenda identifying approved substitutions to all prospective ~~contractors,~~ contractors and Owner. The Architect shall review, in conjunction with the Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction within Owner's overall budget for the Project.

...

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for ~~Construction.~~ Construction, *as amended for the Project, and as specified in Section 3.1.6 herein.* If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. While on Owner's property and throughout Architect's services under this Agreement, 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 prohibitions against fraud and financial impropriety."

§ 3.6.1.2 The Architect shall ~~be a representative of,~~ and 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, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor'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 Contractor 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 in accordance with the Standard of Care shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions in accordance with the Standard of Care shall be at no additional cost to Owner.

PAGE 18

§ 3.6.2.1 ~~The Architect shall visit the site at Architect, or his authorized representative, as a representative of the Owner, shall visit the site at least twice per week (or more per week when deemed necessary by the Owner's Superintendent or when necessary to protect Owner's interest), and at other intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the the Contractor's operations (1) to inspect the progress, quantity and quality of the Work completed; (2) to reject any observed nonconforming Work; (3) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed completed; (4) to guard the Owner against defects and deficiencies in the Work; (5) 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. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.~~ 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. Attendees will include Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction that, 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, ~~the Architect shall keep the Owner reasonably informed about on-site observations, or inspections by the Architect, Architect shall keep Owner and Owner's Contractor informed of the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations and~~ from the most recent construction schedule submitted by the Contractor, and (3) ~~(2)~~ defects and deficiencies observed in the Work. Architect shall guard Owner against defects and deficiencies in the Work, and shall promptly notify Owner and Contractor orally regarding the defect or nonconforming Work, which notice shall be followed by notice in writing of defects and nonconforming work noted and corrective actions taken or recommended. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. 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 errors or omissions shall be at no additional cost to Owner.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall ~~have the authority to require-recommend to~~ Owner additional 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. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Construction Manager at Risk, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with 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 2269 of the Texas Government Code.

§ 3.6.2.3 The Architect shall interpret and ~~decide-make recommendations to~~ Owner regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. 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 ~~decisions-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 ~~decisions-recommendations~~, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, ~~shall not show partiality to either, Contractor~~ and shall not be liable for results of interpretations or ~~decisions-recommendations~~ rendered in good faith. The Architect's ~~decisions-Owner's recommendations~~ on matters relating to aesthetic effect shall be ~~final if consistent with the intent expressed in the Contract Documents:final.~~

§ 3.6.2.5 ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims~~ The Architect shall promptly render initial written recommendations or interpretations on Claims, disputes, or other matters in question between the Owner and Contractor as provided in the Contract Documents.

PAGE 19

§ 3.6.3.1 The Architect shall observe the progress of the Work, critically evaluate, review and certify the amounts due the Contractor and shall ~~issue certificates in such amounts, sign and issue Certificates for Payment 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 Contractor's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations and/or evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, that the Work has progressed to the point indicated, and in Architect's professional opinion, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. the Construction Documents and the Contract Documents and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. If Architect disputes the Contractor's payment application in whole or in part, Architect shall provide in writing to Owner and Contractor a detailed statement of the Architect's reason for withholding certification in accordance with Texas Government Code §2251.042(a) and as provided in §§9.4.1 and 9.5.1 of the AIA A201 for the project. The foregoing representations are subject to (1) an 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 by the Architect. Architect in writing to Owner.

...

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule, and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, for the purpose of checking for conformance with the Contract Documents and all laws, statutes, codes and requirements applicable to Architect's design services. 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 reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor 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.

§ 3.6.4.2 The In accordance with the Architect-approved submittal schedule, the Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor 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 Contractor'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-adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals.

PAGE 20

§ 3.6.4.5 The Architect shall maintain a record-all records of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

...

§ 3.6.5.1 ~~The Architect may order~~ With notice and consent of Owner, the Architect may authorize 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

...

