



AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

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

Galveston Independent School District
3904 Avenue T
Galveston, Texas 77550

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

PBK Architects, Inc.
11 Greenway Plaza, 22nd Floor
Houston, Texas 77046

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

Replacement of Ball High School
Natatorium at new Ball High School
4115 Avenue O
Galveston, Texas 77550

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") Architect warrants and represents that its employees performing the services under this Agreement are properly licensed in the State of Texas to perform the architectural, structural MEP/civil or other engineering services set forth herein.

§ 1.1.1 The Owner's program for the Project:

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

The demolition of the existing Ball High School at 3904 Avenue T, and the construction of the New Ball High School. The actual program of spaces will be determined at a later date.

§ 1.1.2 The Project's physical characteristics:

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

The New High School will be located on its existing site between 43rd Street and 41st Street, and Avenue Q and Ursuline Street.

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

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

Refer to Exhibit A for cost of work budget sheet for Ball High School. Refer to Exhibit B for cost of work budget sheet for the new natatorium at Ball High School.

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

- .1 Design phase milestone dates, if any:
TBD
- .2 Construction commencement date:
Refer to Exhibit C for project schedule
- .3 Substantial Completion date or dates:
Refer to Exhibit C for project schedule
- .4 Other milestone dates:
Refer to Exhibit C for project schedule

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Sealed Proposal

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

None.

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

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

Dr. Jerry Gibson
Superintendent
3904 Avenue T
Galveston, Texas 77550
Telephone: (409) 766-5121

§ 1.1.8 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:
(List name, address, and other contact information.)

TBD

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

- .1 Geotechnical Engineer:

To be determined

.2 Civil Engineer:

N/A

.3 Other, if any:

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

Topographical Surveyor, to be determined.

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

Ron Bailey, Partner
Manuel "Manny" Torres, Principal
11 Greenway Plaza, 22nd Floor
Houston, Texas 77046
Telephone: (713) 965-0608

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Kubala Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046

.2 Mechanical Engineer:

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-965-0608

.3 Electrical/Plumbing Engineer:

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-965-0608

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.4 Civil Engineer:

DIG Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046

.5 Other, if any:

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

Food Service:
Foodservice Design Professionals
25317 Interstate 45
The Woodlands, Texas 77380
Telephone: (281) 350-2323

Landscaping:
Edgeland
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: (713) 965-0608

Acoustical Consultant:
Bai, LLC
4006 Speedway
Austin, Texas 78751
Telephone: (512) 476-3464

Theater Consultant:
Shuler Shook
325 N Saint Paul, Suite 3250
Dallas, Texas 75201
Telephone: (214) 238-5123

§ 1.1.11.2 Consultants retained under Supplemental Services:

TBD

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

N/A

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality under the same or similar circumstances and professional license. The Architect shall be responsible to the Owner for all costs and damages resulting from (1) defects in design, (2) non-workability of design details, (3) failure of the Architect to comply with the terms of this Agreement, and (4) errors and omissions of the Architect. Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflict or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance, use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

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

§ 2.5 The Architect shall provide and maintain in effect during the performance of the Work under the Agreement and for a period of eight (8) years after Substantial Completion of the Project insurance of the following types and with indemnification limits not less than the amounts indicated:

Worker's Compensation: (Including Waiver of Subrogation Endorsement) and Employer's Liability:	All liability arising out of Architect's employment of workers and anyone for whom Architect shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted. To be no less than: \$1,000,000 Each Accident; \$1,000,000 Disease -Policy Limit; and \$1,000,000 Disease -Each Employee
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Professional Liability:	
Architect	\$2,000,000.00 per claim and \$5,000,000.00 in the aggregate
Architect's Consultants	\$2,000,000.00 per claim and \$4,000,000.00 in the aggregate

Commercial General Liability:	
Each Occurrence	\$1,000,000.00
General Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00 each person
Products Comp/Op Aggregate	\$1,000,000.00
Medical Expenses	\$10,000.00

Automobile Liability	\$1,000,000.00 combined single limit
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Umbrella:

Excess Umbrella Liability

\$10,000,000.00 each occurrence and aggregate

- .1 The required insurance must be written by a company authorized to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are authorized to issue such policies in the State of Texas.
- .2 The Commercial General Liability and Automobile policies issued in the name of Architect shall also name the Owner as additional insured. Evidence of additional insured status will be provided to Owner by providing a copy of the endorsement being utilized to effect the additional and shall be subject to the Owner's reasonable approval.
- .3 It is the intent of the parties to this Agreement that all coverage provided herein that lists Owner as additional insured shall be primary to and shall seek no contribution for all insurance available to Owner, with Owner's insurance being excess, secondary and non-contributing and shall apply to both ongoing and completed operations. The Commercial General Liability coverage shall be endorsed to provide such primary and non-contributing liability.
- .4 Architect shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that while the Work is in progress no insurance will be canceled or materially changed in a manner that impacts Architects ability to meet the obligations set forth herein without thirty (30) calendar days (except ten (10) calendar days for non-payment of premium) prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, the Owner is named as additional insured.

Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If Architect neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Architect's expense.

- .5 Insurance provided pursuant to this Section shall be considered a part of the Architect's Basic Services and shall not be a Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.

§ 2.5.1 Intentionally deleted.

§ 2.5.2 Intentionally deleted.

§ 2.5.3 Intentionally deleted.

§ 2.5.4 Intentionally deleted.

§ 2.5.5 Intentionally deleted.

§ 2.5.6 Intentionally deleted.

§ 2.5.7 Intentionally deleted.

§ 2.5.8 Intentionally deleted.

2.6 The Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations orders and other legal requirements including but not limited to all zoning restrictions or requirements of record, building, occupancy, environmental, disabled person accessibility and land use laws, requirements regulations and ordinances relating to the construction use and occupancy of the Project ("Governmental Requirements") existing on the date of this

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Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. Architect shall use its best efforts to avoid incorporating into the Project design elements that would give rise to code interpretation questions and to discuss in advance all such situations with the Owner.

2.7 The Architect represents to Owner that all Design Documents, Contract Documents and other documents prepared and issued by Architect pursuant to this Agreement will be of good quality, free from substantial defects, and in conformance with and satisfying all applicable federal, state, municipal and local ordinances, codes, and other governmental requirements and shall be fit for the particular purpose intended thereby. Architect shall notify the Owner in a prompt and timely manner of any discovered discrepancies inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Failure to so notify Owner will be considered a breach of the standard of professional practice set forth in this Agreement.

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, plumbing, electrical and civil or other engineering services, as well as any other services specifically designated as Basic Services in Article 1, Article 4 or elsewhere in this Agreement..

