



## **ALEDO ISD BOARD MEETING TEMPLATE**

**MEETING DATE:** June 15, 2015

**AGENDA ITEM:** Consider Approval of Architectural Contract

**PRESENTER:** Derek City and Earl Husfeld

**ALIGNS TO BOARD GOAL(S):** Financial/Facilities – The District shall exhibit excellence in financial and facility planning, management, and stewardship.

**BACKGROUND INFORMATION:**

- Texas Government Code, Chapter 2254, states a school district must select and award a contract for professional services on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price.

**ADMINISTRATIVE CONSIDERATIONS:**

- With the passage of the 2015 Bond Election, multiple bond projects will require the services of an architectural firm.
- VLK Architects (VLK) has done excellent work for the District over the years on many projects, both large and small. They have repeatedly demonstrated their competence and qualifications to perform the needed services.
- A significant benefit to the District of utilizing VLK for the design, etc. of elementary school number 5, is the potential to use McCall Elementary as a prototype and adapt that design to a different site.
- Based on the anticipated scope of services required on identified projects in the 2015 bond program, the District and VLK have negotiated a reduced rate of 5.25% of the cost of the work.
- For your review, the following AIA contracts are the final contracts between Aledo ISD and VLK from 2013. These are the “starting points” for the current contracts. Minor points are being finalized between the District, VLK, and Mr. Tom Myers, the District’s attorney with Brackett & Ellis. Updated versions of the contracts will be available at the board meeting.

**FISCAL NOTE:**

Costs associated with the VLK contract will be paid from 2015 bond funds.

**ADMINISTRATIVE RECOMMENDATION:**

The Administration recommends the Board of Trustees approve the selection of VLK Architects to provide architectural services for the 2015 bond program.

# AIA® Document B201™ – 2007

## **Standard Form of Architect's Services: Design and Construction Contract Administration**

for the following PROJECT:

*(Name and location or address)*

Additions and Renovations to the Learning Center and  
Security Improvements at Aledo High School

### **THE OWNER:**

*(Name, legal status (Name and address))*

Aledo Independent School District  
1008 Bailey Ranch Road  
Aledo, Texas 76008

### **THE ARCHITECT:**

*(Name, legal status (Name and address))*

VLK Architects  
2821 West 7th Street, Suite 300  
Fort Worth, Texas 76107

*(Note: This AIA Document B201-2007, as amended, should only be used in conjunction with  
AIA Document B102-2007, as amended. This document must also contain an Exhibit A, the  
AIA Document B201-2007 Exhibit A, as amended)*

### **THE AGREEMENT**

This Standard Form of Architect's Services is part of or modifies the accompanying  
Owner-Architect Agreement (hereinafter, the Agreement) dated the 18 day  
of March in the year 2013.

*(In words, indicate day, month and year.)*

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

This document provides the Architect's scope of services only and must be used with an owner-architect agreement. It may be used with AIA Document B102™–2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, to provide the Architect's sole scope of services, or with B102 in conjunction with other standard form services documents. It may also be used with G802™–2007, Amendment to the Professional Services Agreement, to create a modification to any owner-architect agreement.

### **TABLE OF ARTICLES**

- 1 INITIAL INFORMATION
- 2 SCOPE OF ARCHITECT'S BASIC SERVICES
- 3 ADDITIONAL SERVICES
- 4 OWNER'S RESPONSIBILITIES
- 5 COST OF THE WORK
- 6 COMPENSATION
- 7 ATTACHMENTS AND EXHIBITS

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## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information and incorporate it into this services document at Section 7.1, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

See Attached AIA Document B201 Exhibit A.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date: Spring 2013
- .2 Substantial Completion date: Early Spring 2014
- .3 Final Completion date: 30 days after Substantial Completion

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect ~~shall appropriately adjust~~ may mutually adjust, in writing, as appropriate, the schedule, the Architect's services and the Architect's compensation.

§ 1.4 All references in this Agreement to "Contractor" shall include "Construction Manager at Risk" as appropriate. All references in this Agreement to "Contract Sum" shall include "Guaranteed Maximum Price" as appropriate.

§ 1.5 This Agreement is subject to, and shall be construed in accordance with, the provisions of AIA Document B102-2007, as amended for the Project and executed by Owner and Architect.

§ 1.6 The Texas Board of Architectural Examiners 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://www.tbae.state.tx.us>.

## ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1 The Architect's Basic Services consist of those described in Article 2 and include usual and customary structural, mechanical, and electrical engineering services. ~~Services not set forth in Article 2 are Additional Services:~~ architectural services, structural, mechanical, plumbing, and electrical engineering services; landscape design; architectural interior design; site feasibility design; programming for new schools and/or scope of work verification for renovations of existing schools; graphics/way-finding planning services; roofing consultant services unless otherwise approved by Owner; accessibility services; and internal auditing and accounting services necessary for Architect to fulfill Architect's responsibilities under this Agreement and as necessary to complete the Project. Architect shall provide all plans and specifications for all site development necessary for the Project, which shall include locating any building on-site, and developing all plans and specifications for site drainage, parking, landscaping, walkways, irrigation, playgrounds, staging areas and portable buildings and accompanying infrastructure, when appropriate. All architectural plans, specifications or estimates shall be prepared by a registered professional architect, as required by Texas Occupations Code Chapter 1051. Any structural, mechanical, plumbing, and electrical engineering plans, specifications or estimates for construction must be prepared by a registered professional engineer, as required by Texas Occupations Code Chapter 1001.

§ 2.1.1 The Architect shall ~~manage the Architect's services, perform and manage the Architect's services and administer the Project, in accordance with this Agreement as amended, the AIA Document B102-2007, as amended for this Project, and with the AIA Document A201-2007, 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.~~ progress to the Owner through the issuance of progress reports to Owner and Contractor, as more specifically defined hereafter. The Architect shall not

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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 monthly presentations to Owner's Board of Trustees.