§ 3.6.5.3 The Architect shall accept requests by the Owner, and shall review properly-prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly-prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, then the Architect may issue an order for a minor change in the Work, with prior written notice to the Owner, or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, then the Architect shall make a recommendation to approve or deny the requested change to the Owner. Based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to Additional Services of the Architect. If the Architect recommends approval, then the Architect shall incorporate those estimates into a proposed Change Order or other appropriate documentation for the Owner's Board of Trustees' approval and execution.

PAGE 21

- .2 issue Certificates of Substantial Completion and of Final Completion, using Owner's or State forms, and ensure Contractor gives its notarized signature on its Certification of Substantial or Final Completion;
- .3 receive from the Contractor and 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 Contractor; Contract; and,
- .4 issue 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~~ the Work complies with the requirements of the Contract Documents.
- .5 For any Work that exceeds \$50,000, Architect shall schedule and ensure completion of inspections with the Texas Department of Licensing and Regulation as required by Texas Government Code Section 469.105.
- .6 Owner, Architect, Contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable school facility standards required in 19 TAC Section 61.1040 subsections (d) and (g)-(k). 19 TAC Section 61.1040(f).
- .7 (B) Architect certifications. Architect shall certify the following, as required by 19 TAC 61.1040(f)(1)(B):
 - (i) Certifications related to educational adequacy under subsection (d) of 19 TAC 61.1040(d). The Architect for a capital improvement project shall certify compliance that the project has been designed in reasonable accordance with the long-range facility plan and educational specifications, if applicable.
 - (ii) Certifications related to standards for space for instructional facilities under subsection (g) of 19 TAC Section 61.1040 and to standards associated with the method of compliance approved by the Owner's board of trustees for instructional facility space under subsection (h) of 19

TAC Section 61.1040 related to the quantitative method of compliance or under subsection (i) of 19 TAC Section 61.1040 related to the qualitative method of compliance. To provide adequate instructional spaces and adequate space in instructional facilities, the Architect shall certify compliance that the Project has been designed in reasonable accordance with the standards for space in subsection (g) of 19 TAC Section 61.1040 and with the standards associated with the method of compliance approved by the Owner's board of trustees under subsection (h) or (i) of 19 TAC Section 61.1040.

- (iii) Certifications related to safety and security standards under subsection (k) of 19 TAC Section 61.1040. A design professional of record shall certify compliance that the Project has been designed in reasonable accordance with any required safety and security directives approved by the Owner in accordance with subsection (k) of 19 TAC Section 61.1040.

...

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner Prior to the expiration of six months from the date of Substantial Completion, prior to the expiration of ten months from the date of Final Completion, and upon request of the Owner at any other time within one year of Final Completion, the Architect shall meet with the Owner and the Owner's Designated representative to review the facility operations and performance-performance; to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner.

PAGE 22

§ 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 Supplemental 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. included in Basic Services. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. The Architect shall not be entitled to additional compensation for Services listed below unless otherwise indicated, or if such services are not required for this Project or approved by Owner.

...

§ 4.1.1.1	Programming	<u>Architect</u>
§ 4.1.1.2	Multiple preliminary designs	<u>Architect</u>
§ 4.1.1.3	Measured drawings	<u>Architect</u>
§ 4.1.1.4	Existing facilities surveys	<u>Architect</u>
§ 4.1.1.5	Site evaluation and planning	<u>Architect</u>
§ 4.1.1.6	Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.7	Development of Building Information Models for post construction use	<u>Architect</u>
§ 4.1.1.8	Civil engineering	<u>Architect</u>
§ 4.1.1.9	Landscape design	<u>Architect</u>
§ 4.1.1.10	Architectural interior design	<u>Architect</u>
§ 4.1.1.11	Value analysis	<u>Architect</u>
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	<u>Architect</u>
§ 4.1.1.13	On-site project representation	<u>Architect</u>
§ 4.1.1.14	Conformed documents for construction	<u>Architect</u>
§ 4.1.1.15	As-designed record drawings	<u>Architect</u>
§ 4.1.1.16	As-constructed record drawings	<u>Not Provided</u>

§ 4.1.1.17	Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.18	Facility support services	<u>Not Provided</u>
§ 4.1.1.19	Tenant-related services	<u>Not Provided</u>
§ 4.1.1.20	Architect's coordination of the Owner's consultants	<u>Architect</u>
§ 4.1.1.21	Telecommunications/data design	<u>Architect</u>
§ 4.1.1.22	Security evaluation and planning	<u>Architect</u>
§ 4.1.1.23	Commissioning	<u>Architect</u>
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.25	Fast-track design services	<u>Not Provided</u>

...