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

.1 Upon request of the Owner's representative, the Architect shall make presentations to Owner's representatives to review the design of the Project. In addition, upon request of the Owner's representative, the Architect shall make monthly presentations to Owner's Board of Trustees or at such other intervals as reasonably requested by Owner.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information. Architect shall also promptly respond, in writing, to notices from Owner regarding Owner's discovery of errors, omissions, or inconsistencies, and if requested, shall promptly meet with Owner regarding same. Owner's notice or lack of notice, shall not relieve Architect of any responsibility or liability for performance of Architect's contracted services.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial 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 review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval. The Architect shall review, and be responsible for compliance with, laws, codes, and regulations, applicable to the Architect's services, including, without limitation, school facility standards found in 19 TAC Section 61.1040, and Texas Health and Safety Code Chapter 341, in accordance with the applicable standard of care. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies, regulations, and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and fraud and financial impropriety. Architect shall certify that it has reviewed the standards contained in 19 TAC Section 61.1040. Architect shall also certify that the Construction Documents are in reasonable accordance with the provisions of 19 TAC Section 61.1040, except as indicated on the certification. Architect shall perform a building code search under applicable regulations that may influence the Project, and shall certify that the design has been researched before it is final, as required by 19 TAC Section 61.1040. Architect shall also certify that the facilities have been designed according to the provision of 19 TAC Section 61.1040, based on the educational program, long-range school facility plan, educational specifications, building code specifications, and all documented changes to the Construction Documents provided by the District, as required by 19 TAC Section 61.1040. Architect shall complete the Texas Education Agency's Certification of Project Compliance located at www.tea.state.tx.us. In executing the certifications required under the provision of this Section, Architect shall exercise his/her reasonable professional judgement and care consistent with the applicable standard of care. Architect shall design the Project in such a manner that the project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulations, and all applicable requirements or standards of the American National Standards Institute. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards which become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities. Any changes required by governmental authorities, if approved by the Owner, shall be made by the Architect at no additional cost to the Owner, except where the changes are inconsistent with previous directions or approvals of the Owner or the Owner's program or criteria and Architect timely notified Owner of such inconsistency in writing.

§ 3.1.6 The Architect shall be responsible for filing documents required for the approval of governmental authorities having jurisdiction over the Project, subject to review and approval of the Owner.

3.1.7 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be AIA Document A201-2017, as amended by the Owner for the Project and such services shall be administered in accordance with such general conditions. A copy of the AIA Document A201-2017 shall be delivered to the Architect upon execution of this Agreement.

3.1.8 Notwithstanding any other provision of the Agreement, the following are Services of the Architect fully compensated under Section 11.1 as Basic Services:

- .1 The time period during which the Architect's duty to provide Basic Services shall include that time necessary to correct any defective work caused by defects, errors or omissions of the Architect during any phase of construction. Such services shall be performed by the Architect at no additional charge, either in fee or expenses.
- .2 The Architect shall be responsible for retaining all necessary consultants to execute Architect's scope of work. Such consultants shall be professionals licensed by the State of Texas to practice the building discipline for which they are retained on the Project. Consultants required by the Architect shall at a

minimum be required to make on-site visits and observations during those periods when work they have designed is being constructed.

- .3 The Architect shall require the Contractor and its subcontractors to maintain a set of record drawings to be furnished to the Owner in reproducible form upon Substantial Completion of the Project. The Architect shall cause the Contractor to provide all warranty documents and Owner operation manuals required by the Contract Documents. The Architect shall review the record drawings, warranties, and operation manuals for conformance with the Contract Documents and shall deliver the record drawings, warranties, and operation manuals to the Owner by written transmittal.
- .4 The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one (1) year after the date of Substantial Completion. In addition, the Architect shall monitor the progress of corrections and furnish the Owner with written notification of completed corrections. The one (1) year period shall be extended to portions of the Work first completed after the date of Substantial Completion by the period of time between Substantial Completion and the actual completion of such Work. The obligations under this Section shall survive acceptance of the Work by the Owner.

§ 3.2 Schematic Design Phase Services

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

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. The Architect shall visit the Owner's Project site and shall provide to Owner a written report evaluating the feasibility of the Owner's site for the Project based on site conditions, and the Owner's program, schedule, and budget for the Cost of the Work. The Architect shall include, in the written report, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall address with the Owner any existing easement 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.

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

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

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

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

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

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

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Architect shall not proceed to the Design Development Document Phase without the approval of Owner's Board of Trustees, or the Board's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

§ 3.3 Design Development Phase Services

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustment to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with the Owner, and if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of the equipment and facilities. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided in Section 3.3.3, and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget, and the Owner shall cooperate with the Architect in making such adjustments, with Owner having the right to approve or reject such recommendations.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Architect shall not proceed to the Construction Documents Phase without the approval of Owner's Board of Trustees, or Board's designee; provided, however, this approval shall not relieve Architect of Architect's reasonability and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without Board approval.

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

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. "Construction Documents" means: all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth, in detail, the requirements of

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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 standard in 19 TAC Section 61.1040 and the standards set forth in Section 3.1.4 of this Agreement. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and comply with all applicable laws, ordinances, codes, rules and regulations, as of the date of issuance of Construction Documents. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. Owner and Owner's authorized representatives shall be given the opportunity to review all Construction Documents prior to release of the Construction Documents for bidding, proposal, or negotiation purposes. Architect's bid specifications and any subsequent contract shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code Section 2269.054. Architect shall also add the following language in any document issued to solicit bids or competitive sealed proposals on the Project:

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

3.4.1.1 Errors and Omissions.

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

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

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

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

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

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

3.4.3.2 Architect shall insert in the Project Specifications the requirements that all bonds comply with the requirements of Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2254 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 reinsurer in the State of Texas, and that is a holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under Federal law. Owner and Architect reserve the right to rely on the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided herein, and, in doing so, shall notify Owner, in writing, of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic, and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget. Owner shall consider Architect's recommendations but shall decide, in its discretion, what adjustments to make.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. Architect shall not proceed to the Procurement Phase without the approval of Owner's Board of Trustees, or Board designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions in accordance with the applicable standard of care. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

3.4.6 After Owner's approval of the Construction Documents, the Architect shall not make or approve any change in the Work, except for minor changes in the Work not involving an adjustment in the Contract Sum, expenditure of contingency funds or an extension of the Contract time, without the prior written consent of the Owner. The Architect shall be liable to the Owner for any damages arising from or caused by any change to the Work made or approved by the Architect without the Owner's prior written consent.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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.

§ 3.5.2 Competitive Procurement

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

§ 3.5.2.2 The Architect shall assist the Owner in the procurement process for Construction Services by:

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

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

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

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

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- .1 facilitating the distribution 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;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 if requested by Owner, the Architect shall participate in selection interviews with prospective contractors and/or participate in negotiations with ranked contractors and prepare any summary reports requested by the Owner in relation to the results of such processes.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as a Basic Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner, a copy of which has been provided to the Architect concurrent with the execution of this Agreement. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

3.6.1.4 The Architect shall prepare Drawings, Specifications, and other documentation and supporting data evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives as Basic Services.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, or his authorized representative, as a representative of the Owner, shall visit the site at least twice per week (or more per week when deemed necessary by the Owner's Superintendent or when necessary to protect Owner's interests), and at other intervals appropriate to the stage of the Contractor's operations (1) to inspect the progress, quantity and quality of the Work completed; (2) to reject any observed nonconforming Work; (3) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed; (4) to guard the Owner against defects and deficiencies in the Work; (5) to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents and on time; and (6) to document progress of the Work, in written and photographic form. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect. Attendees will include Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing

up of portions of the construction that, if covered, would conceal problems with the structural integrity of the Project. Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect, and will assist Owner in development of Requests for Proposals or other solicitations for any required testing services approved by Owner. On the basis of the site visits, on-site observations or inspection by the Architect, the Architect shall keep the Owner and Owner's Contractor informed of the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Architect shall guard Owner against defects and deficiencies in the Work, and shall promptly notify Owner and Contractor orally regarding the defect or nonconforming Work, which notice shall be followed by notice in writing of defects and nonconforming Work noted, and corrective actions taken or recommended. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or safety precautions and programs in connection the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Any services by Architect made necessary due to Architect's failure to discover a construction defect or nonconforming work shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work, nor shall it give rise to the Architect assuming responsibility for the safety of the Contractor or the site. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with Contract Documents, upon discovery of the defect or nonconformance, and shall notify Owner of all corrective actions taken or recommended. The testing or inspections required by this Section are subject to the requirements of Chapter 2269 of the Texas Government Code.