.2 The Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Board of Trustees, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Board of Trustees in the further development of the design, provided that nothing herein shall relieve Architect of responsibility or liability for design defects, errors, or omissions.

§ 2.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants, in accordance with 19 TAC Section 61.1036. 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.

§ 2.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services--services, including the dates of Architect's design services and the completion of documentation required by the Architect. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion and Final Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's and 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 and Final Completion as stated in this Agreement, as amended, and within Owner's budget, as identified in Section A.1.3 of AIA Document B201 – 2007, Exhibit A, as amended. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner-Architect. With the Owner's prior written approval, 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.

§ 2.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval-review, and be responsible for compliance with, laws, codes, and regulations applicable to the Architect's services, including, without limitation, school facility standards found in 19 TAC Section 61.1036, and Texas Health and Safety Code Chapter 341. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies, regulations and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and fraud and financial impropriety. Architect shall certify that he has reviewed the standards contained in 19 TAC Section 61.1036, and used the best professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the Construction Documents. Architect shall also certify that the Construction Documents conform to the provisions of 19 TAC Section 61.1036, except as indicated on the certification. Architect's signature and seal on the Construction Documents shall certify compliance. Architect shall perform a building code search under applicable regulations that may influence the Project, and shall certify that the design has been researched before it is final, as required by 19 TAC Section 61.1036(c). Architect shall also certify that the facilities have been designed according to the provisions of 19 TAC Section 61.1036, based on the educational program, long-range school facility plan, educational specifications, building code specifications, and all documented changes to the Construction Documents provided by the District, as required by 19 TAC Section 61.1036. Architect shall complete the Texas Education Agency's Certification of Project Compliance, located at [www.tea.state.tx.us/school.finance/facilities/cert](http://www.tea.state.tx.us/school.finance/facilities/cert) 2004.pdf. In executing the certifications required under the

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provisions of this Section, Architect shall exercise his/her reasonable professional judgment and care consistent with the practice of architecture in the State of Texas and applicable law. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulation, and all applicable requirements or standards of the American National Standards Institute. If Owner is using instructional facilities allotment funds for the Project which are allotted to Owner under Subchapter A of Chapter 46 of the Texas Education Code, then Architect shall consider, in the design of the Project, the security criteria developed by the Texas School Safety Center under Texas Education Code Section 37.2051. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards which become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion shall be addressed by the Architect, and shall be compensated as an Additional Service pursuant to Section 3.1.

§ 2.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall ~~respond to~~ comply with applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 2.1.6 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. The Architect shall document all meetings and decisions made throughout the course of the Project and shall provide copies to the Owner and to the Construction Manager at Risk or Contractor.

§ 2.1.7 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 A201-2007, as amended for this Project as of the date of this Agreement, and Architect herein agrees to abide by same. Architect agrees that the AIA Document A201-2007 may be subject to subsequent amendments based upon negotiations between Owner, Architect and Contractor. As a condition of further service, Architect shall provide to Owner a signed statement stating Architect's agreement to adhere to any such negotiated amendments.

## § 2.2 SCHEMATIC DESIGN PHASE SERVICES

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

§ 2.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or 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, and Architect shall review any additional information provided pursuant to Architect's request. The Architect shall visit the Owner's Project site and shall provide to Owner a preliminary evaluation of 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 preliminary evaluation, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall also address with the Owner any existing easements or rights-of-way which may interfere with Owner's Project. As soon as practicable after execution of this Agreement and, if possible, before Owner's Board of Trustees designates a method of construction contract procurement, the Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner in writing of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

§ 2.2.3 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 ~~an~~ a written understanding with the ~~Owner~~ Owner's designated representative regarding the requirements of the Project.

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

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

§ 2.2.5.1 The Architect shall consider environmentally responsible 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 other environmentally responsible design services under Article 3.

§ 2.2.5.2 The Architect shall ~~consider~~ 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.

§ 2.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 5.3.

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

### § 2.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 2.3.1 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. 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 such other elements as outlined in this Agreement and/or AIA Documents B102-2007 and B201-2007 Exhibit A and as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

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

§ 2.3.3 The Architect shall submit the Design Development Documents 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 by majority vote; 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

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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.

§ 2.3.4 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.

## **§ 2.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

§ 2.4.1 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 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 61.1036 and the standards set forth in Section 2.1.4 of AIA Document B201- 2007, as amended. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and shall comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents. The Owner and Architect acknowledge that in order to construct 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 2.6.4. 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 2267.054. 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."

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

§ 2.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) ~~bidding~~-bidding, competitive purchasing and procurement information that describes the time, place and conditions of ~~bidding~~-bidding or proposing, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions)-The Conditions), as amended for the Project. After consultation with the Owner, the Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding or proposal requirements and sample forms. As required by law, all bid or proposal documents and contracts shall include, if applicable, all required information related to trench excavation safety. Texas Health and Safety Code Section 756.021 et seq. All playground equipment designed by Architect, if any, shall comply with each applicable provision of ASTM Standard F1487-07ae1. "Consumer Safety

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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. All ventilation and indoor air quality systems designed by Architect shall meet the indoor air quality voluntary guidelines established by the Texas Department of State Health Services. Texas Health and Safety Code Chapter 385. Architect shall also comply with 15 U.S.C. §8003 (Drain cover standards) if applicable. If applicable, Architect shall comply with U.S. Environmental Protection Agency rules concerning renovating, repairing, and painting work in schools built before 1978 that involves lead-based paint.

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

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

§ 2.4.4 The Architect shall update the estimate for the Cost of the Work. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval 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.

§ 2.4.5 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 5.5, and request the Owner's designated representative's approval. 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.

