

DRAFT AIA® Document B101™ - 2017

Standard Form of Agreement Between Owner and Architect

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

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

«Galveston Independent School District »« »
«3904 Avenue T »
«Galveston, TX 77550 »
« »

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

The use of the term "Architect" throughout this Agreement shall apply to the professional services of Architects or Engineers authorized by law to perform the services described 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. The Architect/Engineer shall provide architectural/engineering services for the Project as described in this Agreement. The Architect shall comply with Texas Administrative Code, Title 19 Section 61.1040, pertaining to services and actions required of the Architect. The 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

«VLK Architects »« »
«20445 TX-249, #350 »
«Houston, TX 77070 »
« »

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

«Ball High School Replacement »
« »
« »

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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ARTICLE 1 INITIAL INFORMATION

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

«The program for the Project will be determined in partnership with the Owner using the process described in § 3.2»

§ 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.)

«The Project's physical characteristics will be determined by the Architect as Basic Services »

§ 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.)

«Building Construction : \$162,000,000
Demolition of Scott Building: \$530,000

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User Notes:

Demolition of Ball High: \$2,200,000
Allowances and Contingencies: \$8,000,000
Total: \$172,730,000 »

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

.1 Design phase milestone dates, if any:

«Issued for Competitive Sealed Proposals: May 15, 2023 »

.2 Construction commencement date:

«June 21, 2023 »

.3 Substantial Completion date or dates:

«June 30~~2~~, 2025 construction of the new Ball High
October 31, 2025 demolition of existing Ball High and restoration of property, parking complete »

.4 Other milestone dates:

« »

§ 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.)

«Competitive Sealed Proposal »

§ 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.)

« The Owner's Board of Trustees, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas independent school district organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order requiring an increase in the Contract Sum, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Board may designate in writing an authorized representative (or representatives), as appropriate, to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Board of Trustees and shall have the authority to bind the Owner only to the extent expressly authorized or delegated by the Board of Trustees. The authorized representative shall have no implied authority. Such authorized representative shall also bring recommendations to the Board of Trustees on any matter requiring Board approval. In the event that changes in the scope of the Work are required before the Board's next regularly scheduled meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative shall have authority to approve construction changes that do not exceed \$50,000.00 in increased costs. Any such change shall be confirmed in writing between the Contractor and the Board's authorized representative and notice of such approved changes shall be given to the Board at its next

regularly scheduled meeting. The Board shall act as soon as reasonably possible to avoid unnecessary delays in the construction completion date. Except as expressly authorized by the Owner or the Contract Documents, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

The Owner's authorized representative: Superintendent of Schools

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§ 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.)

« The Owner's Program Manager:
Lockwood, Andrews & Newnam, Inc.
2925 Briarpark Dr., Suite 400
Houston, Texas 77042
»

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

.1 Surveyor:

«Landtech, Inc.»«»
«2525 North Loop West, Ste. 300»
«Houston, TX 77008»
«»
«»

.2 Geotechnical Engineer

«Terracon»«»
«11555 Clay Road, Ste. 100»
«Houston, TX 77043»
«»
«»

Geotechnical Engineer:

«By Architect»«»
«»
«»
«»
«»

.2—Civil Engineer:

«By Architect»«»
«»
«»
«»
«»

.3 Building Envelope Consultant

«Zero/Six Consulting, LLC»«»
«1027 Tremont Street»
«Galveston, TX 77550»
«»

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

«Commissioning by Owner through consultant to be determined»
«Construction Materials Testing by Owner through consultant to be determined»

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

«Melissa Fleming, AIA»
«VLK Architects, Inc.»
«20445 SH 249, Suite 350»
«Houston, TX 77070»
«(281) 671-2300»
«»

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«Matrix Structural Engineers»«»
«5177 Richmond Avenue, Suite 670»
«Houston, TX 77056»
«»
«»

.2 Mechanical Engineer:

«Salas O'Brien»«»
«10930 W. Sam Houston Parkway, Suite 900»
«Houston, TX 77064»
«»
«»

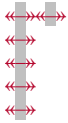
.3 Electrical Engineer:

«Salas O'Brien»«»
«10930 W. Sam Houston Parkway, Suite 900»
«Houston, TX 77064»
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.4 Civil Engineer:

«»
«»
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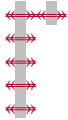
.5 IT Consultant:



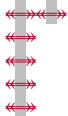
.6 Food Service:

«Foodservice Design Professionals (“FDP”)»
«25317 Interstate 45»
«The Woodlands, TX 77380»
« »
« »

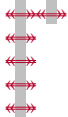
.7 Surveyor:



.8 Geotechnical Engineer



.9 Building Envelope Consultant



§ 1.1.11.2 Consultants retained under Supplemental Services:



.17 Surveyor:

«Landtech, Inc.»
«2525 North Loop West, Ste. 300»
«Houston, TX 77008»
« »
« »

.8 Geotechnical Engineer



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.9—Civil Engineer (includes landscape/irrigation):

«Adico, LLC »«>»

«2114 El Dorado, Suite 400 »

«Friendswood, TX 77546 »

«>»

Budget: \$400,000-\$800,000

.2 IT Consultant:

«Salas O'Brien »«>»

«10930 W. Sam Houston Parkway, Suite 900 »

«Houston, TX 77064 »

«>»

Budget: \$140,000-\$160,000

.3 Other, if any:

(List any other consultants and contractors retained as Supplemental by the Architect.)

«Acoustical engineering, and theatrical lighting, rigging and sound (budget: \$375,000-\$400,000), traffic engineering through consultants to be determined.»

Building Envelope Consultant

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Commented [JH1]: MF requested this be Owner retained.

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

«Project must conform to Owner's Technical Design Guidelines. The Owner will construct a new natatorium on or adjacent to the site of the Project. Architect will cooperate with the Owner's other consultants and contractors performing services for the natatorium, should the need arise »

§ 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 Instruments of Service 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.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect shall comply with Texas Administrative Code, Title 19 Section 61.1040, pertaining to services and actions required of the

Architect. 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 use the Architect's best efforts, skill, judgment and abilities to perform the services in compliance with all laws, regulations, codes, ordinances and orders of governmental bodies having jurisdiction, to further the interests of the Owner in accordance with the Owner's requirements and procedures, and to represent that the Project, if built in compliance with the plans and specifications, will comply with all applicable laws, codes and ordinances. The Architect shall be responsible to the Owner for all costs and damages resulting from: (1) defects in design; (2) non-workability of design details; (3) failure of the Architect to comply with the terms of this Agreement; and (4) errors and omissions of the Architect. 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 exercise usual and customary professional care to comply with applicable laws, codes and regulations in effect as of the date of plans are approved for permitting. Design changes made necessary by newly enacted laws, codes and regulations after such date shall entitle the Architect to a reasonable adjustment in the schedule and compensation in accordance with the Additional Services provisions of this Agreement.~~ Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflicts, or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance, use of, or payment for, all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to 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 The Architect shall provide and maintain the following insurance with indemnification limits not less than the amounts indicated, until termination of this Agreement. The Architect and Consultants shall not commence work until all required insurance coverage has been obtained and such insurance has been reviewed and accepted by the Owner. Certificates of Insurance on the current ACORD form shall be issued to the Owner showing all required insurance coverage.

Insurance Required	Limit Required
Automobile Liability Insurance covering Any Auto	\$1,000,000.00 Combined Single Limit (Ea. Accident)
Comprehensive (Commercial) General Liability insurance including Products, Completed Operations, Independent Contractors, Broad Form Property Damage, Pollution and Blanket Contractual Liability coverage. Any XCU exclusions to be removed when underground work is performed.	\$1,000,000.00 Occurrence \$2,000,000.00 Aggregate \$1,000,000.00 Personal and Advertising Injury \$500,000.00 Fire Damage \$10,000.00 Medical Payments Per Project Aggregate. Evidence of coverage must be shown on certificates of insurance

Professional Errors and Omissions Liability Insurance required for all licensed or certified professionals, (e.g., all Architects and Engineers)	\$32,000,000.00 Per Claim and Per Occurrence \$45,000,000.00 Annual Aggregate Retroactive to date preceding date of contract must be shown in the Comments/Remarks Section of the ACORD form. Professional Errors and Omissions Liability Insurance shall be maintained for three (3) years past substantial completion of construction contract, including last completed phase for phased project delivery, <u>provided if not commercially available, Architect shall notify Owner of such, and the Architect shall procure alternative terms acceptable to Owner, which Owner shall not unreasonably deny.</u> If coverage is cancelled or non-renewed prior to contract completion date, the Architect shall purchase "Extended Reporting Period" coverage for three (3) year period, <u>provided if not commercially available, Architect shall notify Owner of such, and the Architect shall procure alternative terms acceptable to Owner, which Owner shall not unreasonably deny.</u>
Workers Compensation insurance with limits to comply with the requirements of the Texas Workers' Compensation Act	Statutory Limits
Employers Liability Insurance	\$1,000,000.00 Each Accident \$1,000,000.00 Disease – Each Employee \$1,000,000.00 Disease – Policy Limit
Umbrella or Excess Liability insurance	\$5,000,000.00 Each Occurrence \$5,000,000.00 Aggregate

§ 2.5.1 The required insurance must be written by companies acceptable to the Owner. The required insurance policies, except for professional liability insurance and worker's compensation insurance, shall and must name the Owner and Program Manager, its officials, employees, and officers as additional insureds. The required insurance policies shall contain no specific limitations on the coverage afforded the Additional Insureds.