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

§ 3.6.2.4 Interpretations and decisions 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, 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 rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall observe the progress of the Work; critically evaluate, review and certify the amounts due the Contractor, and shall sign and issue Certificates for Payment in such amounts, if such amounts are valid, correct, and deemed due and owing, in Architect's professional opinion, within seven (7) days of receipt of Contractor's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations and/or evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and in Architect's professional opinion, the quality of the Work is in accordance with the Construction Documents and the Contract Documents and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. If Architect disputes the Contractor's payment application in whole or in part, Architect shall provide in writing to Owner and Contractor a detailed statement of the Architect's reason for withholding certification in accordance with Texas Government Code §2251.042(a) and as provided in §§9.4.1 and 9.5.1 of the AIA A201 for the project. The foregoing representations are subject to (1) an

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evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect, in writing to Owner.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work except as otherwise required in this Agreement, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

3.6.3.4 The Architect shall observe the Work prior to approving any Certificate for Payments to the Contractor to determine if the Project is progressing in accordance with the approved schedule and to determine the dates of Substantial Completion and final completion. The Architect shall report the results of observations to the Owner in writing prior to approving any Certificate for Payments.

3.6.3.5 Architect shall not issue a Certificate for Payment releasing any retainage without prior receipt of a Consent of Surety to Final Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report, in writing, to the Contractor and Owner any errors, inconsistencies, and omissions discovered by the Architect in the Shop Drawings, Product Data, and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials, or mechanical equipment without Owner's prior written consent.

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

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

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents as Basic Services. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information as Basic Services.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall prepare Change Orders, Construction Change Directives and documents authorizing expenditures of contingency funds, with supporting documentation and data if deemed necessary by the Architect, as Basic Services compensated under Section 11.1, for the Owner's approval and execution in accordance with the Contract Documents. The Architect may order minor changes in the Work not involving an adjustment in the Contract Sum, an expenditure of contingency funds or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified as Basic Services compensated under Section 11.1.

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

3.6.5.3 The Architect shall prepare a set of reproducible record drawings in electronic format showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct observations to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final observation indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's observations shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

3.6.6.6 Pursuant to 19 Texas Administrative Code § 61.1040, the Architect shall sign and seal the Construction Documents and certify on the Certification of Project Compliance form developed by the Texas Education Agency as follows:

- .1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used the best professional judgment and reasonable care consistent with the practice of architecture in the State of Texas in executing the construction documents and that these documents conform with the provisions of 19 TAC § 61.1040.
- .2 It has performed a building code search under applicable regulations that may influence the project and the design has been researched prior to becoming final.

- 3 It has designed the facility according to the provisions of 19 TAC § 61.1040 based on the long-range school facility plan and/or education specifications, building code specifications, and all documented changes to the Construction Documents provided by the District.

3.6.6.7 As a condition to the Project being considered Substantially Complete, the Architect shall obtain the certification of the Contractor on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in Section 3.6.6.6 above.

ARTICLE 4 BASIC, SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are Basic Services or Supplemental Services as indicated. The Architect shall provide the listed Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.1 or Section 11.2, as applicable. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Service is not being provided for the Project. The term "Basic Services" has the same meaning as in Article 3. All Basic Services shall be provided at no additional cost to the Owner.

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Basic Services – Architect
§ 4.1.1.2 Multiple preliminary designs	Basic Services – Architect
§ 4.1.1.3 Measured drawings	Basic Services – Architect
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Basic Services – Architect
§ 4.1.1.6 Building Information Model management responsibilities	Basic Services – Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Basic Services – Architect
§ 4.1.1.8 Civil engineering	Basic Services – Architect
§ 4.1.1.9 Landscape design/architecture	Basic Services – Architect
§ 4.1.1.10 Architectural interior design	Basic Services – Architect
§ 4.1.1.11 Value analysis	Basic Services – Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Basic Services – Architect
§ 4.1.1.13 On-site project representation beyond Section 3.6 responsibilities	Basic Services – Architect
§ 4.1.1.14 Conformed documents for construction	Basic Services – Architect
§ 4.1.1.15 As-designed record drawings	Basic Services – Architect
§ 4.1.1.16 As-constructed record drawings	Basic Services – Architect
§ 4.1.1.17 Post-occupancy evaluation	N/A
§ 4.1.1.18 Facility support services	N/A
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect’s coordination of the Owner’s consultants	Basic Services – Architect
§ 4.1.1.21 Telecommunications/data design	Basic Services – Architect
§ 4.1.1.22 Security evaluation and planning	Basic Services-Architect

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Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	Basic Services--Architect
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner/Additional Services – Architect
§ 4.1.1.29 Other services provided by specialty Consultants	N/A
§ 4.1.1.30 Other Supplemental Services	N/A
4.1.1.31 Surveys	Basic Services – Architect
4.1.1.32 Geotechnical Engineering	Basic Services – Architect
4.1.1.33 Structural Engineering	Basic Services – Architect
4.1.1.34 Mechanical Engineering	Basic Services – Architect
4.1.1.35 Plumbing Engineering	Basic Services – Architect
4.1.1.36 Electrical Engineering	Basic Services – Architect
4.1.1.37 Acoustical/AV System Design	Basic Services – Architect
4.1.1.38 Food Service Design	Basic Services – Architect
4.1.1.39 Theater Design	Basic Services – Architect

The term "Basic Services" has the same meaning as in Article 3. All Basic Services shall be provided at no additional cost to the owner. Without limiting any other obligations of the Architect set forth herein,

- PBK will assist Galveston ISD with monthly budget reviews
- PBK will assist Galveston ISD with monthly scheduling reviews
- Should the final construction cost fall below the established budget, PBK’s professional fees would be adjusted accordingly
- It is anticipated that a design charrette will be conducted in order to expedite the schedule

§ 4.1.2 Description of Supplemental Services

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

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

N/A

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

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

N/A

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

§ 4.2 Architect's Additional Services

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

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, or the Owner's schedule or budget for Cost of the Work;
- .2 Intentionally deleted;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors; or
- .5 Intentionally deleted;
- .6 Intentionally deleted;
- .7 Intentionally deleted;
- .8 Intentionally deleted;
- .9 Intentionally deleted;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .11 Intentionally deleted.

§ 4.2.2

(Paragraphs deleted)

Intentionally deleted.

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

- .1 Four (4) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Four (4) visits to the site by the Architect during construction
- .3 Four (4) 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 Four (4) observations for any portion of the Work to determine final completion.
- .5 The Architect shall visit the site and observe the Work at appropriate stages of construction no less than weekly or, to the extent more frequently as otherwise set forth in this Agreement. The Architect shall report the results of all observations to the Owner in writing. Any and all observed deficiencies shall immediately be reported to the Owner and Contractor in writing.