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

## **§ 2.5 BIDDING OR NEGOTIATION PHASE SERVICES**

The Architect shall assist the Owner in establishing a list of prospective contractors. 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.

§ 2.5.1 The Architect shall assist the Owner in identifying and investigating prospective contractors. 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 and evaluating bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction. 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. 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.

## **§ 2.5.2 COMPETITIVE BIDDING**

**§ 2.5.2.1** Bidding Documents shall consist of bidding 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.

**§ 2.5.2.2** ~~The~~ If requested by the Owner, the Architect shall assist the Owner in bidding the Project by

- .1 procuring at Owner's cost the reproduction of Bidding Documents for distribution 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 all 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.

**§ 2.5.2.3** ~~The~~ In consultation with 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. Owner-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.

## **§ 2.5.3 NEGOTIATED PROPOSALS PROPOSALS**

**§ 2.5.3.1** 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 Agreement) and consist of the Agreement, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract.

**§ 2.5.3.2** ~~The~~ If requested by Owner, the Architect shall assist the Owner in obtaining proposals by

- .1 ~~procuring~~ procuring, at Owner's cost, the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

**§ 2.5.3.3** ~~The~~ In consultation with Owner, the Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors. Owner-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.

## § 2.6 CONSTRUCTION PHASE SERVICES

### § 2.6.1 GENERAL

§ 2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201-2007, General Conditions of the Contract for Construction. ~~If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~ Construction, as amended for this Project, and as provided in Section 2.1.7 above.

§ 2.6.1.2 The Architect shall be a representative of and 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.

§ 2.6.1.3 Subject to Section 3.3, the Architect's responsibility to provide Construction Phase services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 2.6.2 EVALUATIONS OF THE WORK

§ 2.6.2.1 ~~The Architect shall visit the site at Architect, or his authorized representative, as a representative of the Owner, shall visit the site at least twice per week (or more per week when deemed necessary by the Owner's Superintendent or when necessary to protect Owner's interests), and at other intervals appropriate to the stage of construction, or as otherwise required in Section 3.3.3, (1) to evaluate the progress, quantity and quality of the Work completed, (2) to reject any observed nonconforming Work, (3) to become generally familiar with the progress and quality of the portion of the Work completed, (4) to endeavor to guard the Owner against defects and deficiencies in the Work, (5) to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents, Documents and on time, and (6) to document progress of the Work, in written and photographic form. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. 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's representatives, Owner's Program Manager, if appropriate, the Contractor's project manager and/or superintendent, Architect's project representative and Architect. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect, and will assist Owner in development of Requests for Proposals or other solicitations for any required testing services approved by Owner. On the basis of the site visits, observations or evaluations by the Architect, the Architect shall keep the Owner reasonably and Owner's Contractor informed about the progress and quality of the portion of the Work completed, and shall promptly orally report to the Owner and Contractor (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Work, which notice shall be followed by notice in writing of defects and nonconforming Work noted and corrective actions taken or recommended. Any services by Architect made necessary due to Architect 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.~~

§ 2.6.2.2 The Architect ~~has the authority to~~ shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall ~~have the authority to~~ notify Owner of the necessity to require 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. 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, 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 Construction Documents or Contract Documents, upon discovery of the defect or nonconformance, and shall notify Owner of all corrective actions taken or recommended. The testing or inspections required by this Section are subject to the requirements of Chapter 2267 of the Texas Government Code.

§ 2.6.2.3 The Architect shall interpret and ~~decide~~ make recommendations to Owner regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 2.6.2.5 ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims~~ The Architect shall promptly render initial written recommendations or interpretations on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents.

### § 2.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 2.6.3.1 The Architect shall ~~review~~ carefully evaluate, review, and certify the amounts due the Contractor and shall ~~issue certificates in such amounts, sign and issue certificates in such amounts, if such amounts are valid, correct and deemed due and owing, in Architect's professional opinion, within seven 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 ~~evaluation~~ observations and/or evaluations of the Work as provided in Section 2.6.2 and on the data comprising the Contractor's Application for Payment, that, in Architect's professional opinion and to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. ~~Construction Documents and the Contract Documents, and that the Architect has carefully evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion.~~ The foregoing representations are subject (1) to an inspection and evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the ~~Architect~~ Architect in writing to Owner.

§ 2.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other ~~data~~ data, unless 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.

§ 2.6.3.3 The Architect shall maintain ~~a record~~ all records of the Applications and Certificates for Payment.

### § 2.6.4 SUBMITTALS

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

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**§ 2.6.4.2** In accordance with the Architect approved submittal schedule, the Section 2.6.4.1, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, ~~but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not the Contract Documents and all laws, statutes, codes, regulations, ordinances, and requirements applicable to Architect's design services. Review of such submittals is for the purpose of determining the general accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are substantiating instructions for the installation of equipment or systems. Specific dimensions, quantities, installation and performance of equipment and systems remain the Contractor's responsibility.~~ The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. 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.

**§ 2.6.4.3** 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 shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 2.6.4.4** Subject to the provisions of Section 3.3, 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-A properly-prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare deemed appropriate by the Architect, the Architect shall, on the Owner's behalf, prepare, reproduce, distribute and issue supplemental Drawings and Specifications in response to requests for information-~~ information by the Contractor.

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

## **§ 2.6.5 CHANGES IN THE WORK**

**§ 2.6.5.1** The Architect shall timely review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents, accompanied by all supporting documentation. With prior written notice to the Owner, the Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 3.3, the ~~If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified.~~ Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

**§ 2.6.5.1.1** 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.

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

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

### § 2.6.6 PROJECT COMPLETION

§ 2.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; ~~issue Certificates of Substantial Completion; Completion, using Owner's form;~~ 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; and issue a Certificate of Final Completion, using Owner's form; a Certification of Project Compliance as described in Section 2.1.4 herein; and a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Construction Documents and the Contract Documents.