§ 2.5.2 All insurance and limits of liability required herein shall be in effect as of the earlier of the effective date of this Agreement or the date of the commencement of Architect's services in relation to the Project and shall remain in effect continuously throughout the term of this Agreement or for such longer periods as are required herein, provided if not commercially available, Architect shall notify Owner of such, and the Architect shall procure alternative terms acceptable to Owner, which Owner shall not unreasonably deny. In the case of Professional Liability insurance, the required coverage and limits of liability shall remain in effect for a minimum period of two (2) years following the completion of professional services hereunder.

§ 2.5.3 If the insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than thirty—six (36) months following completion of this Agreement and acceptance by Owner, provided if not commercially available, Architect shall notify Owner of such, and the Architect shall procure alternative terms acceptable to Owner, which Owner shall not unreasonably deny.

§ 2.5.4 The Workers' Compensation insurance policy required herein shall contain a waiver of subrogation in favor of Owner, its officials, employees, and officers, whether by way of an approved endorsement or otherwise.

§ 2.5.5 The Architect shall be responsible for verifying insurance coverage in the required amounts of all Consultants or other professionals employed by or used by the Architect and obtaining the required certificates of insurance before any such Consultants or other professionals begin work on the Project.

§ 2.5.6 The insurance policies required by this Agreement shall be endorsed to reflect that the Architect's insurance coverage is primary over any other applicable insurance coverage held by Owner.

§ 2.5.7 Insurance provided pursuant to this Section shall be considered a part of the Architect's basic services and shall not be a Reimbursable Expense.

§ 2.5.8 Certificates of insurance acceptable to the Owner and naming the Owner, its officials, employees, and officers as additional insureds shall be filed with the Owner prior to commencement of the Architect's services or the services of consultants to the Architect or other professionals employed or used by Architect in relation to the Project, and thereafter upon renewal or replacement of each required *policy* of insurance, provided if not commercially available, Architect shall notify Owner of such, and the Architect shall procure alternative terms acceptable to Owner, which Owner shall not unreasonably deny. These certificates and the insurance policies required herein shall contain a provision that coverages afforded under the policies will not be canceled, non-renewed, allowed to expire, ~~or materially changed~~ until at least 30 days' prior written notice has been given to the Owner.

~~§ 2.5.9 The Architect shall notify Owner in writing and by certified mail or personal delivery, within ten (10) days after the Architect knew or should have known of any change that materially affects the provision of the required insurance coverages of any person providing services on the Project. Intentionally deleted.~~

§ 2.5.10 Because the Architect will be performing on-site services and observations, a copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, or TWCC-84), showing statutory worker's compensation coverage for the Architect and its employees providing services on the Project is required for the duration of the Project.

§ 2.5.10.1 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.

§ 2.5.10.2 Employees providing services on the Project include all persons or entities *employed* or contracted by the Architect and performing all or part of the services the Architect has undertaken to perform on the Project, that furnishes persons to provide services on the Project.

§ 2.5.10.3 If 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.

§ 2.5.10.4 The Architect shall obtain from each person providing services on the Project, and provide to the Owner:

- 1 A certificate of coverage, prior to that person beginning work on the Project, so Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project.
- 2 No later than seven (7) 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.

§ 2.5.10.5 By signing this contract or providing or causing to be provided a certificate of coverage, the Architect is representing-acknowledging 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, or other civil actions.

§ 2.5.11 The Architect's failure to comply with any of the provisions in this § 2.5 and its subparts is a material breach of contract by the Architect that entitles the Owner to immediately declare the contract void and terminate this Agreement.

§ 2.5.12 All Engineers and other Consultants retained to work for Architect or retained at Architect's expense shall carry the same amounts under the same conditions as described in this § 2.5 and its subparts.

§ 2.6 The Architect shall provide recommendations and the Architect shall respond to Owner requests with regard to accelerated or fast-track scheduling, procurement or phased construction so as to facilitate the preparation of Individual Package Pricing by the Contractor. The Architect shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues

in making recommendations. When approved by the Owner, the Architect shall complete those activities in Article 3 to accomplish the completion of phased project delivery.

§ 2.7 The Architect shall not engage in any activity or course of conduct which is detrimental to the Owner's best interests. The Architect shall be responsible for making, and agrees to make, timely payment to all Engineers and Consultants retained by the Architect for the Project.

§ 2.8 The Architect shall provide recommendations and the Architect shall respond to Owner requests with regard to accelerated or fast-track scheduling, procurement or phased construction so as to facilitate the preparation of Individual Package Pricing by the Contractor. The Architect shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues in making recommendations. When approved by the Owner, the Architect shall complete those activities in Article 3 to accomplish the completion of phased project delivery.

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 shall consist of those described in this Article 3 and Article 4 and any other services identified as a part of the Basic Services, and include all civil, structural, technology, mechanical, electrical and plumbing engineering services, and other consultants as deemed necessary by Programming. 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, staging areas, and accompanying infrastructure, when appropriate. Services not set forth in this Article 3 or Article 4 are Supplemental or Additional Services unless otherwise stipulated herein.

§ 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, the Architect shall make presentations to Owner's Board of Trustees upon Owner's request.
- .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, as specified herein.
- .3 The Architect shall obtain written approval before proceeding with each Project phase.

§ 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. 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. 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. Notwithstanding the foregoing, in no event shall the Architect be responsible for quality assurance of the work of the Owner's consultants, nor shall the Architect be liable for any errors or omissions in such work.

§ 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 or Owner. 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.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made or given 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, Texas Health and Safety Code Chapter 341. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies, regulations and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and fraud and financial impropriety. Architect shall certify that he has used the best professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the Construction Documents. Architect's signature and seal on the Construction Documents shall certify compliance. Architect shall perform a building code search under applicable regulations that may influence the Project and shall certify that the design has been researched before it is final. In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the practice of architecture in the State of Texas and applicable law. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulation, and all applicable requirements or standards of the American National Standards Institute. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards which become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion shall be addressed by the Architect, and shall be compensated as an Additional Service pursuant to Section 3.1.

§ 3.1.5 The Architect shall, at appropriate times, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. In designing the Project the Architect shall comply with applicable design requirements imposed by those authorities and such entities providing utility services. The Architect shall design the extension of utility services necessary for the completion of the project but not provided by entities providing utility services to the Project. The cost of construction of the utilities shall be considered a Cost of the Work and the Architect shall be compensated for such design work as a Cost of the Work. The Architect shall bear any remedial costs to correct or replace Work not designed in compliance with current federal, state, or local laws at the time the Project is designed and permitted.

§ 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, 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 execute the negotiated amendments, which shall constitute Architect's agreement to adhere to any such negotiated amendments.

§ 3.1.7 The Architect will make as many visits as reasonably necessary, not to exceed once per week, to verify programming, design, and completion of work items and shall conduct as many reviews of Shop Drawings, product Data items, samples and similar submittals of the Contractor to ensure-determine compliance with the Contract Documents.

§ 3.1.8 The Architect shall provide written updates to the Owner during design and construction not less than once per week. Among other project information, the updates shall indicate actions requiring attention of the Owner.