§ 4.1.1.27	Historic preservation	<u>Not Provided</u>
§ 4.1.1.28	Furniture, furnishings, and equipment design	<u>Not Provided</u>

PAGE 23

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

(Describe in detail the Architect's Supplemental 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 Supplemental Services.)

§ 4.1.2.2 A description of each Supplemental 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.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

...

- .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~~ including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .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 Instruments of Service 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 Instruments of Service when those Instruments of Service 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;~~

- ~~.5~~ — Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- ~~.6~~ — Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- ~~.7~~ — Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~.8~~ — Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- ~~.9~~ — Evaluation of the qualifications of entities providing bids or proposals;
- ~~.10~~ .3 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- ~~.11~~ Assistance to the Initial Decision Maker, if other than the Architect. .4 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- ~~.1~~ — Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
 - ~~.2~~ — Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
 - ~~.3~~ — Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
 - ~~.4~~ — Evaluating an extensive number of Claims as the Initial Decision Maker; or,
 - ~~.5~~ — Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.
- .1 Five (5) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
 - .2 Two (2) visits to the site by the Architect per week during construction as required by § 3.6.2.1
 - .3 Five (5) inspections for ~~any~~ each 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 Five (5) inspections for ~~any~~ each portion of the Work to determine final completion.

§ 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.

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~()~~ 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.

§ 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, 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 as required by 19 Texas Administrative Code Section 61.1040.~~ 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 and update the Owner's budget for the Project, when required, 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 significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. 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. Owner's Board of Trustees, is the only representative of Owner, an independent school district, having the power to enter into or amend a contract, to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's Board of Trustees may designate one or more representatives with authority to sign documents after Board approval and/or to advise and consult with Architect for day-to-day operations under the agreement.~~

Owner's designated representative to sign contracts:

Name: Dr. Scott Muri Title: Superintendent, or designee

Owner's designated representative for day-to-day operations:

Name: Dr. Scott Muri Title: Superintendent, or his designee

§ 5.4 ~~The Owner shall furnish surveys to describe~~ Upon written request of the Architect, the Owner shall furnish surveys known to the Owner describing 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. Other than the metes and bounds noted in the legal description of the site, the Architect shall not be entitled to rely on the accuracy of information furnished by the Owner, but shall exercise proper precautions relating to the safe performance of the Work. Other than the metes and bounds noted in the survey if any, Owner does not guarantee the accuracy of surveys provided, including the locations of utility lines, cables, pipes or pipelines or the presence or absence of easements. Architect shall review this information and shall provide to Owner a written request for additional information needed, if any, for Architect to adequately perform services hereunder. Upon receipt of this request, the Owner will procure and provide to the Architect the information requested.

§ 5.5 The Owner ~~shall~~ may 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 Supplemental 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, attached to 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 that are required by law or the Contracts to be furnished by the Owner. To the extent that tests, inspections and reports are not~~

required by law or the Contract Documents to be furnished by Owner, but are deemed necessary by the Architect or Owner, then they shall be furnished by Architect, unless Architect receives Owner's written permission to charge Owner for the services or Owner agrees to separately contract for the services..

§ 5.10 ~~The Owner shall furnish all legal, insurance~~ Unless otherwise provided in this Agreement, the Owner may, in its sole discretion, furnish legal 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 Instruments of Service. Service and Architect shall have the reasonable amount of time required by Texas Government Code Chapter 2272 to cure its errors, omissions, or inconsistencies as a precondition to any dispute resolution proceeding involving Owner and Architect. 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, in accordance with the Standard of Care.