§ 4.2.4 Intentionally deleted.

§ 4.2.5 Intentionally deleted.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, 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.

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

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Except as otherwise delegated by the Owner's Board of Trustees, said Board of Trustees is the only representative of Owner, an independent school district, having the power to enter into or amend a contract to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's Board of Trustees may designate one or more representatives with authority to sign documents after Board approval and/or to advise and consult with Architect for day-to-day operations under the Agreement.

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

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

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

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

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

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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

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

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, 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 shall include contractors' general conditions costs, overhead and profit. To the extent that the Project is not completed or constructed, the Cost of the Work shall include the estimated cost to the Owner of all elements of the Project designed by the Architect and accepted by the Owner but not constructed by the Owner. The Cost of the Work does not include elements of the Project designed by Architect but not accepted by the Owner. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

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

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the bid or proposal providing the best value to the Owner, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's services for modifying the Construction Documents shall be without additional compensation. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

7.3 The Construction Documents may be used as a prototype for other facilities by the Owner. The Owner may elect to use the Architect to perform the site adaption 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 adaption 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 designs 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 notice Owner in writing, if Architect is unable to do so. In the event of termination of this Agreement for any reason, the Owner shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

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

(Paragraphs deleted)

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law.

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

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

§ 8.2 Mediation

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

§ 8.2.2 Unless the parties mutually agree otherwise, mediation shall be administered in accordance with the following:

- .1 Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.
- .2 In the event the Owner and the Architect are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.
- .3 At all times during the course of any dispute resolution process, the Architect shall continue diligently and without delay to perform the services and obligations of the Agreement provided that Owner continue to make any undisputed payments.

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

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

(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

§ 8.3 Arbitration

§ 8.3.1 Intentionally deleted.

§ 8.3.1.1 Intentionally deleted.

§ 8.3.2 Intentionally deleted.

§ 8.3.3 Intentionally deleted.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Intentionally deleted.

§ 8.3.4.2 Intentionally deleted.

§ 8.3.4.3 Intentionally deleted.

§ 8.4 Intentionally deleted.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, through no fault of the Architect, 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 not cured by the Owner within seven (7) days following notice of any past-due payment. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven (7) days' written notice to the Owner.

§ 9.2 This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies.

§ 9.3 If the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate this Agreement upon not less than seven (7) days' written notice. Should the Architect elect to so terminate this Agreement, the Architect shall be compensated for services actually performed and expenses actually incurred prior to notice of such termination.

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause, and in conjunction with such notice, the Owner may direct the Architect to immediately cease performing services.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated only for services actually performed and reimbursable expenses actually incurred prior to termination, or prior to the date upon which the Architect was directed to cease performance of services, if earlier.

§ 9.7

(Paragraphs deleted)

Intentionally deleted.

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

§ 9.9 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 7.

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ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. Venue for any lawsuit arising under this contract shall be in the county in which the Project is located. No provision of this Agreement is a waiver of any immunity or defense. No provision of this Agreement is a consent to suit.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

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

§ 10.6 The Architect and Architect's consultants shall have no responsibility for the handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. The Architect and the Architect's consultants shall have no responsibility to initially discover the presence of such hazardous materials on the Project site, but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Architect or the Architect's consultants to be present on the Project site.

§ 10.7 With prior written consent of the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

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

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

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or

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unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

10.10 In any adjudication or claim under this Agreement, reasonable and necessary attorney's fees that are equitable and just may be awarded to the prevailing party.

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

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

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

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

10.14 Intentionally deleted.

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

10.16 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance here from.

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

10.18 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

10.18.1 Pursuant to Texas Government Code Chapter 2271, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement.

10.18.2 Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

10.18.3 The Architect represents and warrants to the Owner that the Architect does not boycott energy companies as

contemplated by Chapter 809 of the Government Code and will not boycott energy companies during the term of this Agreement.

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

10.19 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this agreement, the Architect certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

10.20 CRIMINAL HISTORY RECORD CHECKS

10.20.1 To the extent permitted by law, 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, to the extent permitted by law, 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, or, in the event Architect is not legally permitted to comply with such requirements, Architect shall cooperate with the Owner as set forth below. Upon request by Owner, Architect will provide, in writing, updated certifications and the names of any other requested information regarding covered employees, so that the Owner may obtain criminal history recommended information to the covered employees. Architect shall assume all expenses associated with obtaining criminal history record information.

10.20.2 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, including any such information shared by Owner, then Architect will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) 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 of Architect's own consultants will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

10.20.3 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 designed 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 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

10.20.4 Any subcontractor entity, as defined by Texas Education Code § 22.08341(a)(3), shall be, to the extent permitted by law, required by the terms of their contract with Architect or any other contracting entity (as defined in Texas Education Code § 22.08341(a)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certification to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

10.20.5 On request of Owner, Architect and/or its consultants shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Architect and all subcontracting entities, Architect shall update this list on Owner's request. Architect and/or its consultants shall further cooperate in all respects with any reasonable request by Owner to assist Owner in obtaining criminal history record information on the employees of Architect and/or its consultants, including without limitation paying any fees or costs reasonably requested by Owner to enable Owner to obtain needed criminal history record information.

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

Five and one quarter percent (5.25) % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Per rate schedule referenced in Section 11.7.

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

On a case-by-case basis for each Additional Service as agreed to by the parties in writing.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0 %), or as follows:
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

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

Schematic Design Phase	fifteen	percent (	15	%)
Design Development Phase	twenty	percent (	20	%)
Construction Documents Phase	thirty-five	percent (	35	%)
Procurement Phase	five	percent (	5	%)
Construction Phase	twenty-five	percent (	25	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

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

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

See Exhibit D.

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

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

- .1
(Paragraphs deleted)
Permitting and other fees required by authorities having jurisdiction over the Project; and
- .2 Printing, reproductions, plots, and standard form documents;
(Paragraphs deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

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

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

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

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

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Delinquent payments are subject to the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

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

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

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative upon request at mutually convenient times. "Direct Personnel Expense" is defined as the direct salaries of the Architect's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code section 1051.251: "The Texas Board of Architectural Examiners (333 Guadalupe Suite 2-350, Austin, Texas 78701 Telephone:512-305 -9000) has jurisdiction over individuals licensed to practice architecture in the State of Texas."

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code Chapter 1001: "Texas Board of Professional Engineers, 1917 S Interstate 35, Austin, Texas 78741-3702 has jurisdiction over individuals licensed to practice engineering in the State of Texas."

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this agreement.)

- .3 Exhibits:

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

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

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

Exhibit A – Cost of Work Budget Sheet – Ball High School

Exhibit B – Cost of Work Budget Sheet – Natatorium at Ball High School

Exhibit C – Project Schedule

Exhibit D – Hourly Rates

- .4 Other documents:

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

This Agreement entered into as of the final day all parties have signed below.

GALVESTON INDEPENDENT SCHOOL DISTRICT

PBK ARCHITECTS, INC.

OWNER *(Signature)*

ARCHITECT *(Signature)*

Dr. Jerry Gibson, Superintendent
(Printed name and title)

Ron Bailey, Partner
(Printed name, title, and license number, if required)

Date:

Date:

Init.

/

Additions and Deletions Report for AIA® Document B101™ – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:16:54 ET on 08/19/2022.

PAGE 1

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

...