§ 3.1.9 Architect shall prepare an agenda for all meetings. The agenda shall be distributed not less than 48 hours prior to the start of the meeting. The agenda shall contain the date of the meeting, location for the meeting, the time for the meeting, the requested participants and specific detail about the topics to be discussed so that the participants arrive prepared for productive outcomes. Where a meeting is a regularly occurring event, the meeting agenda shall incorporate all previous open discussion items in a sequential topic and date logical order. The Architect shall be an active participant in the development of the agenda and proactive in the resolution of matters scheduled for discussion. The Architect shall participate in all construction progress meetings and all special meetings. The Architect shall be an active participant in the development of the agenda and proactive in the resolution of matters scheduled for discussion by proposing solutions to causes for delay, cost increase and conflicts with Owner's operational needs. The Architect shall prepare and distribute meeting notes (minutes) and ensure coordination of issues raised during the meetings with responsible project stakeholders. This will include construction progress meetings, which the Architect will chair. Meeting notes (minutes) will be issued no later than three (3) working days following the date of the meeting. The architect shall prepare meeting minutes for all meetings attended by the architect. The meeting minutes shall consist of the date of the meeting, location for the meeting, the time for the meeting, the meeting attendees, detail record of all topics discussed, the person responsible for the topic comment/decision/instruction, a listing of the party responsible for the topic, a listing of all action items, a listing of the date assigned, a listing of the date due, a listing of the date closed (retain closed items for one subsequent meeting). Additionally, the meeting minutes shall contain all documents distributed during the course of the meeting; sign in sheet, sketches, plans and specifications, project schedule, request for information logs, change proposal request logs, request for information, pay applications, etc. The minutes shall be distributed not more than 48 hours following the meeting. The Construction Progress Meetings shall contain the following topics as a minimum:

1. Discuss and Approve Previous Meeting Minutes
2. Review Project Progress and Planned Progress
 - a. Completed work
 - b. Planned work
 - c. Presentation and discussion of updated construction progress schedule
3. Payment Applications
4. Report on Issues Which May Impede Planned Progress
5. Laboratory Testing
6. Review of Submittal Schedule and Status of Submittals
7. Review of RFI
8. Review of RFP/procurement solicitation
9. Review of Change Proposals and Change Orders
10. Safety
11. Punch List
12. Closeout
13. Other Business Related to the Work

§ 3.1.10 The Architect shall utilize online project management software in the manner described in Exhibit D Project Management Software and the costs for the required licenses for the Architect and any sub-consultants shall be borne by the Architect.

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

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

§ 3.1.13 The Architect shall furnish evidence of quality control checking of the Construction Documents for the project. Evidence shall consist of the Design Submission Checklists exhibits and the following:

1. Structural calculations;
2. Wind load calculations;
3. Mechanical equipment sizing calculations, and;
4. Electrical equipment sizing calculations

§ 3.1.14 The Architect shall furnish written responses and dispositions to design review comments

§ 3.1.15 The Owner shall pay fees payable to the Texas Department of Licensing and Regulation (TDLR) and Registered Accessibility Specialists (RAS) for document review and inspection relative to the Elimination of Architectural Barriers Act and the Architect will submit the documents to the TDLR for review and approval. The Architect shall arrange for and attend building assessment by TDLR representative. The Architect shall prepare responses for the use of the Owner in addressing inspection deficiencies identified by the inspection, at no cost to the Owner. 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.

§ 3.1.16 The Architect shall, as directed by the Owner Representative, make presentations and answer questions from project stakeholders including Owner, the City, County and State. The Owner shall approve of the design and information before it is made available to the project stakeholders.

§ 3.2 Programming and 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. The Architect shall provide Programming services as described:

1. Administer programming services;
2. Identify required participants;
3. Identify and prioritize Owner's values, goals and objectives;
4. Perform all necessary information gathering;
5. Analyze information gathered and develop performance and design criteria for the facility;
6. Prepare final Program of Requirements to include:
 1. Executive summary,
 2. Documentation of the methodology used to develop the program,
 3. Value and goal statements,
 4. Relevant facts upon which the program was based,
 5. Conclusions derived from data analysis,
 6. Relationship diagrams,
 7. Flow diagrams,
 8. Matrices identifying space allocations and relationships,
 9. Space listings by function and size,
 10. Initial assumptions for building construction (Uniformat type; foundation, enclosure, finishes, etc.)
 11. Space program sheets including standard requirements and special HVAC, plumbing, power, lighting, acoustical, furnishings, equipment, or security needs for each space
 12. Estimated Cost of the Work, and
 13. Laws, codes, and regulations applicable to the project.

§ 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 including the feasibility of incorporating environmentally responsible design approaches. 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 the 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 environmentally responsible and 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 environmentally responsible and sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 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, shall prepare a preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3. To the extent the Owner has stipulated a Cost of the Work limitation for the Project, such estimated Cost of the Work shall not exceed the Owner's budget limitations, unless agreed to in writing by Owner.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. The submission shall contain the information required to satisfy all applicable portions of the Design Submission Checklist attached as Exhibit A to this Agreement. The Architect shall submit the completed Checklist with the Schematic Design Documents. The Architect shall submit electronic (Native CAD and word processing program) format copies of the Architects and the Architect's Consultants' Instruments of Service to the Owner as a prerequisite to payment for services completed during this phase. 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 in accordance with this Agreement, 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. A color and material sample board is required.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3. As the design process progresses through the end of the preparation of the Design Development, the Architect 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 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 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 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. To the extent the Owner has stipulated a construction budget limitation for the Project, such estimated Cost of the Work shall not exceed the Owner's budget limitations, unless agreed to in writing by the Owner.

§ 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 (if Board approval if required). The submission shall contain the information required to satisfy all applicable portions of the Design Submission Checklist attached as Exhibit B to this Agreement. The Architect shall submit the completed Checklist with the Design Development Documents. The Architect shall submit electronic (Native CAD and word processing program) format copies of the Architects and the Architect's Consultants' Instruments of Service to the Owner as a prerequisite to payment for services completed during this phase.

§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. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. "Construction Documents" 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 this Agreement. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and 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 Subject to and to the extent not inconsistent with the normal standard of care of an architect practicing in the same geographic area. 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.

§ 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 to timely detect errors and omissions ~~before they become costly additions to the Project during construction.~~

§ 3.4.1.1.3 Subject to and to the extent not inconsistent with the normal standard of care of an architect practicing in the same geographic area. 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 including, without limitation, school facility standards found in 19 Texas Administrative Code, Subchapter CC, Section 61.1040, and Texas Health and Safety Code Section 341.065. Architect shall certify that he/she has to his/her knowledge and belief reviewed the standards contained in 19 Texas Administrative Code Section 61.1040, and used the best reasonable professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the Construction Documents. Architect shall also certify to his/her knowledge and belief that the Construction Documents conform to the provisions of 19 Texas Administrative Code Section 61.1040, except as indicated on the certification. Architect's signature and seal on the Construction Documents shall certify compliance to his/her knowledge and belief. Architect shall perform a building code search under applicable regulations that may influence the Project, and shall certify to his/her knowledge and belief that the design has been researched before it is final, as required by 19 Texas Administrative Code Section 61.1040. Architect shall also certify to his/her knowledge and belief that the facilities have been designed according to the provisions of 19 Texas Administrative Code 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 Owner, as required by 19 Texas Administrative Code, section 61.1040. Architect shall complete the Texas Education Agency's (TEA's) Certification of Project Compliance, available on the TEA website. In executing the certifications required under the provisions of this Section to his/her knowledge and belief, Architect shall exercise his/her reasonable professional judgment and care consistent with the practice of architecture in the State of Texas and applicable law. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and

usable by individuals with disabilities, in compliance with the Americans with Disabilities Act and 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 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 legal counsel, as applicable, in the development and preparation of (1) bidding competitive purchasing, and bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and 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.

§ 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. 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.

§ 3.4.3.2 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.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. 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. To the extent the Owner has stipulated a construction budget limitation for the Project, as may

be amended pursuant to Section 4.3.1, such estimated Cost of the Work shall not exceed the Owner's budget limitations, unless agreed to in writing by the Owner.

§ 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'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. The submission shall contain the information required to satisfy all applicable portions of the Design Submission Checklist attached as Exhibit C to this Agreement. The Architect shall submit the completed Checklist at each phase of review of the Construction Documents. The Architect shall submit electronic (Native CAD and word processing program) format copies of the Architects and the Architect's Consultants' Instruments of Service to the Owner as a prerequisite to payment for services completed during this phase. ~~Additionally, the Architect shall submit a Navisworks™ electronic model and Navisworks™ conflict report.~~ A color and material sample board is required. As required by Texas Education Agency rule 19 Texas Administrative Code Section 61.1040, Architect shall perform a building code search under applicable regulations that may influence the Project and shall certify that the design has been researched and satisfies the applicable building codes. The Architect's or engineer's seal and signature on the Construction Documents shall indicate certification of compliance with this section. "Certify" means that the Architect has reviewed the standards contained in Texas Education Agency rules and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the Construction Documents.

§ 3.4.6 After Owner's approval of the Construction Documents, the Architect shall not make or approve any changes in the Work, unless those changes do not involve an adjustment in the Contract Sum or Contract time, without prior written consent of the owner. The Architect shall be liable to Owner for any damages arising from or caused by any changes to the Work made or approved by the Architect without the Owner's prior written consent.