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

PAGE 25

§ 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.~~

§ 6.1 ~~For purposes of this Agreement, 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 contractors' 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. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect, Architect or the Architect's consultants; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; 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 required 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 Contractor'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. if the Architect's design is determined to exceed Owner's budget, then Architect agrees to redesign the Project, at Architect's expense and as a part of Architect's Basic Services, to meet Owner's budget."~~

§ 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, in accordance with the Standard of Care, 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; ~~the Project with the prior consent of Owner's Board of Trustees or designee;~~ and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. ~~The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.~~

§ 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 ~~shall~~ 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 elements of the Project, without the Owner's knowledge and written consent. 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 for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.~~ quality or budget. Owner shall consider Architect's recommendation, 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,~~ proposal prior to commencement of the Work, the Owner shall

PAGE 26

- .2 authorize rebidding or renegotiating of the Project within a reasonable ~~time;~~ time, and/or authorize a different construction procurement method, consistent with State law;

...

- .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;~~ alternative; or,
- .6 direct the Architect to redesign the Project to meet the Owner's budgetary, programmatic and quality needs.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, ~~the Architect 6.6.4 or 6.6.5, the Architect, without additional compensation,~~ 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 the Architect could not reasonably anticipate, 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 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.~~

§ 6.8 If, after commencement of the Work, the Cost of the Work is exceeded due to the negligent errors or omissions of the Architect, in accordance with the Standard of Care, then the Architect shall bear financial responsibility to Owner for the increases in the Cost of the Work, except for all materials, labor, and overhead related to the betterment obtained by the Owner. By way of example, the Architect shall bear responsibility for the difference between what would have been the original cost of that portion of the Work, but for Architect's negligent error or omission, in accordance with the Standard of Care, and the actual cost of that portion of the Work performed to remedy the negligent error or omission. Further, Architect shall not be entitled to Architect's fee for the excess Cost of the Work. Unless Architect disputes the amounts due pursuant to the alternative dispute resolution process provided in Article 8 of this Agreement, as amended, Owner shall be entitled to withhold from sums due to Architect the amounts detailed above.

PAGE 27

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, 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 Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. 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.

Architect shall provide to Owner, as a "Work Made for Hire," all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor of Architect and Architect's consultants (including the necessary number of paper copies and electronic format copies), and other documents hereinafter "Construction Documents," that are within Architect's scope of services and are sufficient for Owner to complete construction of the Project and are free from material defects or omissions. The Construction Documents for this Project are the property of the Owner whether or not the Project is completed and whether or not Architect's Agreement is terminated. The Owner shall be furnished and permitted to retain reproducible copies and electronic versions of the Construction Documents. Only the signature details, standard details and form specifications of the Construction Documents relating to this Project may be used by the Architect on other projects, but they shall not be used as a whole without written authorization by the Owner. Owner-furnished forms, conditions, and other written documents shall not be used on other projects by the Architect without written authorization by the Owner. Owner hereby owns all common law, statutory, or other reserved rights, including copyrights, pertaining to the Construction Documents; provided, however, Owner hereby assigns to Architect the right to enforce Owner's copyright in the Construction Documents and agrees to reasonably cooperate with Architect in any proceedings related to such enforcement.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering 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 Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established 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. 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 prototype. 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 prototype, 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 prototype, 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.

...

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall be free to use said Construction Documents for Owner's purposes, but shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. 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.

...

§ 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, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable by this Agreement and by Texas law, but in any case not more than 4-8 years after the date of Substantial Completion of the Work. Work unless extended in accordance with Texas Civil Practice and Remedies Code Section 16.008. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 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 any other applicable policy and regulations as designated by Owner, and the timelines established in the policy. Level I of the grievance process will be conducted by the Superintendent's designee or the Superintendent, as appropriate. Level II shall be heard by the Superintendent, unless he heard Level I. If the Superintendent heard Level I, then the grievance will proceed to the Owner's Board of Trustees at Level III. 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 To Only to the extent damages are fully covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, 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, for Construction, as amended for this Project, and if applicable. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. 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 I of Texas Local Government Code Chapter 271.