Galveston Independent School District
3904 Avenue T
Galveston, Texas 77550

...

PBK Architects, Inc.
11 Greenway Plaza, 22nd Floor
Houston, Texas 77046

...

Replacement of Ball High School
Natorium at new Ball High School
4115 Avenue O
Galveston, Texas 77550

PAGE 2

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") Architect warrants and represents that its employees performing the services under this Agreement are properly licensed in the State of Texas to perform the architectural, structural MEP/civil or other engineering services set forth herein.

...

The demolition of the existing Ball High School at 3904 Avenue T, and the construction of the New Ball High School. The actual program of spaces will be determined at a later date.

...

The New High School will be located on its existing site between 43rd Street and 41st Street, and Avenue Q and Ursuline Street.

...

Refer to Exhibit A for cost of work budget sheet for Ball High School. Refer to Exhibit B for cost of work budget sheet for the new natatorium at Ball High School.

TBD

...

Refer to Exhibit C for project schedule

...

Refer to Exhibit C for project schedule

...

Refer to Exhibit C for project schedule

...

Competitive Sealed Proposal

...

None.

...

Dr. Jerry Gibson
Superintendent
3904 Avenue T
Galveston, Texas 77550
Telephone: (409) 766-5121

...

TBD
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To be determined

...

N/A

...

Topographical Surveyor, to be determined.

...

Ron Bailey, Partner
Manuel "Manny" Torres, Principal
11 Greenway Plaza, 22nd Floor
Houston, Texas 77046
Telephone: (713) 965-0608

...

Kubala Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-965-0608

.3 Electrical Engineer:Electrical/Plumbing Engineer:

LEAF Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: 713-965-0608

.4 Civil Engineer:

DIG Engineers
11 Greenway Plaza, 15th Floor
Houston, Texas 77046

.5 Other, if any:

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

Food Service:
Foodservice Design Professionals
25317 Interstate 45
The Woodlands, Texas 77380
Telephone: (281) 350-2323

Landscaping:
Edgeland
11 Greenway Plaza, 15th Floor
Houston, Texas 77046
Telephone: (713) 965-0608

Acoustical Consultant:
Bai, LLC
4006 Speedway
Austin, Texas 78751
Telephone: (512) 476-3464

Theater Consultant:
Shuler Shook
325 N Saint Paul, Suite 3250
Dallas, Texas 75201
Telephone: (214) 238-5123

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TBD

...

N/A

...

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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§ 2.2 The Architect shall perform its services ~~consistent~~ with the professional skill and care ordinarily provided by competent architects practicing in the same or similar locality under the same or similar ~~circumstances, circumstances and professional license. The Architect shall be responsible to the Owner for all costs and damages resulting from (1) defects in design, (2) non-workability of design details, (3) failure of the Architect to comply with the terms of this Agreement, and (4) errors and omissions of the Architect. Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflict or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance, use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder.~~ The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.5 The Architect shall ~~maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~ provide and maintain in effect during the performance of the Work under the Agreement and for a period of eight (8) years after Substantial Completion of the Project insurance of the following types and with indemnification limits not less than the amounts indicated:

<u>Worker's Compensation:</u>	All liability arising out of Architect's employment of workers
<u>(Including Waiver of Subrogation Endorsement)</u>	and anyone for whom Architect shall be liable for Worker's
<u>and Employer's Liability:</u>	Compensation claims. Worker's Compensation is required and
	no "alternative" form of insurance shall be permitted. To be no
	less than:
	<u>\$1,000,000 Each Accident;</u>
	<u>\$1,000,000 Disease -Policy Limit; and</u>
	<u>\$1,000,000 Disease -Each Employee</u>

Professional Liability:

<u>Architect</u>	<u>\$2,000,000.00 per claim and</u>
	<u>\$5,000,000.00 in the aggregate</u>
<u>Architect's Consultants</u>	<u>\$2,000,000.00 per claim and</u>
	<u>\$4,000,000.00 in the aggregate</u>

Commercial General Liability:

<u>Each Occurrence</u>	<u>\$1,000,000.00</u>
------------------------	-----------------------

General Aggregate	\$2,000,000.00
Personal and Advertising Injury	\$1,000,000.00 each person
Products Comp/Op Aggregate	\$1,000,000.00
Medical Expenses	\$10,000.00

Automobile Liability \$1,000,000.00 combined single limit

Umbrella:

Excess Umbrella Liability \$10,000,000.00 each occurrence and aggregate

- .1 The required insurance must be written by a company authorized to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner’s Representative will contact the State Board of Insurance to confirm that the issuing companies are authorized to issue such policies in the State of Texas.
- .2 The Commercial General Liability and Automobile policies issued in the name of Architect shall also name the Owner as additional insured. Evidence of additional insured status will be provided to Owner by providing a copy of the endorsement being utilized to effect the additional and shall be subject to the Owner’s reasonable approval.
- .3 It is the intent of the parties to this Agreement that all coverage provided herein that lists Owner as additional insured shall be primary to and shall seek no contribution for all insurance available to Owner, with Owner’s insurance being excess, secondary and non-contributing and shall apply to both ongoing and completed operations. The Commercial General Liability coverage shall be endorsed to provide such primary and non-contributing liability.
- .4 Architect shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that while the Work is in progress no insurance will be canceled or materially changed in a manner that impacts Architects ability to meet the obligations set forth herein without thirty (30) calendar days (except ten (10) calendar days for non-payment of premium) prior written notice to Owner, and a statement that, except for professional liability insurance and worker’s compensation insurance, the Owner is named as additional insured.
Architect shall permit Owner to examine the insurance policies, or at Owner’s option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If Architect neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Architect’s expense.
- .5 Insurance provided pursuant to this Section shall be considered a part of the Architect’s Basic Services and shall not be a Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.

~~§ 2.5.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage. Intentionally deleted.~~

~~§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. Intentionally deleted.~~

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

~~§ 2.5.4 Workers’ Compensation at statutory limits. Intentionally deleted.~~

~~§ 2.5.5 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit. Intentionally deleted.~~

~~§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than (\$) per claim and (\$) in the aggregate. Intentionally deleted.~~

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

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

2.6 The Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations orders and other legal requirements including but not limited to all zoning restrictions or requirements of record, building, occupancy, environmental, disabled person accessibility and land use laws, requirements regulations and ordinances relating to the construction use and occupancy of the Project ("Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. Architect shall use its best efforts to avoid incorporating into the Project design elements that would give rise to code interpretation questions and to discuss in advance all such situations with the Owner.

2.7 The Architect represents to Owner that all Design Documents, Contract Documents and other documents prepared and issued by Architect pursuant to this Agreement will be of good quality, free from substantial defects, and in conformance with and satisfying all applicable federal, state, municipal and local ordinances, codes, and other governmental requirements and shall be fit for the particular purpose intended thereby. Architect shall notify the Owner in a prompt and timely manner of any discovered discrepancies inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Failure to so notify Owner will be considered a breach of the standard of professional practice set forth in this Agreement.

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

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§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services-plumbing, electrical and civil or other engineering services, as well as any other services specifically designated as Basic Services in Article 1, Article 4 or elsewhere in this Agreement..

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

.1 Upon request of the Owner's representative, the Architect shall make presentations to Owner's representatives to review the design of the Project. In addition, upon request of the Owner's representative, the Architect shall make monthly presentations to Owner's Board of Trustees or at such other intervals as reasonably requested by Owner.