§ 3.4.7 Pursuant to 19 Texas Administrative Code §61.1040, the Architect shall sign and seal the Construction Documents and certify to his/her knowledge and belief on the Certification of Project Completion form developed by the Texas Education Agency as follows:

1. It has reviewed the standards contained in 19 TAC Chapter 61 and has used ~~the best reasonable~~ professional judgment and reasonable care consistent with the practice of architecture in the State of Texas in executing the Construction Documents and that these documents conform with the provisions of 19 TAC §61.1040.
2. It has performed a building code search under applicable regulations that may influence the project and the design has been researched prior to becoming final.
3. It has designed the facility according to the provisions of 19 TAC §61.1040 based on the long-range school facility plan and / or educational specifications, building codes specifications, and all documented changes to the Construction Documents provided by the District.

§ 3.4.8 As a condition to the Project being considered Substantially Complete, the Architect shall obtain the certification of the Contractor on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in 3.4.7.3 above.

§ 3.4.9 The Architect shall prepare a submittal and procurement log file. The file shall contain the anticipated submittals for the project including the submittal section number, the paragraph number around which the submittal is to be generated, a description of the submittal and the title of the submittal section. Submittal and procurement log shall contain not only the technical submittals but administrative submittals required by the Construction Documents and close out submittals required for the project completion. Each submittal required within the specification section shall be categorized according to one of the following categories:

01 - Preconstruction Submittals, 02 - Shop Drawings, 03 - Product Data, 04 - Samples, 05 - Design Data, 06 - Test Reports, 07 - Certificates, 08 - Manufacturer's Instructions, 09 - Manufacturer's Field Reports, 10 - Operation and Maintenance Data, 11 - Closeout Submittals, 12 - Other.

§ 3.4.10 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 and publicly advertising the Project in accordance with public procurement laws. 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. To accommodate the Owner's need to fast track or phase projects, the Architect shall prepare for and accomplish multiple construction procurement services for the project, if directed by the Owner. 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 his 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. If the Owner intends to solicit competitive sealed proposals, the provisions of 3.5.2 shall still apply, and the terms "Competitive Bidding" and "Competitive Proposals" shall be used interchangeably. The Contract Documents are enumerated in the agreement, as amended, between the Owner and Contractor (hereinafter the Owner/Contractor Agreement) and consist of the Owner/Contractor Agreement, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, Addenda issued prior to execution of the Owner/Contractor Agreement, and other documents listed in the Owner/Contractor Agreement and Modifications issued after execution of the Owner/Contractor Agreement.

§ 3.5.2.2 If requested by 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 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
- ;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 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,
- .5 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 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 Contractor (hereinafter the Owner/Contractor Agreement) and consist of the Owner/Contractor 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, and other documents listed in the Owner/Contractor Agreement and Modifications issued after execution of the Owner/Contractor Agreement.

§ 3.5.3.2 If requested by Owner, the 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 subcontractors 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 distributing the Proposal Documents to prospective contractors, requesting their return upon completion of the procurement process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective contractors;
- .3 organizing and conducting a pre-proposal conference for prospective contractors
- .4 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;
- .5 organizing and participating in selection interviews with prospective contractors;
- .6 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 3.6.1 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, which policies are available at <https://pol.tasb.org/Home/Index/499>.

§ 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 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.

§ 3.6.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction, phased bid package or Guaranteed Maximum Price and terminates at final completion, plus services required under this Agreement in connection with the contractual correction period.

§ 3.6.1.4 The Architect shall be responsible for a complete re-evaluation of the Work approximately eleven (11) months after the date of Substantial Completion. Furthermore, the Architect shall report all deficiencies in the Work

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uncovered during said evaluation and shall be responsible for monitoring the correction of said deficiencies, regardless of other time limits set forth elsewhere in this Agreement

§ 3.6.1.5 Warranty Phase - The Architect shall be responsible for tracking and reporting all known building deficiencies to the Contractor for a period of one year from the date of Substantial Completion (beginning with Substantial Completion for the last project in the case of phased project delivery). Additionally, the Architect shall monitor the progress of the reported corrections and furnish the Owner with written notification of completed corrections. The one-year period shall be extended to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 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 once per week (or more per week when deemed necessary by the Owner's Designated Representative or when necessary to protect Owner's interest, and at other intervals appropriate to the stage of Contractor's operations) (1) to ~~inspect-observe~~ 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 ~~reasonably endeavor 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 ~~continuous-periodic~~ 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 ~~periodic~~ 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, or-site observations, or ~~inspections-observations~~ by the Architect, the Architect shall keep Owner and Owner's Contractors 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 from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Furthermore, a minimum of two (2) job-site meetings per month shall be initiated by the Architect and shall include the Owner, the Architect, the General Contractor's Project Manager, the General Contractor's Project Superintendent and any others deemed necessary. To expedite decision making and improve project communications, the Architect's consultants shall attend when ongoing construction activities pertain to the scope of the consultant's services, unless attendance is waived by the Owner in writing. Said meetings will commence at the time of Construction commencement and shall cease after Substantial Completion. The architect, and consultants to the architect, shall prepare site observation reports following each occasion when the Architect or consultant to the architect is at the project site, including regularly scheduled progress meetings. The site observation report shall contain photos of the general condition of the project, construction crews on site, work in progress, deficiencies noted in the work including communication given in verbal format, action items and follow up needs generated during the course of the site visit. Site observation reports shall be distributed with 48 hours of the site observation to the Owner and the Contractor. Action items developed during the site observation shall be tracked during subsequent site visits and discussed during construction progress meetings. Architect shall ~~reasonably endeavor to~~ 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 shall reject Work that does not conform to the Contract Documents. The Architect shall be required to promptly notify the Owner of any observed nonconforming Work, and shall reject such nonconforming work unless the Owner objects to the rejection, in writing, within 24 hours of such notification. Whenever the Architect considers it necessary or advisable, the Architect will recommend to the Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Performance of any additional inspection or testing, which would result in additional cost to the Owner, shall require advance notice to and written approval of the Owner. 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, material and equipment 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. The Architect shall ~~render initial recommendations on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents~~ endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Owner's interpretations and opinions on matters relating to the aesthetic effect shall be final.

§ 3.6.2.5 ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as the term is defined in AIA Document A201—2017,~~ 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 to the his or her knowledge and belief 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 the Architect's professional opinion, the quality of the Work is in accordance with the Construction Documents and 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. 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 the Owner. The Architect shall certify to the his or her knowledge and belief amounts due reflect the allowable amounts for pre-construction phase services, General Conditions, Fees, use of Allowances and use of Contingencies, approved Change Orders, approved Allowance Expenditure Authorizations (AEA's) and approved Change Proposal Requests (CPR's).

§ 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, except as otherwise required by this agreement, (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 prepare a listing of all required submittals for the project and distribute to the Owner and Contractor. 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, within ten (10) business days.

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, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and all laws, statutes, codes and requirements applicable to the Architect's design services. 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 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 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 five (5) business days. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information at no additional charge to the Owner, and shall incorporate such changes in closeout documents furnished to the Owner at the completion of the Project.

§ 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. The Architect shall prepare Allowance Expenditure Authorizations, Change Proposal Requests, Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents at no additional expense to the Owner, whether initiated by Owner, Contractor or Architect.

§ 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' or Board's designee's approval and execution.

§ 3.6.5.5 The Architect shall prepare a set of reproducible record drawings and record specifications showing significant changes made during construction based upon marked-up prints, drawings and other data furnished by the Contractor to the Architect or based on Architect's revisions. The drawings and specification records furnished by the Architect to the Owner shall be in native drawing format, word processing format, and be accompanied by a .PDF and printed copy of the drawings and specifications.

§ 3.6.5.6 In transmitting a change proposal request to the Owner, the Architect shall first have verified that the change proposal request contains specific information required for the owner to verify the amounts asserted in the change proposal request. The Architect shall, within 48 hours of receipt, return any change proposal request that does not contain unit price breakdowns to the contractor for additional detail required to complete a full itemized breakdown. Full itemization consists of individual material costs per element (e.g. lockset, valve, light fixture, breaker) of an assembly and labor costs for the completion of the assembly. Additionally, subcontractor costs shall be itemized in the same way. It is the responsibility of the Architect to instruct the contractor regarding the missing content to eliminate delays and re-work in the project. The Architect shall verify that the change proposal request contains a cover sheet summarizing the material cost labor costs and allowable mark ups under the contract. The Architect shall verify that the change proposal request contains zero days for extension, or if days are claimed, that the Architect is able to substantiate the amount of days claimed through a review of the contractor's critical path schedule. The Architect shall also transmit an estimate of the cost or credit for the change according to the Architect's own estimating methods.

§ 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 forms;
- .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 assembled by the Contractor;
- .4 issue a final Certificate for Payment based upon a final inspection indicating that the Work complies with the requirements of the Contract Documents; and,
- .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

§ 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.