§ 8.1.4 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.

PAGE 28

§ 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 ~~binding dispute resolution~~. ~~If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~the institution of legal or equitable proceeding, unless the filing deadlines under applicable statutes of limitation and/or repose would otherwise expire. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the parties agree to submit the matter to mediation as soon as reasonably possible. Claims for injunctive relief shall not be subject to this Section s.

§ 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.~~mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the mutually-acceptable person or entity administering the mediation. ~~The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

In the event the parties are unable to agree on a mediator, then the mediation shall be conducted by either the Center for Public Policy Dispute Resolution at the University of Texas School of Law or by a mediator selected by a local district court judge upon the joint request of the parties. The request shall be made within 30 days after the completion of Owner's grievance process. In no event shall the request for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in controversy would be barred by applicable statutes of limitation.

§ 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 county where Owner's main administrative office is located, unless another location is mutually agreed upon. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties' authorized representatives, if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 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: parties shall submit the dispute or claim(s) to a court of competent jurisdiction.~~

PAGE 29

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
☒ 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.

The parties agree that any claim, dispute, or other matter in controversy between them shall not be subject to mandatory arbitration. The parties may, however, mutually agree in writing to submit such claims, disputes, or matters in controversy to nonbinding arbitration. However, neither party may compel the other to arbitrate any claim, dispute, or matter in controversy between them.

§ 8.2.5 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."

§ 8.3 ArbitrationThe provisions of this Article 8 shall survive the termination of this Agreement.

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

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

§ 9.1 If the Owner fails to make timely payments to the Architect for undisputed sums in accordance with this Agreement, ~~Agreement and Texas law,~~ such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall termination. 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. Before resuming services, the Owner may pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the ~~Project,~~ Project for more than ninety (90) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. ~~When the Project is resumed, the Architect~~

~~shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall~~may be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 ~~cumulative 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 ~~seven~~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 days' written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest bona fide bid or negotiated proposal.

§ 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, together with Reimbursable Expenses then due..~~

§ 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.)

.1 — Termination Fee:

.2 — Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

The parties hereby agree that: 1) if an order for relief is entered on behalf of the Architect, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Architect makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Architect's performance. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Architect adequate assurance of future performance in accordance with the terms and conditions of this Agreement. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Architect's services in accordance with this Section.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of ~~Substantial~~Final Completion.

§ 9.9 The Owner's rights to use the Architect's ~~Instruments of Service~~Construction Documents in the event of a termination of this Agreement are set forth in Article 7 and Section ~~9.7.11.9.~~

§ 9.10 This Agreement may be terminated by Owner at any time if Architect engages in conduct that would constitute a violation of state or federal criminal law, 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.

PAGE 30

§ 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. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8.3, State of Texas. Mandatory and exclusive forum and venue for any dispute resolution arising out of or related to this Agreement shall be in the state district courts of Ector County.

§ 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~~. Construction as amended for the Project. As a material consideration of the making of this Agreement, the Modifications to this Agreement shall not be construed against the drafter of said Modifications.

§ 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.~~ other.

§ 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~~ The Architect shall execute certificates or consents consistent with the Architect's standard of care pursuant to this Agreement.

...

§ 10.6 Unless otherwise required in this Agreement, the Architect 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~~. site, unless Architect knew, directed, or specified that, or allowed such hazardous materials be used in the Project. Architect shall promptly disclose in writing to Owner any hazardous materials specified for the Project or discovered on site, regardless of the date of discovery or the date on which Architect learns of the hazardous nature of the materials.

§ 10.7 ~~The Architect shall have the right to~~ With prior written consent of the Owner, the Architect may 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~~. ~~representations, but may not photograph students without prior written parental consent. 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.~~ Owner provides notice that confidential and proprietary information shall include, but shall not be limited to, all items listed in Section 10.8.