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

§ 2.6.6.3 When the Work is found to be substantially complete and again when the Work is found to be finally complete, the Architect shall inform the Owner in writing about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

~~§ 2.6.6.5 Upon request of the Owner, and prior~~ § 2.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, and upon request of the Owner at any other time within one year of the date of Substantial Completion, the Architect shall, without additional compensation, inspect the Work and conduct a meeting with the Owner to review the facility operations and performance and Owner's Designated Representative to review the facility operations and performance for purposes of identifying defects, warranty issues, and proposed corrections and advising Owner in writing regarding the need for correction of the Work.

## ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 6.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 3.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

(Note: Indicate whether listed services are Basic Services, Additional Services, or Not Provided. These are project-specific and should be negotiated with the Architect. Please note that the Agreements made here can dramatically impact the cost of the Project. Make sure that this list is consistent with the terms of this Agreement and B201 Exhibit A.)

Any service not specified below as an Additional Service shall be considered a Basic Service.

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Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 3.2 below or in an exhibit attached to this document and identified below)
§ 3.1.1 Programming	Owner	To the extent required by 19 TAC Section 61.1036
§ 3.1.2 Multiple preliminary designs	Architect	Included in Basic Services
§ 3.1.3 Measured drawings	Architect	Included in Basic Services
§ 3.1.4 Existing facilities surveys	Owner	
§ 3.1.5 Site Evaluation and Planning (B203™–2007)	Architect	Included in Basic Services
§ 3.1.6 Building information modeling	Not Provided	Not Provided
§ 3.1.7 Civil engineering	Architect	Additional Services
§ 3.1.8 Landscape design	Architect	Included in Basic Services
§ 3.1.9 Architectural Interior Design (B252™–2007)	Architect	Included in Basic Services
§ 3.1.10 Value Analysis (B204™–2007)	Architect and Owner	Included in Basic Services
§ 3.1.11 Detailed cost estimating	Contractor	
§ 3.1.12 On-site project representation	Architect	Included in Basic Services
§ 3.1.13 Conformed construction documents	Architect	Included in Basic Services
§ 3.1.14 As-designed record drawings	Architect	Additional Services
§ 3.1.15 As-constructed record drawings	Contractor	
§ 3.1.16 Post occupancy evaluation	Architect/Owner	Included in Basic Services
§ 3.1.17 Facility Support Services (B210™–2007)	Not Provided	Not Provided
§ 3.1.18 Tenant-related services	Not Provided	Not Provided
§ 3.1.19 Coordination of Owner's consultants	Owner	
§ 3.1.20 Telecommunications/data design	Not Provided	Not Provided
§ 3.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided	Not Provided
§ 3.1.22 Commissioning (B211™–2007)	Not Provided	Not Provided
§ 3.1.23 Extensive environmentally responsible design		Not Provided
§ 3.1.24 LEED® Certification (B214™–2007)	Not Provided	Not Provided
§ 3.1.25 Fast-track design services	Not Provided	Not Provided
§ 3.1.26 Historic Preservation (B205™–2007)	Not Provided	Not Provided
§ 3.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Owner	Not Provided

§ 3.2 Insert a description of each Additional Service designated above as the Architect's responsibility, if not further described in an exhibit attached to this document.

*(Note: If you designate the Architect to provide any Additional Services above, include a detailed description of the services here.)*

§ 3.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement, if agreed by Owner in writing prior to commencement of the services. In the absence of Owner's prior agreement in writing, the Owner shall have no obligation to pay for any Additional Services performed. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 3.3 shall entitle the Architect to compensation pursuant to Section 6.3 may result in either an upward or a downward adjustment in the compensation due to the Architect. The Architect shall not be entitled to an upward adjustment in compensation or Reimbursable Expenses due to the fault or error of the Architect or Architect's consultants, but may be subject to a downward adjustment in compensation.

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§ 3.3.1 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 services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery ~~method; method, after Construction Documents are complete, except when said changes are due to Architect's or Architect's consultants' errors or omissions;~~
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared ~~Instruments of Service~~ Construction Documents necessitated by the enactment or revision of codes, laws or regulations or official ~~interpretations;~~ interpretations after Substantial Completion;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or ~~contractors;~~ contractors, to the Architect's detriment, which significantly change the services required of the Architect under this Agreement;
- .5 ~~Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 ~~Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~
- .9 ~~Evaluation of the qualifications of bidders or persons providing proposals;~~
- .10 Consultation concerning replacement of Work resulting from fire or other cause during ~~construction;~~ or construction.
- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect.~~

Services not listed above shall be considered Basic Services.

§ 3.3.2 ~~To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:~~

- .1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;~~
- .2 ~~Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;~~
- .3 ~~Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- .4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- .5 ~~Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- .6 ~~To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.~~

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

- .1 five ( 5 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 ( — ) visits to the ten ( 10 ) visits per month to each Project site by the Architect over the duration of the Project during construction

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- .3 two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 two ( 2 ) inspections for any portion of the Work to determine final ~~completion~~completion.

~~§ 3.3.4 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall establish and ~~periodically update~~ the Owner's budget for the Project, ~~including when required,~~ (1) the budget for the Cost of the Work as defined in Section 5.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. 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, shall furnish the educational program and educational specifications approved by Owner's Board of Trustees, per 19 TAC Section 61.1036. The Architect shall review the program and specifications furnished by Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with Owner. Architect shall include all components of Owner's program in the Project, unless specific written agreement to delete a component is received from Owner.~~

§ 4.2 The Owner shall furnish surveys ~~to it has in its possession and which~~ describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. ~~The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and 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. Architect shall review this information and shall provide to Owner a written request for additional information needed, if any, for Architect to adequately perform services hereunder. Upon receipt of this request, the Owner will procure and provide to the Architect the information requested.~~

§ 4.3 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to 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~~recommendations, unless specifically provided otherwise in Section A.2.5.1 of AIA Document B201-2007 Exhibit A.