.2 The Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Board of Trustees, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Board

of Trustees in the further development of the design, provided that nothing herein shall relieve Architect of responsibility or liability for its failure to provide its services in accordance with the applicable standard of care.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. 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.

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§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval. The Architect shall review, and be responsible for compliance with, laws, codes, and regulations, applicable to the Architect's services, including, without limitation, school facility standards found in 19 TAC Section 61.1040, and Texas Health and Safety Code Chapter 341, in accordance with the applicable standard of care. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. The Architect shall comply with all policies, regulations, and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and fraud and financial impropriety. Architect shall certify that it has reviewed the standards contained in 19 TAC Section 61.1040. Architect shall also certify that the Construction Documents are in reasonable accordance with the provisions of 19 TAC Section 61.1040, except as indicated on the certification. Architect shall perform a building code search under applicable regulations that may influence the Project, and shall certify that the design has been researched before it is final, as required by 19 TAC Section 61.1040. Architect shall also certify that the facilities have been designed according to the provision of 19 TAC Section 61.1040, based on the educational program, long-range school facility plan, educational specifications, building code specifications, and all documented changes to the Construction Documents provided by the District, as required by 19 TAC Section 61.1040. Architect shall complete the Texas Education Agency's Certification of Project Compliance located at www.tea.state.tx.us. In executing the certifications required under the provision of this Section, Architect shall exercise his/her reasonable professional judgement and care consistent with the applicable standard of care. Architect shall design the Project in such a manner that the project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulations, and all applicable requirements or standards of the American National Standards Institute. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards which become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities. Any changes required by governmental authorities, if approved by the Owner, shall be made by the Architect at no additional cost to the Owner, except where the changes are inconsistent with previous directions or approvals of the Owner or the Owner's program or criteria and Architect timely notified Owner of such inconsistency in writing.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility to be responsible for filing documents required for the approval of governmental authorities having jurisdiction over the Project, subject to review and approval of the Owner.

3.1.7 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be AIA Document A201-2017, as amended by the Owner for the Project and such services shall be administered in accordance with such general conditions. A copy of the AIA Document A201-2017 shall be delivered to the Architect upon execution of this Agreement.

3.1.8 Notwithstanding any other provision of the Agreement, the following are Services of the Architect fully compensated under Section 11.1 as Basic Services:

- .1 The time period during which the Architect's duty to provide Basic Services shall include that time necessary to correct any defective work caused by defects, errors or omissions of the Architect during any phase of construction. Such services shall be performed by the Architect at no additional charge, either in fee or expenses.
- .2 The Architect shall be responsible for retaining all necessary consultants to execute Architect's scope of work. Such consultants shall be professionals licensed by the State of Texas to practice the building discipline for which they are retained on the Project. Consultants required by the Architect shall at a minimum be required to make on-site visits and observations during those periods when work they have designed is being constructed.
- .3 The Architect shall require the Contractor and its subcontractors to maintain a set of record drawings to be furnished to the Owner in reproducible form upon Substantial Completion of the Project. The Architect shall cause the Contractor to provide all warranty documents and Owner operation manuals required by the Contract Documents. The Architect shall review the record drawings, warranties, and operation manuals for conformance with the Contract Documents and shall deliver the record drawings, warranties, and operation manuals to the Owner by written transmittal.
- .4 The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one (1) year after the date of Substantial Completion. In addition, the Architect shall monitor the progress of corrections and furnish the Owner with written notification of completed corrections. The one (1) year period shall be extended to portions of the Work first completed after the date of Substantial Completion by the period of time between Substantial Completion and the actual completion of such Work. The obligations under this Section shall survive acceptance of the Work by the Owner.

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§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery ~~method, method~~ and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project. The Architect shall visit the Owner's Project site and shall provide to Owner a written report evaluating the feasibility of the Owner's site for the Project based on site conditions, and the Owner's program, schedule, and budget for the Cost of the Work. The Architect shall include, in the written report, an identification and evaluation of the location, availability, adequacy, capacity, and sufficiency of all utilities necessary to serve the completed Project. The Architect shall address with the Owner any existing easement 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.

...

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

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§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Architect shall not proceed to the Design Development Document Phase without the approval of Owner's Board of Trustees, or the Board's designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

...

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustment to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with the Owner, and if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of the equipment and facilities. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided in Section 3.3.3, and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget, and the Owner shall cooperate with the Architect in making such adjustments, with Owner having the right to approve or reject such recommendations.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Architect shall not proceed to the Construction Documents Phase without the approval of Owner's Board of Trustees, or Board's designee; provided, however, this approval shall not relieve Architect of Architect's reasonability and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without Board approval.

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

...

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. "Construction Documents" means: all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth, in detail, the requirements of 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 standard in 19 TAC Section 61.1040 and the standards set forth in Section 3.1.4 of this Agreement. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and comply with all applicable laws, ordinances, codes, rules and regulations, as of the date of issuance of Construction Documents. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. Owner and Owner's authorized representatives shall be given the opportunity to review all Construction Documents prior to release of the Construction Documents for bidding, proposal, or negotiation purposes. Architect's bid specifications and any subsequent contract shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code Section 2269.054. Architect shall also add the following language in any document issued to solicit bids or competitive sealed proposals on the Project:

"By submitting a bid or proposal, each bidder or proposer agrees to waive any claims it has or may have against the Owner, the Architect, and their respective officers, trustees, employees, agents, or representatives, arising out of or in connection with the administration, evaluation, recommendation, or selection of any bid

or proposal; waiver of any requirements under the bid or proposal documents or contract documents; acceptance or rejection of any bid or proposal; and award of the contract."

3.4.1.1 Errors and Omissions.

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

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

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

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

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

3.4.3.2 Architect shall insert in the Project Specifications the requirements that all bonds comply with the requirements of Texas Insurance Code Section 3503.001 *et seq.* and Texas Government Code Chapter 2254 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 reinsurer in the State of Texas, and that is a holder of a certificate of authority from the U.S. Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under Federal law. Owner and Architect reserve the right to rely on the Treasury list of companies holding certificates of authority to determine whether the surety or reinsurer complies with the legal requirement.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided herein, and, in doing so, shall notify Owner, in writing, of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary, programmatic, and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget. Owner shall consider Architect's recommendations but shall decide, in its discretion, what adjustments to make.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. Architect shall not proceed to the Procurement Phase without the approval of Owner's Board of Trustees, or Board designee; provided, however, this approval shall not relieve Architect of Architect's responsibility and liability to provide documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions in accordance with the applicable standard of care. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without required approval.

3.4.6 After Owner's approval of the Construction Documents, the Architect shall not make or approve any change in the Work, except for minor changes in the Work not involving an adjustment in the Contract Sum, expenditure of contingency funds or an extension of the Contract time, without the prior written consent of the Owner. The Architect shall be liable to the Owner for any damages arising from or caused by any change to the Work made or approved by the Architect without the Owner's prior written consent.

§ 3.5.2 Competitive Bidding Procurement

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

§ 3.5.2.2 The Architect shall assist the Owner in ~~bidding the Project~~ the procurement process for Construction Services by:

- .1 facilitating the distribution of Bidding Procurement Documents to prospective bidders;

...

- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Procurement Documents to the prospective bidders in the form of addenda; and,

...