§ 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 to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar written agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. Owner herein designates the following as confidential information: security measures; security access codes; pending real estate purchases, exchange, lease or value; any information pertaining to litigation; student likenesses and student record information; employee information; and any other information deemed confidential by law. As to Owner, the parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Chapter 552 et seq. and the Texas Open Meetings Act, Texas Government Code, Chapter 551 et seq.~~

§ 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.

PAGE 31

§ 10.10 NO LIENS. The parties agree that no architect, engineer, mechanic, contractor, materialman, artisan, laborer or subcontractor, whether skilled or unskilled, shall ever, in any manner have, claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas, or upon any funds of Owner.

§ 10.11 APPLICABLE LAW. This Agreement is subject to all applicable federal and State of Texas laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§ 10.12 CONFLICT OF DOCUMENTS. To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

§ 10.13 RELATIONSHIP OF PARTIES. It is understood and agreed that the relationship of Architect to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Architect the servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Architect. Any direction or instruction by Owner or any of its authorized representatives in respect to the Architect's services shall relate to the results the Owner desires to obtain from the Architect, and shall in no way affect the Architect's independent contractor status.

§ 10.14 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 10.15 Pursuant to Texas Education Code Section 44.034, Architect must give advance written notice to the Owner if the Architect or an owner or operator of the Architect has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Architect failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.

§ 10.16 CHILD SUPPORT. By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

§ 10.17 By executing this Agreement, Architect verifies that Architect does not boycott Israel or any Israeli-controlled territory, and will not boycott Israel or any Israeli-controlled territory during the term of this Agreement. Pursuant to Texas Government Code, Chapter 2271, as amended, if Architect is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement."

§ 10.18 Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect misrepresents its inclusion on the list, then such omission or misrepresentation shall void this Agreement.

§ 10.19 The Architect verifies by its signature below that it is not an abortion provider or an affiliate of abortion providers.

§ 10.20

1. By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Architect agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Architect and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Architect that Architect provide that information to the District.
2. The Architect must:
 1. Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;
 2. Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Architect upon request of the District; and,
 3. On completion of the Contract, either:
 1. Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Architect; or
 2. Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.
 4. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Architect agrees that the contract can be terminated if the Architect knowingly or intentionally fails to comply with the requirements of that subchapter.
 5. Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
 6. If an Architect fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Architect in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Architect fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.
 7. If Architect is not a sole proprietorship, has ten (10) or more employees, and the value of Contractor's bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined by Texas Government Code Ann. Chapter 2274, and will not during the term of any contract with the Owner, unless excepted from that law.
 8. As required by Texas Government Code Ann. Chapter 2274, if Contractor has ten (10) or more employees, is not a sole proprietorship, and if the value of Contractor's bid or proposal has a value

of \$100,000 or more, Contractor certifies by submitting Contractor's bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner, unless excepted by that law.

§ 10.21 CRIMINAL HISTORY RECORD CHECKS:

§ 10.21.1 So that Owner can obtain the national criminal history record information required by Texas Education Code Section 22.0834 on all "covered employees" (as defined in Section 10.21) of Architect, its subcontractors, or any subcontracting entities who will perform the Work, Architect shall submit to Owner the name and all necessary identifying information necessary to enable Owner to obtain the national criminal history information on those covered employees before they begin the Work. Architect's submission will include the employee's written authorization for Owner to obtain such criminal history information. Owner may, in its sole discretion, prohibit the use of any employee to perform the Work after its review of the criminal history information, but cannot disclose the criminal history information to Architect. Architect shall reimburse Owner for Owner's costs incurred in obtaining the criminal history information.