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

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

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

§ 3.6.6.2.3 The Architect shall coordinate the work of the consultants to ~~ensure-require~~ timely arrival to the project for punch list development and timely creation of the punch list for punch list observation. The Architect shall independently verify that the verbal or written additions to the Contractor's punch list made by the Architect, his Consultants and the Owner (at its discretion) during their inspections are incorporated into the Contractor's punch list. The punch list shall contain an area or room description, and a photograph of each deficiency listed in the punch list and a space for contractor and architect to individually indicate the date of the correction and observation of the correction, respectively. The Architect shall, upon notice from the Contractor that punch list work is complete, verify the accuracy and completeness punch list work. Incomplete work shall be communicated to the Contractor and Owner, in writing, by the Architect.

§ 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 When all of the Work is finally completed and all required documentation has been submitted, and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Contractor shall issue its final Application for Payment.

§ 3.6.6.5 The Architect shall, after verifying completeness, 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.

§ 3.6.6.6 For a period beginning at Substantial Completion of any phase of the work and extending twelve (12) months beyond Final Completion of any phase of the work, upon request of the Owner, the Architect shall, not less than once a month, conduct a meeting with the Owner 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 indicated as a Supplemental or Additional Service. The Architect shall not be entitled to additional compensation for Services listed below unless otherwise indicated. Notwithstanding any provision in this Agreement to the contrary, services made necessary as a result of the Architect's failure to timely provide accurate or complete information, approvals or clarifications, or to timely render a decision, shall be considered 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.

(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 <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect, Basic Service
§ 4.1.1.2 Multiple preliminary designs	Architect, Basic Service
§ 4.1.1.3 Measured drawings	Architect, Basic Service
§ 4.1.1.4 Existing facilities surveys	Architect, Basic Service
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Architect, Basic Service
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect, Basic Service
§ 4.1.1.8 Civil engineering	Architect, Basic Supplemental Service
§ 4.1.1.9 Landscape design	Architect, Basic Service
§ 4.1.1.10 Architectural interior design	Architect, Basic Service
§ 4.1.1.11 Value analysis	Architect, Basic Service
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect, Basic Service
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Architect, Basic Service
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Architect, Basic Service
§ 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	Not Provided
§ 4.1.1.21 Telecommunications/data design	Architect, Basic Supplemental Service
§ 4.1.1.22 Security evaluation and planning	Architect, Basic Service
§ 4.1.1.23 Commissioning	Not Provided Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Architect, Basic Service
§ 4.1.1.26 Multiple bid packages	Architect, Basic Service
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect, Basic Service Owner
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.29.1 Transportation and traffic engineering	Architect, Basic Supplemental Service
§ 4.1.1.29.2 Graphics and signage	Architect, Basic Service
§ 4.1.1.29.3 Acoustical engineering	Architect, Basic Supplemental Service
§ 4.1.1.29.4 Theater design	Architect, Basic Supplemental Service
§ 4.1.1.29.5 Food service design	Architect, Basic Service
§ 4.1.1.29.6 Building Envelope	Architect Supplemental Service
§ 4.1.1.30 Other Supplemental Services	
§ 4.1.1.30.1 Warranty phase support services	Architect, Basic Service
§ 4.1.1.30.2 Animations and Fly-Throughs	Architect, Basic Service
§ 4.1.1.30.3 Alternates	Architect, Basic Service
§ 4.1.1.30.4 Renderings and Communication Graphics	Architect, Basic Service

§ 4.1.2 Description of Supplemental Services

§ 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.)

«4.1.1.3: The Architect shall be responsible for investigating through non-destructive means and preparing measured drawings (as-builts) of aspects of the project to the level of detail and study as deemed necessary by the Architect for the proper execution of the Work.

4.1.1.4: The Architect shall be responsible for investigating through non-destructive means and preparing existing facility surveys (space layout, building envelope construction details, accessibility, utility services connections, nameplate data, finishes, equipment, above ceiling inspections, etc.) of aspects of the project to the level of detail and study as deemed necessary by the Architect for the proper execution of the Work.

4.1.1.10: The Architect shall obtain furniture product data from the Owner. The Architect shall cooperate with the Owner in the selection of furniture styles and furniture finishes by coordinating the Owner's choices with the interior design concepts prepared by the Architect, providing recommendations to modify either the furniture selections or interior design finishes to coordinate with one another. The Architect shall ~~and~~ prepare illustrations for finishes, furniture, furnishings and equipment as may be appropriate for the Project, including specially designed items or elements, to indicate finished appearance and functional operation. The Architect shall illustrate the architectural and decorative character of the Project. Such illustrations may include drawings, plans, elevations, sections, renderings, photographs, and samples of actual materials, colors and finishes.

4.1.1.14: The Architect shall, with ten (10) business days of construction notice to proceed provide conformed Construction Documents incorporating all approved changes during bidding and negotiation. Changes include approved substitution requests, approved alternates, value engineering, and clarifications during bidding, and changes required by review of the Authorities Having Jurisdiction. The Conformed documents for construction shall include the graphic illustration of changes previously conveyed only with written narrative or abbreviated notes. The Architect shall affix a seal to the Conformed documents and shall cause the consultants to do the same.

4.1.1.16: The Architect may receive electronic copies of CAD files or marked up record drawings from the Contractor showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor. Based on these changes and others known to the Architect and the Architect's Consultant's, but not shown on the documents provided by the Contractor, the Architect and the Architect's Consultants shall prepare CAD revisions to the documents and issue printed record drawings and a CD containing the CAD files for the project.

4.1.1.21: The Architect shall provide all telecommunications and data design services for the project. Architect shall consult with Owner to develop level of need, expectations, and documentation for that design. A complete and functioning system is required. The Architect will design for installation and point to point testing by the contractor all cabling, including copper systems and fiber optic cabling within the building. The Owner will design and install fiber optic cable from utility provider to Main Distribution Frame.

The following shall be included in the Contract Documents:

1. All electrical power for any equipment
2. Infrastructure and wiring for Data drops
3. Data Infrastructure for Wireless Access Points
4. Clocks, paging, and Intercom Systems
5. Scoreboards
6. Theatrical needs, lighting, sound systems
7. HVAC controls and wiring
8. Conduit to "D-Mark" panel for Phone System and Fiber Cable
9. Conduit for Fiber Cable to Patch Panels
10. Cameras, cabling, and infrastructure for Security Monitoring System
11. Security and Access Controls and Infrastructure
12. Power for I-Pad Cart charging stations

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13. MDF and IDF Racks
14. Conduit pathway with pull string from utility provider source into building MDF for OFOI fiber cabling
15. Fiber backbone cable and conduit pathway between MDF and IDF and supported equipment

The following shall be purchased by Owner IT contractor and be installed by the Owner IT contractor, except as noted. Architect shall include details in the Contract Documents regarding mounting height, blocking, receptacles, cabling between devices and controllers.

1. Interactive TVs and TV Monitors (OFOI by Owner-selected vendor)
2. Any Projectors, screens, and Monitor Arrays for Video (OFOI by Owner-selected vendor)
3. Digital menu boards (OFOI by Owner selected vendor)
4. Network Server Switches, routers, UPS Units and System Hardware for Racks (OFOI by Owner-selected vendor)
5. All Classroom, Computer Lab, CTE and Administrative Computers (OFOI by GISD internal staff)
6. Wireless Access Points (OFOI for Access Point, Cabling by Contractor)
7. Printers and copiers
8. IP Phones (OFOI by Owner-selected vendor)
9. Fiber backbone cable to building in CFCl conduit

4.1.1.28: ~~Furnish-Owner shall obtain services described by B253™-2019, Article 3 and 4 and their subparagraphs. The Architect shall obtain furniture product data from the Owner. The Architect shall cooperate with the Owner in the selection of furniture styles and furniture finishes by coordinating the Owner's choices with the interior design concepts prepared by the Architect, providing recommendations to modify either the furniture selections or interior design finishes to coordinate with one another. Architect shall provide input to Owner and Owner's consultants, and Architect shall coordinate as needed on color and materials. Terms and conditions of this Agreement (B101, as amended) govern where conflict exists.~~

4.1.1.29.2: Prepare interior graphics consisting of graphic murals, artwork, logos, banners and similar items; prepare interior directional signage design; and prepare exterior vehicle and pedestrian directional signage design.

4.1.1.30.1: Establish protocol for reporting warranty deficiency. Disposition warranty claim and identify appropriate party for response; architect, contractor or owner. Establish tracking of warranty items and corrective actions. Enforce contract requirements of Owner-Contractor agreements to achieve satisfactory outcomes. Correct, at no cost to the Owner, deficiencies caused by deficiencies in the work of the Architect.