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

- .4 ~~participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner. If requested by Owner, the Architect shall participate in selection interviews with prospective contractors and/or participate in negotiations with ranked contractors and prepare any summary reports requested by the Owner in relation to the results of such processes.~~

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner’s written authorization, the Architect shall, as ~~an Additional a Basic Service~~, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

...

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for ~~Construction–Construction~~, as modified by the Owner, a copy of which has been provided to the Architect concurrent with the execution of this Agreement. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

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

...

3.6.1.4 The Architect shall prepare Drawings, Specifications, and other documentation and supporting data evaluating Contractor’s proposals, and providing other services in connection with Change Orders and Construction Change Directives as Basic Services.

§ 3.6.2.1 The Architect shall visit the site at Architect, or his authorized representative, as a representative of the Owner, shall visit the site at least twice per week (or more per week when deemed necessary by the Owner's Superintendent or when necessary to protect Owner's interests), and at other intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the the Contractor' operations (1) to inspect the progress, quantity and quality of the Work completed; (2) to reject any observed nonconforming Work; (3) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed completed; (4) to guard the Owner against defects and deficiencies in the Work; (5) to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work Documents and on time; and (6) to document progress of the Work, in written and photographic form. Furthermore, a minimum of two job site meetings per month from commencement of construction through Final Completion will be initiated by the Architect. Attendees will include Owner, the Contractor's project manager and/or superintendent, Architect's project representative, and Architect. Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable. In addition, Architect or his authorized representative will provide on-site observations prior to covering up or closing up of portions of the construction that, if covered, would conceal problems with the structural integrity of the Project. Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect, and will assist Owner in development of Requests for Proposals or other solicitations for any required testing services approved by Owner. On the basis of the site visits, on-site observations or inspection by the Architect, the Architect shall keep the Owner reasonably informed about and Owner's Contractor informed of the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations and from the most recent construction schedule submitted by the Contractor, and (3)-(2) defects and deficiencies observed in the Work. Architect shall guard Owner against defects and deficiencies in the Work, and shall promptly notify Owner and Contractor orally regarding the defect or nonconforming Work, which notice shall be followed by notice in writing of defects and nonconforming Work noted, and corrective actions taken or recommended. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or safety precautions and programs in connection the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Any services by Architect made necessary due to Architect's failure to discover a construction defect or nonconforming work shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Work, nor shall it give rise to the Architect assuming responsibility for the safety of the Contractor or the site. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with Contract Documents, upon discovery of the defect or nonconformance, and shall notify Owner of all corrective actions taken or recommended. The testing or inspections required by this Section are subject to the requirements of Chapter 2269 of the Texas Government Code.

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§ 3.6.3.1 The Architect shall observe the progress of the Work; critically evaluate, review and certify the amounts due the Contractor and shall issue certificates in such amounts. Contractor, and shall sign and issue Certificates for Payment in such amounts, if such amounts are valid, correct, and deemed due and owing, in Architect's professional opinion, within seven (7) days of receipt of Contractor's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations and/or evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, that the Work has progressed to the point indicated, indicated and in Architect's professional opinion, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. Construction Documents and the

Contract Documents and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. If Architect disputes the Contractor's payment application in whole or in part, Architect shall provide in writing to Owner and Contractor a detailed statement of the Architect's reason for withholding certification in accordance with Texas Government Code §2251.042(a) and as provided in §§9.4.1 and 9.5.1 of the AIA A201 for the project. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. Architect, in writing to Owner.

§ 3.6.3.2 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~~, Work except as otherwise required in this Agreement, (2) reviewed construction means, methods, techniques, sequences or procedures, ~~(3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) or (3) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~

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3.6.3.4 The Architect shall observe the Work prior to approving any Certificate for Payments to the Contractor to determine if the Project is progressing in accordance with the approved schedule and to determine the dates of Substantial Completion and final completion. The Architect shall report the results of observations to the Owner in writing prior to approving any Certificate for Payments.

3.6.3.5 Architect shall not issue a Certificate for Payment releasing any retainage without prior receipt of a Consent of Surety to Final Payment.

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report, in writing, to the Contractor and Owner any errors, inconsistencies, and omissions discovered by the Architect in the Shop Drawings, Product Data, and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials, or mechanical equipment without Owner's prior written consent.

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

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

§ 3.6.4.4 ~~Subject to Section 4.2, the~~ The Architect shall review and respond to requests for information about the ~~Contract Documents.~~ Documents as Basic Services. The Architect shall set forth, in the Contract Documents, the

requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for ~~information~~ information as Basic Services.
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§ 3.6.5.1 The Architect shall prepare Change Orders, Construction Change Directives and documents authorizing expenditures of contingency funds, with supporting documentation and data if deemed necessary by the Architect, as Basic Services compensated under Section 11.1, for the Owner's approval and execution in accordance with the Contract Documents. The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents not involving an adjustment in the Contract Sum, an expenditure of contingency funds or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified as Basic Services compensated under Section 11.1.

...

3.6.5.3 The Architect shall prepare a set of reproducible record drawings in electronic format showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

...

.1 conduct ~~inspections~~ observations to determine the date or dates of Substantial Completion and the date of final completion;

...

.4 issue a final Certificate for Payment based upon a final ~~inspection~~ observation indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's ~~inspections~~ observations shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

...

3.6.6.6 Pursuant to 19 Texas Administrative Code § 61.1040, the Architect shall sign and seal the Construction Documents and certify on the Certification of Project Compliance form developed by the Texas Education Agency as follows:

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

3.6.6.7 As a condition to the Project being considered Substantially Complete, the Architect shall obtain the certification of the Contractor on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in Section 3.6.6.6 above.

ARTICLE 4 — SUPPLEMENTAL AND ADDITIONAL SERVICES

ARTICLE 4 BASIC, SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1.1 The services listed below are ~~not included in Basic Services but may be required for the Project.~~ Basic Services or Supplemental Services as indicated. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in ~~Section 11.2.~~ Section 11.1 or Section 11.2, as applicable. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project. The term "Basic Services" has the same meaning as in Article 3. All Basic Services shall be provided at no additional cost to the Owner.