§ 10.21.2 Architect will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Architect receives information that a covered employee has a reported disqualifying criminal history, then Architect will immediately remove the covered employee from the Project and notify the Owner in writing within three business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Architect agrees to immediately discontinue using that covered employee to provide services on Owner's Project. If Architect has taken precautions or imposed conditions to ensure that the employees of Architect and any subconsultant will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.21.3 For the purposes of this Section, "covered employees" means employees, agents, or applicants of Architect who have or will have continuing duties related to the services to be performed on Owner's Project and have or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. The definition of "covered employees" does not include individuals working on the Work if the Work: (1.) does not involve the construction, alteration, or repair of an instructional facility as defined herein; (2.) involves construction of a new instructional facility and the person's duties related to other contracted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3.) involves an existing instructional facility and: (a.) the work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and (b.) the contracting entity adopts a policy prohibiting employees, contractors, and subconsultants from interacting with students or entering areas used by students, informs employees, contractors, and subconsultants of the policy, and enforces the policy at the work area. "Disqualifying criminal history" means: any conviction or other criminal history information designated by the Owner; any felony or misdemeanor conviction that would disqualify a person from obtaining educator certification under Texas Education Code Section 21.060, and 19 Texas Administrative Code Section 249.16; or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state; or a felony violation of Texas Penal Code Section 43.24 related to the sale, distribution or display of harmful material to a minor. The term "instructional facility" means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under the state curriculum for kindergarten through grade 12.

§ 10.21.4 Architect's violation of this section shall constitute a substantial failure under Article 14.

§ 10.21.5 Architect shall assume all expenses associated with the background checks.

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows: for all undisputed payments set forth below. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured, in accordance

with Texas Government Code Chapter 2251. Owner shall further have the right to withhold payments as specified in Sections 6.8 and 11.10.2.2 of this Agreement.

PAGE 34

(Insert percentage value)

~~()~~ % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6. Compensation for all the services described above is based on our understanding of the scope of work as presented by Ector County ISD will be billed at 6.5% of the construction value for the scope of the project.

...

(Describe the method of compensation)

NONE

...

§ 11.2 For the Architect's Supplemental 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 as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

...

As agreed between the parties in writing, executed prior to the Architect beginning performance of the Additional Services.

§ 11.4 Compensation for Supplemental and 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 ~~percent ()~~ percent, Architect, or as follows: *(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

There will be no additional services without the prior written authorization of the Owner. We do not anticipate that additional service fees will apply as the scope of work is understood by PBK.

...

Schematic Design Phase	<u>ten</u>	percent (	<u>10</u>	%)
Design Development Phase	<u>twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>thirty-five</u>	percent (	<u>35</u>	%)
Procurement Phase	<u>five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>thirty</u>	percent (	<u>30</u>	%)

PAGE 35

§ 11.6.1 When compensation is on a percentage 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.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

...

<u>Partner</u>	<u>\$350.00</u>
<u>Principal</u>	<u>\$305.00</u>
<u>Associate Principal</u>	<u>\$270.00</u>
<u>Project Manager/Associate</u>	<u>\$245.00</u>
<u>Architect</u>	<u>\$225.00</u>
<u>Intern</u>	<u>\$135.00</u>
<u>Field</u>	<u>\$125.00</u>
<u>Office</u>	<u>\$95.00</u>

...

- ~~.1~~ Transportation and authorized out-of-town travel and subsistence;
- ~~.2~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- ~~.3~~ Permitting and other fees required by authorities having jurisdiction over the Project;
- ~~.4~~ Printing, reproductions, plots, and standard form documents; .2 Printing, and reproductions, plots, and standard form documents of Construction Documents, other than those required to be provided by Architect under this Agreement;
- ~~.5~~ Postage, handling, and delivery; .3 Postage, handling, and delivery of Construction Documents, other than those required to be provided by Architect under this Agreement;
- ~~.6~~ .4 Expense of overtime work requiring higher than regular rates, if authorized in advance in writing by the Owner;
- ~~.7~~ .5 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; after Architect's provision of one artist's rendering and one model or mock-up of each building in the Project;
- ~~.9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ Site office expenses;
- ~~.11~~ .6 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. Objective.

§ 11.8.2 For Reimbursable Expenses the compensation shall be only the actual the expenses incurred by the Architect and the Architect's consultants ~~plus~~ percent (~~—~~ %) of the expenses incurred. consultants.

§ 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.)

Compensation For Use Of Architect's Construction Documents. The parties agree that Architect's compensation for Basic Services includes all licensing fees for Owner's use of the Construction Documents, including use after termination of this Agreement, to the extent allowed by this Agreement.