§ 4.4 The Owner shall furnish tests, inspections and reports that are required by law or the Contract Documents, ~~such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. Documents to be furnished by 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.~~

§ 4.5 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner ~~shall~~should 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 reserves the right to communicate directly with the Contractor and the Architect's Consultants. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 4.6 ~~Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction, for Construction, as amended for the Project and subject to Section 2.1.7 of this Agreement.~~

§ 4.7 The Owner shall provide to or obtain for the Architect and Architect's designated consultants and representatives access to the Project site prior to commencement of the Work~~the Work~~, to the extent such access does not disrupt

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education or infringe on the property rights of others, and shall obligate the Contractor to provide the Architect and Owner access to the Work wherever it is in preparation or progress.

## ARTICLE 5 COST OF THE WORK

§ 5.1 For purposes of this Agreement, the Architect's compensation, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and constructed by the Owner, and shall include contractors' general conditions costs, overhead and profit. To the extent that the Project is not completed or constructed, the Cost of the Work shall include the estimated cost to the Owner of all elements of the Project designed by the Architect and accepted by the Owner but not constructed by the Owner. The Cost of the Work does not include the compensation of the Architect, the Architect or the Architect's consultants, the costs of the land, rights-of-way, financing, contingencies for changes in the Work-Work, or other costs that are the responsibility of the Owner. For purposes of the Architect's compensation, the Cost of the Work shall not include the fee for management and supervision of construction or installation provided by a separate Owner representative. For purposes of the Architect's compensation, the Cost of the Work shall include the Owner's cost of labor and materials furnished by the Owner in constructing portions of the Project, if the Work is designed and construction is overseen by Architect. For purposes of the Architect's compensation, the Cost of the Work shall only include the Owner's cost of fixtures, furnishing and equipment designed by the Architect, at the request of the Owner.

§ 5.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required-allowed under Sections 4.1, 5.4 and 5.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect. If 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.

§ 5.3 The Architect, and the Construction Manager at Risk, if applicable, shall prepare a preliminary estimate of the Cost of the Work, which shall incorporate Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and, if applicable, the Construction Manager at Risk, shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with Owner and, if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; the Project with the prior consent of Owner's Board of Trustees; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 3.

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

§ 5.5 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

Init.

~~for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments. budget. Owner shall consider Architect's recommendation, but shall decide, in its discretion, what adjustments to make.~~

§ 5.6 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, ~~the Owner shall~~ proposal prior to commencement of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable ~~time;~~ time, and/or authorize a different construction procurement method, consistent with State law;
- .3 terminate in accordance with Section 5.5 of AIA Document B102-2007;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; ~~or~~
- .5 implement any other mutually acceptable ~~alternative;~~ alternative, or
- .6 direct the Architect to redesign the Project to meet the Owner's budgetary, programmatic and quality needs.

§ 5.7 If the Owner chooses to proceed under Section ~~5.6.4, 5.6.4 or 5.6.6,~~ 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. The Architect's modification of the Construction Documents before commencement of the Work shall be the limit of the Architect's responsibility under this Article 5.

§ 5.8 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 4 of AIA Document B102 (2007), as amended, Owner shall be entitled to withhold from sums due to Architect the amounts detailed above.

## ARTICLE 6 COMPENSATION

§ 6.1 For the Architect's Basic Services described under Article 2, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

See AIA Document B102-2007, as amended, at Section 6.1

§ 6.2 For Additional Services designated in Section 3.1, the Owner shall compensate the Architect as follows:

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

Standard hourly rates attached.

§ 6.3 For Additional Services that may arise during the course of the Project, including those under Section 3.3, during the course of the Project, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Standard hourly rates attached.

§ 6.4 Compensation for Additional Services of the Architect's consultants when not included in Section 6.2 or 6.3, shall be the amount invoiced to the Architect plus a fee of percent (—%), (—), or as otherwise stated below:

Standard hourly rates attached.

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§ 6.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows: See AIA Document B102-2007, as amended, at Section 6.1, for an explanation of payment of compensation due the Architect.

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Bidding or Negotiation Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

§ 6.6 When compensation is based on a percentage of the Cost of the Work 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, in accordance with the schedule set forth in Section 6.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 6.7 The For purposes of Additional Services based on hourly rates, if designated in Sections 6.1-6.3, the hourly billing rates for services of the Architect and the Architect's consultants, if any, 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.)*

Standard hourly rates attached.

Employee or Category

Rate

## ARTICLE 7 ATTACHMENTS AND EXHIBITS

The following attachments and exhibits, if any, are incorporated herein by reference:

*(List other documents, if any, including Exhibit A, Initial Information, and any exhibits relied on in Section 3.1.)*

See AIA Document B201-2007 Exhibit A as amended.

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

OWNER

*(Signature)*

Bobby J Rigues

ARCHITECT

*(Signature)*

Leesa Vardeman AIA

*(Printed name and title)*

Principal

VLK Architects

President, Owner's Board of Trustees

Aledo Independent School District

ATTEST:

Johnny Campbell

Secretary, Owner's Board of Trustees

Aledo Independent School District

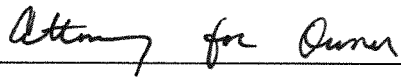
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## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Thomas E. Myers, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 10:18:35 on 03/06/2013 under Order No. 4915695259\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B201™ – 2007, Standard Form of Architect's Services: Design and Construction Contract Administration, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

  
(Signed)

  
(Title)

3/6/13  
(Dated)



# AIA® Document B102™ – 2007

## Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the 18<sup>th</sup> day of March  
in the year 2013

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, ~~legal status~~, address and other information)

Aledo Independent School District  
1008 Bailey Ranch Road  
Aledo, Texas 76008

and the Architect:

(Name, ~~legal status~~, address and other information)

VLK Architects  
2821 West 7th Street, Suite 300  
Fort Worth, Texas 76107

for the following Project:

(Name, location and detailed description)

Additions and Renovations to the Learning Center and  
Security Improvements at Aledo High School

The Owner and Architect agree as follows.