4.1.1.30.2: Prepare multiple Project animations at each stage of project development to convey the project features. Animations shall address site layout, exterior materials, interior materials and convey scale of the project features. Animations shall be true to scale, containing basic thickness and patterns to convey intent at a minimum, when presented for Schematic Design approval. Animations shall be photo-realistic when presented for Design Development and Construction Document approval. As needed, prepare animations to illustrate key project attributes (e.g. traffic flow, special event access restrictions, special instructional spaces)

4.1.1.30.3: Prepare design alternates to allow for maximum flexibility in awarding the Contract or as may be requested by the Owner. Alternates shall contain equivalent detail to base bid design to eliminate ambiguity and depict the complete nature of the work required by the alternate.

4.1.1.30.4: Prepare multiple Project renderings at each stage of project development to convey the project features. Renderings shall address site layout, exterior materials, interior materials and convey scale of the project features. Renderings shall be scaled, line work quality at a minimum, when presented for Schematic Design approval. Renderings shall be photo-realistic when presented for Design Development and Construction Document approval. As needed, prepare diagrams to illustrate key project attributes (e.g. traffic flow, special event access restrictions, special instructional spaces)

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

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

«Surveyor, Geotechnical, Commissioning, Construction and Materials Testing, Building Envelope»

§ 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.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. All services under the terms of this Agreement which would otherwise be constructed as Additional Services will be treated as Basic Services compensated under Section 11.1 for which no additional compensation is authorized, unless such services are requested in writing by the Architect and approved in writing by the Owner prior to the time such services are performed.

§ 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 change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- 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 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- 5 Paragraph deleted
- 6 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- 7 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 Intentionally 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 The Architect will make as many visits as reasonably necessary to verify completion of all previously identified incomplete work items. Additionally, the Architect shall make site visits during construction progress to expedite responses to Requests for Information and submittals.

§ 4.2.4 Notwithstanding any other provision of the Agreement, the following are services of the Architect fully compensated under Article 3 Scope of Architect's Basic Services .

- 1 The time period during which the architect's duty to provide Basic Services shall include that time necessary to correct any defective work caused by defects, errors or omissions of the Architect during any phase of construction. Such services shall be performed by the Architect at no additional Charge, either in fee or expense,
- 2 The Architect shall be responsible for retaining all necessary consultants to execute Architect's scope of work. Such consultants shall be professionals licensed by the State of Texas to practice the building discipline for which they are retained for the project. Consultants required by the Architect shall at a minimum be required to make on-site visits and observations at appropriate stages of construction.
- 3 The Architect shall require the Contractor and its subcontractors to maintain a set of record drawings to be furnished to the Owner in reproducible form upon Substantial Completion of the Project. The Architect shall require the Contractor to provide all warranty documents and Owner operation manuals required by the Contract Documents. The Architect shall review the record drawings, warranties, and operation

manuals for conformance with the Contract Documents and shall deliver the record drawings, warranties, and operation manuals to the Owner by written transmittal.

.4 The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one year after the date of Substantial Completion. In addition, the Architect shall monitor the progress of corrections and furnish the Owner with written notification of completed corrections; The one year period shall be extended to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

.5 The Architect shall be responsible for a complete inspection of the Work approximately eleven (11) months after the date of Substantial Completion. The Architect shall report all deficiencies observed during such inspection and shall be responsible for monitoring the correction of any deficiencies observed

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information as requested, if available, in a timely manner regarding its requirements, objectives, scheduling and limitations for the Project. 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 periodically 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.

§ 5.4 Intentionally deleted

§ 5.5 Intentionally deleted

§ 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.

§ 5.8 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 in this Agreement 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 Unless otherwise provided in this Agreement, the Owner may furnish tests, inspections and reports that are required by law or the Contract Documents, 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, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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

§ 5.12 Except as otherwise provided in this Agreement, or when direct communications have been specifically authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.13 Before executing the Contract for Construction, the Architect shall verify the Architect's duties and responsibilities set forth in the Contract for Construction when compared with the Architect's services set forth in this Agreement and shall prepare an amendment to this Agreement, for the Owner's approval, when Additional or Supplemental Services are required under the Contract for Construction or other modifications are appropriate. 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.

§ 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.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of calculating 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 requested or accepted by the Owner or Owner's Authorized Representative. The Cost of the Work does not include the compensation of the Architect or Architect's consultants; the costs of the land, rights-of-way, financing, unspent contingencies for changes in the Work, unspent allowances, alternate designs of the Architect that are not constructed or accepted by the Owner; Work performed under separate contracts by the Owner; or other costs that are the responsibility of the Owner. The Architect shall be compensated for alternate designs of the Architect that are included in the Procurement Documents but are not constructed or accepted by the Owner as outlined in Section 11.6.2. 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 may 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 familiar with the construction industry in the locality of the Project. It is recognized that the Cost of the Work cannot exceed the Project budget as stipulated in the initial information, unless agreed to in writing by the Owner. All fees and expenses of the Architect to redesign the Project to meet the Owner's budget for the Cost of the Work shall be borne 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 shall prepare an estimate of the Cost of the Work at various stages of the Project, 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 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 in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. In preparing estimates of the Cost of Work, the Architect shall utilize the services of an independent cost estimating service. The use of a Construction Manager At-Risk does not relieve the obligation of the Architect to provide cost estimates. 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 prior consent of Owner's Board of Trustees (if Board approval is required by Owner); and to include design alternates, when approved by the Owner, 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 separately identify the cost of General Conditions, Overhead and Profit in the Cost of the Work. The cost of all utilities, site improvements, easements and other similar costs necessary to construct the project shall be identified by the Architect. The estimates of the Cost of the Work shall be prepared in the following format:

- .1 At Schematic Design: UniFormat Level 3
- .2 At Design Development: Masterformat division Level 3
- .3 At Construction Documents: Masterformat Level 3, specific to Project specification section

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

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget. Owner shall consider Architect's 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 and/or authorize a different construction procurement method, consistent with applicable law;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; ,
- .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 6.6.6, 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.

§ 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, 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, 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/Instruments of Service, 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. If the Owner and Architect intend to transmit Construction Documents/Instruments of Service or any other information in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 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 in the native file format of the Construction Documents/Instruments of Service. 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.

§ 7.4 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.

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 binding 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 12 years after the date of Final Completion of the Work. The Architect waives 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 other policy 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 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 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 (or arbitration if mutually agreed upon in writing) arising under this Agreement, the types and amounts of damages are recoverable shall be subject to Subchapter I of Texas Local Government Code Chapter 271.

§ 8.1.4 In any litigation under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement may, only upon mutual agreement by both parties, be submitted to mediation as a condition precedent to the institution of legal or equitable proceedings by either party, 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.

§ 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. Nothing in this Agreement shall be construed as requiring mandatory mediation of claims, disputes or other matters between 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 Mediation, if any, shall be held in the county where the Owner's administrative office is located. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§ 8.2.4 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 arbitration. Neither party may compel the other to arbitrate any claim, dispute, or matter in controversy between them. If the parties do not resolve a dispute pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[] Litigation in a court of competent jurisdiction

§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 Arbitration
Intentionally deleted

§ 8.3.4 Consolidation or Joinder
Intentionally 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, such failure shall be considered substantial nonperformance and cause for termination. If not cured after ten (10) days' written notice to Owner of delinquency, 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 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. Architect shall be allowed to suspend Architect's performance of services under this Agreement for nonpayment by Owner only after the provision of ten (10) days written notice, in accordance with Texas Government Code section 2251.051 et seq.

§ 9.2 If the Owner suspends the Project for more than 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 ninety (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 seven 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 (7) days' written notice to the Architect for the Owner's convenience and without cause. The Owner may also terminate this Agreement on seven (7) days' written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest bona fide bid or negotiated proposal.

§ 9.6 In the event of any termination of this Agreement, the Architect shall be paid the fee owed, based upon the Architect's services performed to the date of notice of termination, together with Reimbursable Expenses then due.

§9.7 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 of the Project or last completed phase in the case of phased projects.

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

§ 9.10 This Agreement may be terminated by Owner 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 laws of the State of Texas. Mandatory and exclusive venue for any dispute shall be in the state district courts in the county where the Owner's administrative offices are located.

§ 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 maker 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.

§ 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. The Architect shall not be required to execute certificates that would require knowledge, services, or responsibilities beyond the scope of this Agreement, unless previously agreed to by both parties or where required by law.

§ 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. Without prior written consent of the Architect, the Owner and its agents may include the Architect's photographic or artistic representations of the design of the Project among the Owner's or its agent's media and marketing materials.