PAGE 36

~~§ 11.10.1.1 An initial payment of —(\$ —) 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 (\$ —) 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.~~

~~§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid —(—) days after the invoice date for undisputed amounts are due and payable within thirty (30) days after receipt of the Architect's invoice by Owner's designated representative. Undisputed amounts unpaid more than 30 days after Owner's receipt of the invoice shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)~~

~~—%~~

~~below specified by Texas Government Code § 2251.025 or its successor. (NOTE: Per Texas Government Code Section 2251.025, these blanks should be filled in with "30" if the school board meets more often than once per month and with "45" if the school board meets once per month.)~~

~~§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. may withhold payments after appropriate notice as to the reasons for the withholding to the Architect for the purposes of reimbursing Owner for any damages caused by the Architect, for changes in the Cost of the Work which result in Architect's compensation being reduced, for Architect's failure to comply with the provisions of any part of this Agreement, if a claim has been filed against Architect, or 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 available to the Owner at mutually convenient times, provided to the Owner upon presentation of Architect's progress payment applications.~~

~~§ 11.11 Architect shall reasonably cooperate with Owner, at no additional cost to Owner, in connection with a legal proceeding against Owner that relates to the Project~~

~~...~~

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

~~§ 12.1 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 subcontractors, for Construction Documents which are sufficient for Owner to complete the construction of the Project and are free from material defects or omissions, 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, subcontractors, 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 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, INCURRED BY OWNER 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 SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY THE ARCHITECT, OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES~~

CONTROL; 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.

§ 12.2 THE PROVISIONS OF SECTION 12.1 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION OR EXPIRATION OF THIS CONTRACT."

§ 12.3 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 12.1, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect."

§ 12.4 It is understood and agreed that Article 12 above is subject to, and expressly limited by, the terms and conditions of Texas Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended

§ 12.5 RECORDS RETENTION. Architect shall keep all accounting and construction records on the Project for a period of at least ten years after Final Completion of the Project, and thereafter shall offer the records to the Owner in writing, in order for Owner to comply with its records retention requirements, per the Texas Government Code section 441.158 et seq. and the Texas Library and Archives Commission's Local Schedule GR (Government Records). In the alternative, Architect may provide such records to Owner for retention at any time if Owner agrees in writing to accept such records in lieu of Architect's retention under this Section.

§ 12.6 COMPLAINTS. The Texas Board of Architectural Examiner has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas under the Architects Registration Law. Texas Occupations Code Chapter 1051. The Texas Board of Architectural Examiners can be reached at Mailing address: PO Box 12337, Austin, TX 78711; Physical: 505 E. Huntland Dr., Ste. 350, Austin, TX 78752; Telephone: 512.305.9000; Fax 512.305.8900; or on the web at <https://www.tbae.texas.gov>.

PAGE 37

§ 13.1 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~~-oral unless specifically provided for otherwise in this Agreement, as amended. This Agreement may be amended only by written instrument signed by both the Owner approved by the Owner's Board of Trustees and signed by both the Owner's designated representative and Architect.

...

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
— (Insert the date of the E203-2013 incorporated into this agreement.), as amended for this Project;

.3 .2 Exhibits:

...

[X] 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.)

Exhibit A: Owner's Program for the Project

Exhibit B: PBK Fee Proposal Letter dated February 27, 2024

Exhibit C: Hourly Billing Rates

Exhibit D: Insurance Requirements

~~4~~ — 3 Other documents:

AIA Document A 201-2017, General Conditions of the Contract for Construction, as amended for this Project.

This ~~Agreement~~ Amendment to AIA Document is entered into as of the day and year first written above.

PAGE 38

Scott Muri, Ed. D. ECISD Superintendent of
Schools

(Printed name and title)

Darrell Pearson, Partner

*(Printed name, title, and license number, if
required) name and title)*

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, 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 15:39:42 ET on 03/19/2024 under Order No. 3104239853 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, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)