(NOTE: This AIA Document B102-2007, as amended, should only be used in  
conjunction with AIA B201-2007, as amended)

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

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User Notes:

(1919381317)

## TABLE OF ARTICLES

- 1 ARCHITECT'S RESPONSIBILITIES
- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
- 4 CLAIMS AND DISPUTES
- 5 TERMINATION OR SUSPENSION
- 6 COMPENSATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

### ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

~~§ 1.1 The Architect shall provide the following professional services:~~ 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. The Architect shall provide the professional services as set forth in AIA Document B201-2007.

*(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2)*

~~§ 1.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances.~~ In compliance with 19 Texas Administrative Code ("TAC") Section 61.1036, Architect shall certify that he has reviewed the standards contained in the regulation and used the 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. 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. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

~~§ 1.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.~~ The representative shall be a registered professional architect licensed to practice in the state of Texas.

~~§ 1.4 Except with the Owner's knowledge and prior written consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.~~

~~§ 1.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:~~

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## INSURANCE

- .1
- .2
- .3
- .4

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

Note: Coverage should be of the following types and in amounts that should reflect the cost of the Project. Districts are strongly advised to not waive any of the following coverages.

.1 Worker's Compensation Statutory Benefits

Employer's Liability \$1,000,000

.2 Comprehensive General Liability

Bodily Injury \$1,000,000 each occurrence  
\$2,000,000 aggregate

Property damage \$1,000,000 each occurrence

.3 Automobile Liability (Note: Texas statutory minimum for school districts is \$100,000 per person, \$300,000 per occurrence, \$100,000 property damage.)

Bodily injury \$1,000,000 per person  
\$1,000,000 per occurrence  
Property damage \$1,000,000 per occurrence

.4 Errors and Omissions Insurance - \$2,000,000.

.5 Umbrella Excess Liability Coverage Policy: \$2,000,000 per occurrence

Init.

.6 Architectural and engineering consultants shall carry errors and omissions insurance in an amount not less than \$1,000,000. (Note: amount specified should be sufficient to cover any potential damages which could result from that consultant's negligence.)

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

.1 Duration of the Project includes the time from the beginning of the Work on the Project until the Architect's Work on the Project has been completed and accepted by the Owner.

.2 Persons providing services on the Project include all persons or entities performing all or part of the services the Architect has undertaken to perform on the Project, regardless of whether that person contracted directly with the Architect and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.

.3 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.4 The Architect shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all employees of the Architect providing services on the Project for the duration of the Project.

.5 The Architect must provide a certificate of coverage to the Owner prior to being awarded the contract.

.6 If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

.7 The Architect shall obtain from each person providing services on a project, and provide to the Owner:

.1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.2 No later than seven days after receipt by the Architect, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.8 The Architect shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

.9 The Architect shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Architect knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)  
.10 The Architect shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

.11 The Architect shall contractually require each person with whom it contracts to provide services on a project, to:

.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all of its employees providing services on the Project for the duration of the Project;

.2 Provide to the Architect, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;

.3 Provide the Architect, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.4 Obtain from each other person with whom it contracts, and provide to the Architect:

.1 General Liability. A certificate of coverage, prior to the other person beginning work on the Project; and

.2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

.5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

.2 Automobile Liability. 6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage for any person providing services on the Project; and

.7 Contractually require each person with whom it contracts to perform as required by items 1-7, with the certificates of coverage to be provided to the person for whom they are providing services.

.3 Workers' Compensation. 12 By signing this contract or providing or causing to be provided a certificate of coverage, the Architect is representing to the Owner that all employees of the Architect who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Architect to administrative penalties, criminal penalties, civil penalties, or other civil actions.

.13 The Architect's failure to comply with any of these provisions is a breach of contract by the Architect that entitles the Owner to declare the contract void if the Architect does not remedy the breach within ten days after receipt of notice of breach from the Owner.

.14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

28 TAC § 110.110(i).

.4 Professional Liability

§ 1.5.3 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,

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DURING THE CONSTRUCTION OF SAID PROJECT AND FOR A PERIOD OF TEN YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL TWO YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 16.008(c) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING REASONABLE 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, CONTRACTOR OR 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, 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.

## ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. 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 requirements, but only to the extent required by 19 Texas Administrative Code Section 61.1036. The Owner hereby refers Architect to any applicable building code authority to obtain building code specifications.

§ 2.2 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the ~~Project~~. Project, subject to the limitations identified in Article A.2.1 of AIA Document B201-2007, Exhibit A, as amended. 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. Provided, however, nothing herein shall relieve Architect of any responsibility or liability for the performance of Architect's contracted services.

§ 2.3 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 consulting 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, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they or Owner requests such services, the services are approved by Owner, and the services are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

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

§ 2.5 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~~. Construction Documents. Architect acknowledges that he is the leader of the design team and is responsible for the design of the Project. Therefore, Owner shall be entitled to rely on the Construction Documents, services and information furnished by the Architect. This Section shall not relieve Architect of any responsibility or liability for the performance of Architect's contracted services on the Project.

## ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting ~~Instruments of Service, Construction Documents~~, or any other information, the transmitting party is the copyright owner of such information or has permission from the

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copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service-Construction Documents or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

*(Note: Select either Form A or Form B for Section 3.2 by placing an X in the appropriate blank below. If a Form is not selected, then Form B shall control.)*

**FORM A for Sections 3.2 to 3.4 ( ☒ )**

§ 3.2 Architect shall provide to Owner all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor (including the necessary number of paper and electronic copies) and other documents hereinafter referred to as "Construction Documents," that are within Architect's scope of services and that are sufficient for Owner to complete construction of the Project and are free from material defects or omissions. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service-Construction Documents, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service copyrights, provided, however, Architect and Architect's consultants shall not use the Construction Documents on another project without Owner's written permission. Submission or distribution of Construction Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 3.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement, use, reproduce and distribute the Architect's Construction Documents solely and exclusively for constructing, using, maintaining, and renovating the Project. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service-Construction Documents solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

§ 3.3.1 This nonexclusive license shall survive termination of this Agreement, and Architect hereby grants permission to Owner to use the Construction Documents for future renovations, repairs, additions or alterations to the Project. In the event the Owner uses the Instruments of Service-Construction Documents without retaining the author of the Instruments of Service-Construction Documents, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

§ 3.4 Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service-Construction Documents shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**FORM B FOR SECTIONS 3.2 to 3.4 ( ☐ )**

§ 3.2 Architect shall provide to Owner, as a "Work Made for Hire," all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor of Architect and Architect's consultants (including the necessary number of paper copies and electronic format copies), and other documents hereinafter "Construction Documents," that are within Architect's scope of services and are sufficient for Owner to complete construction of the Project and are free from material defects or omissions. The Construction Documents for this Project are the property of the Owner whether or not the Project is completed and whether or not Architect's Agreement is terminated. The Owner shall be furnished and permitted to retain reproducible copies and electronic versions of the Construction Documents. Only the signature details, standard details and form specifications of the Construction Documents relating to this Project may be used by the Architect on other projects, but they shall not be used as a whole without written authorization by the Owner. Owner-furnished forms, conditions, and other written documents shall not be used on

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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.

§ 3.3 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.

§ 3.4 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 4 CLAIMS AND DISPUTES

##### § 4.1 GENERAL

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the terms of this Agreement, the requirements of the method of binding-dispute resolution selected in this Agreement and within the period specified by applicable law and by Texas law, but in any case not more than 10-12 years after the date of Substantial-Final Completion of the Work. The Owner and Architect waive Architect waives all claims and causes of action not commenced in accordance with this Section 4.1.1.

§ 4.1.1.1 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.

§ 4.1.1.2 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.

§ 4.1.2 To-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 A201-2007, General Conditions of the Contract for Construction, as amended for this Project, and if applicable. The Owner or the

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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.

§ 4.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7. In any litigation (or arbitration if mutually agreed upon in writing) arising under this Agreement, the types and amounts of damages recoverable shall be subject to Subchapter I of Texas Local Government Code Chapter 271.

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

## § 4.2 MEDIATION

§ 4.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. ~~If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~ resolution, unless the filing deadlines under applicable statutes of limitation an/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.

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, ~~unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~ mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the mutually-acceptable person or entity administering the mediation. ~~The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. In the event the parties are unable to agree on a mediator, then the mediation shall be conducted by either the Center for Public Policy Dispute Resolution at the University of Texas School of Law or by a mediator selected by a local district court judge upon the joint request of the parties. The request shall be made within 30 days after the completion of Owner's grievance process. In no event shall the request for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in controversy would be barred by applicable statutes of limitation.~~

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

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 4.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

[ ] Other

#### § 4.3 ARBITRATION

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

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

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

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

#### § 4.3.4 CONSOLIDATION OR JOINDER

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

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

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

#### ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 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 or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid 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 termination, if not cured after ten (10) days' written notice to Owner of the delinquency. 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.

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§ 5.2 If the Owner suspends the ~~Project, Project~~ for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. ~~When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall may be equitably adjusted.~~

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

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

§ 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. The Owner may also terminate this Agreement on seven days' written notice if the budget for the Cost of the Work, prior to commencement of the Work, is exceeded by the lowest bona fide bid or negotiated proposal.

§ 5.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then ~~due and all Termination Expenses as defined in Section 5.7.~~ due.

§ 5.7 ~~Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law related to or relevant to the Project, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies.~~

§ 5.7.1 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; or 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.

§ 5.8 ~~The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.~~

## ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for all undisputed payments for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2. 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 Section 6.4.3 of this Agreement.

*(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)*

For new construction for all Basic Services as identified in the AIA Documents B102-2007, B201-2007, and B201-2007 Exhibit A, compensation shall be based on six percent (6%) of the Cost of the Work, as defined in Section 5.1 of AIA Document B201-2007, as amended.

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For renovation work, compensation for all Basic Services as identified in the AIA Documents B102-2007, B201-2007 and B201-2007 Exhibit A, shall be based on six percent (6%) of the Cost of the Work, as detailed in Section 5.1 of AIA Document B201-2007, as amended.

When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project accepted by the Owner shall be payable in accordance with Section 5.1 of AIA Document B201-2007, as amended.

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 following percentages applicable to each phase of Architect's services:

<u>Schematic Design Phase:</u>	<u>15%</u>
<u>Design Development Phase:</u>	<u>20%</u>
<u>Construction Documents Phase:</u>	<u>40%</u>
<u>Bidding and Negotiation Phase:</u>	<u>5%</u>
<u>Construction Administration Phase:</u>	<u>20%</u>

## § 6.2 COMPENSATION FOR REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1
- .2
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents of Construction Documents, other than those required to be provided by Architect under this Agreement;
- .5 Postage, handling and delivery of Construction Documents, other than those required to be provided by Architect under this Agreement;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in writing in advance by the Owner; and
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8
- .9
- .10
- .11

§ 6.2.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include For Reimbursable Expenses, the compensation shall be the actual expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out of town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project related expenditures consultants.