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

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 The Architect shall comply with the provisions of Section 22.0834 of the Texas Education Code and Section 153.1117 of the Texas Administrative Code. The form of certification by the Architect shall be supplied by the Owner, and must be supplemented by the Architect as required by law, or as requested by Owner.

§ 10.11 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.

§ 10.12 APPLICABLE LAW. This Agreement is subject to all applicable federal and state 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.

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

§ 10.14 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

§ 10.15 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.

§ 10.16 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.

§ 10.17 If (a) Architect is not a sole proprietorship; (b) Architect has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Architect hereby certifies and verifies that neither the Architect, nor any affiliate, subsidiary, or parent company of the Architect, if any (the "Architect Companies"), boycotts Israel, and the Architect agrees that the Architect and Architect Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

§ 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 CRIMINAL HISTORY RECORD CHECKS

§ 10.19.1 Architect shall, to the extent permitted by law, before any duties are performed on Owner's property where students are present, and at least annually thereafter, comply with all requirements relating to criminal history information required by Texas Education Code Chapter 22, unless Owner, in its sole discretion, determines in writing that an exception applies under Section 22.08341(c) of the Texas Education Code, subject to Architect's and all Consultants' compliance with Section 22.08341(i) of the Texas Education Code. Before beginning any Work on the Project, Architect will, to the extent permitted by law, provide written certification and all information required by Owner to the Owner that Architect has complied with the statutory requirements as of that date. The form of certification by the Architect shall be supplied by the Owner and must be supplemented by the Architect as required by law, or as requested by Owner. Upon request by Owner, Architect will provide, in writing, updated certifications and the names and any other requested information regarding individuals to whom Chapter 22 applies, so that the Owner may obtain criminal history record information on such individuals. Architect shall assume all expenses associated with obtaining criminal history record information. It shall be the responsibility of the Architect and the entities with which the Architect contracts to ensure compliance with this provision. At Owner's request, Architect shall provide all requested cooperation to Owner to allow Owner to conduct any needed background checks, including Architect causing its employee(s) to provide fingerprints and related information and Architect paying for any costs incurred by Owner in performing the requisite background checks. Architect shall cause any of its Consultants or Subconsultants to provide similar cooperation to Owner.

§ 10.19.1.1 Consultants or any Subconsultants entity, as defined by Texas Education Code Chapter 22, shall be required by the terms of their contract with Architect or any other contracting entity (as defined in Texas Education Code Chapter 22), and by Texas law, to comply with all requirements relating to criminal history record information on their employees, agents, or applicants, to give required certifications and provide all information requested by Owner to Owner and the contracting entities, and to obtain required certifications/compliance from the Consultant entity's Subconsultants.

§ 10.19.1.2 Architect will not assign any "covered employees" 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 (3) business days. If Owner, in its sole discretion, objects to the assignment of a covered employee for any reason, including, but not limited to, on the basis of the covered employee's criminal history record information and/or insufficient qualifications, lack of experience, and the like, based on information gathered by Owner through the procurement and/or contracting processes, Architect, Consultant, or Subconsultants agrees to 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 or any Consultant will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.19.1.3 For the purposes of this Section 10.19.1.2, "covered employees" means employees, agents or Consultants of Architect or a Consultant who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. "Disqualifying criminal history" means: (1) For employees of a contracting or subcontracting entity that is providing engineering, architectural, or construction services on a project to design, construct, alter, or repair a public work: (1) a conviction or other

criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.08341(d), that is: conviction during the preceding 30 years (if at the time of the offense, the victim was under 18 or was enrolled in a public school) of: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an offense under federal law or the laws of another state that is equivalent to (a) or (b); (2) For employees of all other contracting or subcontracting entities: (1) a conviction or other criminal history information designated by Owner; (2) a felony or misdemeanor offense that would prevent a person from being employed under Texas Education Code § 22.085(a), that is: (a) conviction of a felony offense under Title 5, Texas Penal Code if at the time of the offense, the victim was under 18; (b) conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) conviction of an offense under federal law or the laws of another state that is equivalent to (a) or (b).. Owner shall be solely responsible for making the final determination of what constitutes direct contact with Owner's students and what constitutes a disqualifying criminal history.

§ 10.20 The Architect shall perform all services in a skillful and competent manner, exercising due and reasonable professional care, and shall comply with the standards of architectural firms practicing in this area under similar circumstances and the standards and practices specified in this Agreement. ~~The Architect shall be responsible to the Owner for all damages resulting from (1) negligent defects in design, (2) non-workability of design details, (3) failure of the Architect to comply with the terms of this Agreement, and (4) negligent errors and omissions of the Architect.~~

§ 10.21 ~~The Architect represents to Owner that all Design Documents, Contract Documents and other documents prepared and issued by Architect pursuant to this Agreement will be of good quality, free from substantial defects, and in conformance with and satisfying all current interpretations of applicable federal, state, municipal and local ordinances, codes, and other governmental requirements and shall be fit for the particular purpose intended thereby.~~ Intentionally deleted.

§ 10.22 Notwithstanding any provision of this Article to the contrary, services made necessary as a result of the Architect's failure to timely provide accurate or complete information, approvals or clarifications, or to timely render a decision, shall be considered Basic Services.

§ 10.23 Any notice required by or permitted under this Agreement must be in writing unless otherwise provided herein. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

§ 10.24 The Owner shall have the right to examine, copy, and / or audit the books and other records of the Architect relating solely to this Agreement upon reasonable request to the Architect.

§ 10.25 The Architect shall obtain written approval before proceeding with each Project phase.

§ 10.26 The Architect, unless a publicly held corporation, shall provide notice if the Architect or operator of the Architect has been convicted of a felony in accordance with Texas Education Code section 44.034.

§ 10.27 The Architect, in signing this Agreement certifies that it is not ineligible to receive payment of funds in accordance with Texas Family Code section 231.006.

§ 10.28 Texas Occupations Code section 1051.251 requires the following statement: The Texas Board of Architectural Examiners (333 Guadalupe, Suite 2-350, Austin, TX 78701, Telephone (512) 305-9000) has jurisdiction over individuals licensed to practice architecture in the State of Texas.

§ 10.29 Program Manager shall have, and is hereby granted by Owner, full and complete power, authority, and discretion to act for, and in the name, place, and stead of, Owner in carrying out and discharging the responsibilities

and obligations of Program Manager under the Agreement between the Owner and Program Manager; provided, however, that Program Manager shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided in the Agreement between the Owner and the Program Manager or specifically authorized in writing by Owner. In no event shall Program Manager be authorized to execute any documents, agreements, or other instruments on behalf of Owner. In no event shall Program Manager have the authority to modify completion dates of the Project Schedule without written approval by Owner. Program Manager shall have the authority to modify interim milestones dates not affecting the completion dates specified in the Agreements between the parties. In no event shall Program Manager have the authority to modify contract value of the Project without written approval by Owner. Program Manager shall have the authority to modify budgets, contingencies, allowances and similar accounting tasks not affecting the contract value specified in the Agreements between the parties. In no event shall Program Manager have the authority to relax or to bind the Owner to codes and standards imposed by the Authorities Having Jurisdiction, unless authorized in writing by the Owner.

§ 10.30 Architect hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. (Tex. Gov't Code §§ 2252.151-.154)

§ 10.31 If (a) Architect is not a sole proprietorship; (b) Architect has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Architect hereby certifies and verifies that neither the Architect, nor any affiliate, subsidiary, or parent company of the Architect, if any (the "Architect Companies"), boycotts Israel, and the Architect agrees that the Architect and Architect Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

10.31.1 The Architect represents and warrants to the Owner that the Architect does not boycott energy companies as contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

10.31.2 The Architect represents and warrants to the Owner that the Architect does not discriminate against firearm and ammunition companies and trade associations as contemplated by Chapter 2274 of the Government Code and will not so discriminate during the term of this Agreement.

§ 10.32 INDEMNITY Approval of any Construction Documents by Owner shall not constitute and shall not be deemed 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 the 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~~ **EIGHT** YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL ~~TWO-ONE~~ **ONE** YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 16.008(c)), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, ~~AGENTS, REPRESENTATIVES, SERVANTS,~~ AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE, INCLUDING ATTORNEY'S FEES, ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY OR ALL PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE OWNER, CONSTRUCTION MANAGER, ARCHITECT, OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, WHICH ~~MAY DIRECTLY~~ **ARISE** FROM ~~OR BE CONNECTED WITH~~ ANY ACT OF NEGLIGENCE ON THE PART OF THE ARCHITECT OR ANY BREACH OF OBLIGATIONS UNDER THIS AGREEMENT; provided and except, however, that this indemnification provision shall not be construed as requiring the Architect to indemnify or hold 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 of breach of

obligation under this Agreement by Owner or Owner's employees or agents, except Architect.

§ 10.33 If Architect is not a governmental body and (a) this Agreement has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner; or (b) this Agreement results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Owner in a fiscal year of Owner, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov't Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the Architect agrees that the Contract can be terminated if the Architect knowingly or intentionally fails to comply with a requirement of that subchapter." Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Architect hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement; (2) promptly provide to Owner any contracting information related to the Agreement that is in the custody or possession of the Architect on request of Owner; and (3) on completion of the Agreement, either (a) provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Architect, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

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 as 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 Section 2251.051 (c) and (d). Owner shall further have the right to withhold payments as specified in this Agreement.

Percentage Basis

(Insert percentage value)

«Five and One-half Percent» («5.5») % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

Stipulated Sum

\$9,500,150.00 (Insert amount)

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

Compensation for services designated as Basic Services in Section 4.1 shall a part of the Total Basic Compensation due to the Architect under §11.1

§ 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.)

«Hourly, in an amount equal to Architect's direct labor cost times a factor of 2.9. Direct Labor Cost means salaries and wages (basic, premium and incentive) paid to personnel, but does not include indirect payroll related costs or fringe benefits»

§ 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 «Zero» percent («0.0»%), or as follows:

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

«Architect's Consultants considered Supplemental Services and not included in 4.1.1, or compensated under 11.1:

N/A.

~~1 Geotechnical Engineering Services; and;~~

~~2 Surveying and Platting Services; and;~~

~~3 Building Envelope Consulting Services;~~

—»

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis of the Cost of the Work, Compensation shall be paid based on the percentage of the services actually completed by Architect. Progress payments for services in each phase for services completed shall total the percentages applicable to each phase of Architect's services as follows. Compensation for Basic services will be deemed earned upon satisfactory completion of the phases::

Programming/Schematic Design Phase: Ten Percent (10%)

Design Development Phase: Thirty Percent (30%)

Construction Document Phase: Thirty Percent (30%)

Proposal or Negotiation Phase: Five Percent (5%)

Construction Phase: Twenty Percent (20%)

Closeout Phase (payable upon final payment to contractor) Two Percent (2%)

Warranty Phase (payable monthly during 12-months after Substantial Completion) Three Percent (3%)

Total Basic Compensation: One Hundred Percent (100%)

§ 11.5.1 Adjustment of the compensation due, as based on the Cost of the Work, may be made at not less than four intervals; 1.) completion of Programming, 2.) completion of Design Development, 3.) notice to proceed issued to the Contractor and 4.) project final completion. Notification of compensation adjustment shall be by written authorization from the Owner.

~~§ 11.5.1 Adjustment of the compensation due, as based on the Cost of the Work, may be made at not less than four intervals; 1.) completion of Programming, 2.) completion of Design Development, 3.) notice to proceed issued to the Contractor and 4.) project final completion. Notification of compensation adjustment shall be by written authorization from the Owner.~~

§ 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 Article 11.1 by the Owner's most recent budget for the Cost of the Work at the intervals stated in Article 11.5.1 by the percentages identified in Article 11.5 by the incremental proportion of services performed within each phase listed in Article 11.5. 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. When compensation identified in Section 11.1 is on a stipulated sum basis, progress payments for each phase of Basic Services shall be calculated by multiplying the stipulated sum identified in Article 11.1 by the percentages identified in Article 11.5 by the incremental proportion of services performed within each phase listed in Article 11.5. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage 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.

§ 11.6.2 Compensation for Alternate designs deleted or otherwise not constructed. Provided the Architect satisfies the requirements of section 4.1.1.30.3, and when compensation is on a percentage basis, and Alternate 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 up to the value reflected in the schedule of values set forth in Section 11.5. Prior to bidding, the Cost of the Work shall be based on the most recent Estimate of the Cost of the Work for the Alternate(s). After bidding, the Cost of the Work shall be the average price proposal

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User Notes:

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received for the Alternate(s). For those Alternate designs that are accepted and constructed, the Cost of the Work shall be based on the awarded amount. If the requirements of section 4.1.1.30.3 are not satisfied, in the sole opinion of the Owner, the Architect will not be entitled to additional compensation for Alternate designs.

§ 11.6.3 Compensation for the portion of the budget for the Cost of the Work established for Allowances and Contingencies shall be billed only at Final Completion and shall be billed only in proportion to, and only to the extent that, the Owner actually expends Allowance and Contingency funds in the completion of the project. Compensation for Alternate designs deleted or otherwise not constructed. Provided the Architect satisfies the requirements of section 4.1.1.30.3, and when compensation is on a lump sum basis, and Alternate 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 paid a fee equal to the percentage derived by computing the Alternate Cost of the Work divided by Base Cost of the Work, then by multiplying the derived percentage by the value of the lump sum fee for the Basic Services actually performed. Prior to bidding, the Cost of the Work shall be based on the most recent Estimate of the Cost of the Work for the Alternate(s). After bidding, the Cost of the Work shall be the average price proposal received for the Alternate(s). For those Alternate designs that are accepted and constructed, the Cost of the Work shall be based on the awarded amount. If the requirements of section 4.1.1.30.3 are not satisfied, in the sole opinion of the Owner, the Architect will not be entitled to additional compensation for Alternate designs.

§ 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. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

«Hourly, in an amount equal to Architect's direct labor cost times a factor of 2.9. Direct Labor Cost means salaries and wages (basic, premium and incentive) paid to personnel, but does not include indirect payroll related costs or fringe benefits »

§ 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 Out-of-town transportation, for those miles over 50 encountered during the trip, and subsistence, when approved in advance by the Owner in writing;
- 2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- 3 Reproductions of Construction Documents other than those required to be provided by Architect under this Agreement, plots, standard form documents, and courier expenses;
- 4 Expenses of overtime Work requiring higher than regular rates, if authorized in advance by the Owner in writing, except when necessitated by error or omissions of the Architect;
- 5 Models, mock-ups, professional photography, and presentation materials requested by the Owner, and
- 6 Other similar Project-related expenses, if approved in advance by the Owner in writing;
- 7 Fees paid for Geotechnical Engineering Services; and
- 8 Fees paid for Surveying and Platting Services; and
- 9 Fees paid for Building Envelope Consulting Services.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «zero» percent («0.00» %) of the expenses incurred.

§ 11.9 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.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of «zero» (\$ «0.00») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services completed and approved prior to construction shall be made monthly in proportion to services performed. Unless otherwise agreed, payments for services completed and approved during construction shall be directly proportional to the cost certified by the Architect in the Contractor's monthly Application and Certification for Payment as a proportion of the total Cost of the Work, excluding any Allowances and Contingencies. Unless otherwise agreed, payments for warranty services completed and approved after substantial completion shall be made monthly in twelve (12) regular installments. Undisputed amounts are due and payable -within forty-five (45) days from the date of the Owner's receipt of the Architect's invoice. Undisputed amounts unpaid more than forty-five (45) days after Owner's receipt of Architect's invoice shall bear interest at the rate specified by Texas Government Code 2251.025 or its successor.

§ 11.10.2.2 The Owner may withhold payments after appropriate notice as to the reasons for the withholding, to Architect for the purposes of reimbursing Owner for any damages caused by Architect, for changes in the Cost of the Work which result in Architect's compensation being reduced, 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 invoice.

§ 11.10.2.4 In the event that the Project involves multiple campuses, project phases or multiple projects on the same campus, the Architect shall prepare invoices that reflect the packaging of the work (work packages). Each invoice shall reflect the Cost of the Work for the respective work package and the progress payment shall be as described in Section 11.10.2.1. and 11.10.2.3. Additionally, each invoice shall indicate the Purchase Order number and account code furnished to the Architect by the Owner.

§ 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

§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 EIGHT~~ YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL ~~TWO~~ YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 16.008(c) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, ~~AGENTS, REPRESENTATIVES, SERVANTS,~~ AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEY'S FEES, 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 AGREEMENT.

§ 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 twelve 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 P. O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, by phone at (512) 305-9000, by fax at (512) 305-8900, or on the web at <http://tbae.state.tx.us>."

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 or the Board's designee 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, as amended for this Project;
- .2 Other documents:
(List other documents, if any, forming part of the Agreement.)
Exhibit A – Design Submission Checklist – Schematic Design
Exhibit B – Design Submission Checklist – Design Development
Exhibit C – Design Submission Checklist – Construction Documents
Exhibit D – Project Management Software
Exhibit E – Owner's Technical Design Guidelines, and subsequent amendments
Exhibit F – AIA A201, General and Supplemental Conditions to the Contract for Construction

« »

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

« »

OWNER (Signature)

« »« »

(Printed name and title)

(Date)

« »

ARCHITECT (Signature)

« »« »

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

(Date)