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~~§ 6.2.2 For Reimbursable Expenses, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of — percent ( — %) of the expenses incurred.~~

~~§ 6.3 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE  
COMPENSATION FOR USE OF ARCHITECT'S CONSTRUCTION DOCUMENTS~~

~~If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of the Project as follows:~~

~~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.~~

~~§ 6.4 PAYMENTS TO THE ARCHITECT~~

~~§ 6.4.1 An initial payment of ( \$ — ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. (Left Blank Intentionally)~~

~~§ 6.4.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ( — ) days after the invoice date for undisputed amounts are due and payable within 45 days after presentation of the Architect's invoice to Owner's designated representative. Undisputed amounts unpaid more than forty-five ( 45 ) days after Owner's receipt of the invoice shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect specified by Texas Government Code Section 2251.025 or its successor.~~

~~*upon: (Note: Per Texas Government Code Section 2251.025, these blanks should be filled in with "30" if the school board meets more often than once per month, and with "45" if the school board meets once per month.)*~~

~~%~~

~~§ 6.4.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

~~§ 6.4.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times provided to the Owner upon presentation of Architect's progress payment applications.~~

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

~~§ 7.1 GOVERNING LAW. This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3, State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Parker County, Texas.~~

~~§ 7.2 MEANING OF TERMS. Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, as amended for this 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.~~

~~§ 7.3 AGENTS AND ASSIGNS. 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.~~

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

**§ 7.5 NO THIRD PARTY BENEFICIARY.** 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.

**§ 7.6 HAZARDOUS MATERIALS.** 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's acts or omissions introduced or caused or allowed to be introduced to the Project site said hazardous materials as defined in AIA Document A201-2007, as amended for this 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.

**§ 7.7 The Architect shall have the right to PROMOTIONAL MATERIALS.** 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. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project has provided the Architect notice of confidential information in Section 7.8 of this Agreement.

**§ 7.8 CONFIDENTIALITY.** If the Architect or Owner receives information specifically designated by the other party 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 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.

**§ 7.9 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.

**§ 7.10 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.

**§ 7.12 CONFLICTS IN DOCUMENTS.** To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

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

**§ 7.14 INDEPENDENT CONTRACTOR.** 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 agent, 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.

**§ 7.15 NO WAIVER.** 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.

**§ 7.16 FELONY CONVICTION.** 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.

#### **§ 7.17 CRIMINAL HISTORY RECORD CHECKS**

**§ 7.17.1** Architect shall obtain all criminal history information required by Texas Education Code Chapter 22 regarding its "covered employees", as defined below. If Architect is required by Chapter 22 to obtain the information from the Fingerprint-based Applicant Clearinghouse of Texas, then Architect will also subscribe to that person's criminal history record information. Before beginning any Work on the Project, Architect will provide written certification to the District that Architect has complied with the statutory requirements as of that date. Upon request by Owner, Architect will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history recommended information on the covered employees. Architect shall assume all expenses associated with obtaining criminal history record information.

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

**§ 7.17.3** For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Architect or any of Architect's consultants 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. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner, or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5 Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

**§ 7.18 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

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§ 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.

§ 7.19 COMPLAINTS. The Texas Board of Architectural Examiners 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://www.tbae.state.tx.us>.

#### ARTICLE 8 SPECIAL TERMS AND CONDITIONS

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

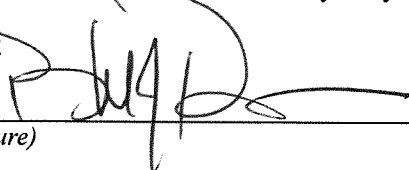
#### ARTICLE 9 SCOPE OF THE AGREEMENT

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or ~~oral~~ oral, unless specifically provided for otherwise in this Agreement, as amended. This Agreement may be amended only by written instrument signed by both ~~Owner and Architect~~ Owner's Board of Trustees and Architect. (Note: It is critical that the agreement drafter be fully informed regarding all pertinent provisions of the retention of Architect's services, so that all services are properly outlined in this Agreement.)

§ 9.2 This Agreement is comprised of the following documents listed below:

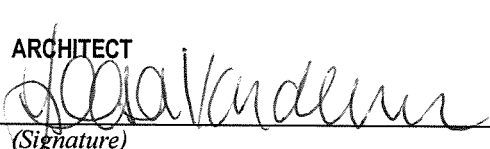
- .1 AIA Document B102-2007, Standard Form Agreement Between Owner and ~~Architect~~ Architect, as amended for this Project;
- .2 AIA Documents B201-2007, Standard Form Agreement Between Owner and Architect, as amended for this Project;
- .3 AIA Document B201-2007 Exhibit A, Initial Information, as amended for this Project;
- .2 AIA Document E201-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:  
*(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)*

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

**OWNER**  
  
(Signature)

(Printed name and title)

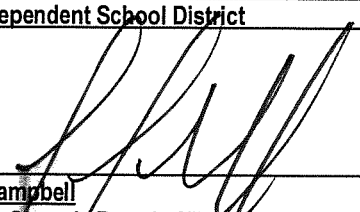
**Bobby J Rigues**  
**President, Owner's Board of Trustees**  
**Aledo Independent School District**

**ARCHITECT**  
  
(Signature)

(Printed name and title)

**Leesa Vardeman, AIA**  
**Principal**  
**VLK Architects**

**ATTEST:**

  
**Johnny Campbell**  
**Secretary, Owner's Board of Trustees**  
**Aledo Independent School District**

Init.

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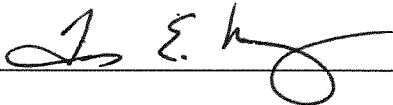
User Notes:

(727344953)

## **Certification of Document's Authenticity**

AIA® Document D401™ – 2003

I, Thomas E. Myers, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 10:15:11 on 03/06/2013 under Order No. 4915695259\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B102™ – 2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

  
(Signed)

*Attorney for Owner*  
(Title)

3/6/13  
(Dated)