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§ 4.1.1.1	Programming	<u>Basic Services – Architect</u>
§ 4.1.1.2	Multiple preliminary designs	<u>Basic Services – Architect</u>
§ 4.1.1.3	Measured drawings	<u>Basic Services – Architect</u>
§ 4.1.1.4	Existing facilities surveys	<u>Owner</u>
§ 4.1.1.5	Site evaluation and planning	<u>Basic Services – Architect</u>
§ 4.1.1.6	Building Information Model management responsibilities	<u>Basic Services – Architect</u>
§ 4.1.1.7	Development of Building Information Models for post construction use	<u>Basic Services – Architect</u>
§ 4.1.1.8	Civil engineering	<u>Basic Services – Architect</u>
§ 4.1.1.9	Landscape design design/architecture	<u>Basic Services – Architect</u>
§ 4.1.1.10	Architectural interior design	<u>Basic Services – Architect</u>
§ 4.1.1.11	Value analysis	<u>Basic Services – Architect</u>
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	<u>Basic Services – Architect</u>
§ 4.1.1.13	On-site project representation <u>beyond Section 3.6 responsibilities</u>	<u>Basic Services – Architect</u>
§ 4.1.1.14	Conformed documents for construction	<u>Basic Services – Architect</u>
§ 4.1.1.15	As-designed record drawings	<u>Basic Services – Architect</u>
§ 4.1.1.16	As-constructed record drawings	<u>Basic Services – Architect</u>
§ 4.1.1.17	Post-occupancy evaluation	<u>N/A</u>
§ 4.1.1.18	Facility support services	<u>N/A</u>
§ 4.1.1.19	Tenant-related services	<u>N/A</u>
§ 4.1.1.20	Architect’s coordination of the Owner’s consultants	<u>Basic Services – Architect</u>
§ 4.1.1.21	Telecommunications/data design	<u>Basic Services – Architect</u>
§ 4.1.1.22	Security evaluation and planning	<u>Basic Services-Architect</u>
§ 4.1.1.23	Commissioning	<u>Owner</u>
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	<u>N/A</u>
§ 4.1.1.25	Fast-track design services	<u>N/A</u>
§ 4.1.1.26	Multiple bid packages	<u>Basic Services--Architect</u>
§ 4.1.1.27	Historic preservation	<u>N/A</u>
§ 4.1.1.28	Furniture, furnishings, and equipment design	<u>Owner/Additional Services – Architect</u>
§ 4.1.1.29	Other services provided by specialty Consultants	<u>N/A</u>

§ 4.1.1.30 Other Supplemental Services	N/A
4.1.1.31 Surveys	<u>Basic Services – Architect</u>
4.1.1.32 Geotechnical Engineering	<u>Basic Services – Architect</u>
4.1.1.33 Structural Engineering	<u>Basic Services – Architect</u>
4.1.1.34 Mechanical Engineering	<u>Basic Services – Architect</u>
4.1.1.35 Plumbing Engineering	<u>Basic Services – Architect</u>
4.1.1.36 Electrical Engineering	<u>Basic Services – Architect</u>
4.1.1.37 Acoustical/AV System Design	<u>Basic Services – Architect</u>
4.1.1.38 Food Service Design	<u>Basic Services – Architect</u>
4.1.1.39 Theater Design	<u>Basic Services – Architect</u>

The term "Basic Services" has the same meaning as in Article 3. All Basic Services shall be provided at no additional cost to the owner. Without limiting any other obligations of the Architect set forth herein,

- PBK will assist Galveston ISD with monthly budget reviews
- PBK will assist Galveston ISD with monthly scheduling reviews
- Should the final construction cost fall below the established budget, PBK's professional fees would be adjusted accordingly
- It is anticipated that a design charrette will be conducted in order to expedite the schedule

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N/A

...

N/A

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The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. ~~Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.~~ All services under the terms of this Agreement which would otherwise be constructed as Additional Services will be treated as Basic Services compensated under Section 11.1 for which no additional compensation is authorized, unless such services are requested in writing by the Architect and approved in writing by the Owner prior to the time such services are performed.

...

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, or the Owner's schedule or budget for Cost of the Work, or procurement or delivery method; Work;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service; Intentionally deleted;

...

- .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; or
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients; Intentionally deleted;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; Intentionally deleted;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing; Intentionally deleted;

- .8 ~~Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; Intentionally deleted;~~
- .9 ~~Evaluation of the qualifications of entities providing bids or proposals; Intentionally deleted;~~
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect. Intentionally deleted.~~

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

- .1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~
- .2 ~~Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;~~
- .3 ~~Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- .4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker; or,~~
- .5 ~~Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom. Intentionally deleted.~~

...

- .1 Four (4) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Four (4) visits to the site by the Architect during construction
- .3 Four (4) 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 ~~(—) inspections~~ Four (4) observations for any portion of the Work to determine final completion.
- .5 The Architect shall visit the site and observe the Work at appropriate stages of construction no less than weekly or, to the extent more frequently as otherwise set forth in this Agreement. The Architect shall report the results of all observations to the Owner in writing. Any and all observed deficiencies shall immediately be reported to the Owner and Contractor in writing.

§ 4.2.4 ~~Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. Intentionally deleted.~~

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

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§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Except as otherwise delegated by the Owner's Board of Trustees, said Board of Trustees is the only representative of Owner, an independent school district, having the power to enter into or amend a contract to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's Board of Trustees may designate one or more representatives with authority to sign documents after Board approval and/or to advise and consult with Architect for day-to-day operations under the Agreement.

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

...

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

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

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

...

§ 6.1 For purposes of this Agreement, the 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 shall include contractors' general conditions costs, overhead and profit. To the extent that the Project is not completed or constructed, the Cost of the Work shall include the estimated cost to the Owner of all elements of the Project designed by the Architect and accepted by the Owner but not constructed by the Owner. The Cost of the Work does not include elements of the Project designed by Architect but not accepted by the Owner. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

...

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

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§ 6.7 If the Owner chooses to proceed under Section ~~6.6.4, 6.6.4~~, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. ~~If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the~~

~~Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the The Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.~~

...

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

7.3 The Construction Documents may be used as a prototype for other facilities by the Owner. The Owner may elect to use the Architect to perform the site adaption 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 adaption 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 designs and review and refer to the Construction Documents, approved shop drawings, and calculations and "as builts" 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 notice Owner in writing, if Architect is unable to do so. In the event of termination of this Agreement for any reason, the Owner shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

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

~~§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.~~

~~§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate~~

contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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

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

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

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§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.~~law.

...

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

§ 8.2.2 ~~The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other 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.~~Unless the parties mutually agree otherwise, mediation shall be administered in accordance with the following:

- .1 Request for mediation shall be in writing and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.
- .2 In the event the Owner and the Architect are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

3 At all times during the course of any dispute resolution process, the Architect shall continue diligently and without delay to perform the services and obligations of the Agreement provided that Owner continue to make any undisputed payments.

[X] Litigation in a court of competent jurisdiction

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

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

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

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

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

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

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

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

~~§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, through no fault of the Architect, 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.~~Agreement if not cured by the Owner within seven (7) days following notice of any past-due payment. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner before suspending services. In

the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. (7) days' written notice to the Owner.

§ 9.2 If the Owner suspends the Project, 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 be equitably adjusted. This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice. upon not less than seven (7) days' written notice. Should the Architect elect to so terminate this Agreement, the Architect shall be compensated for services actually performed and expenses actually incurred prior to notice of such termination.

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without ~~cause~~ cause, and in conjunction with such notice, the Owner may direct the Architect to immediately cease performing services.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. In the event of termination not the fault of the Architect, the Architect shall be compensated only for services actually performed and reimbursable expenses actually incurred prior to termination, or prior to the date upon which the Architect was directed to cease performance of services, if earlier.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 — Termination Fee:

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

Intentionally deleted.

...

§ 9.9 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 7 and ~~Section 9.7.7.~~

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§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the~~

~~Federal Arbitration Act shall govern Section 8.3.~~ Venue for any lawsuit arising under this contract shall be in the county in which the Project is located. No provision of this Agreement is a waiver of any immunity or defense. No provision of this Agreement is a consent to suit.

...

~~§ 10.6 Unless otherwise required in this Agreement, the Architect~~ The Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at handling, removal, or disposal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. The Architect and the Architect's consultants shall have no responsibility to initially discover the presence of such hazardous materials on the Project site, but shall have an affirmative duty to immediately report to the Owner the existence of such materials actually known by the Architect or the Architect's consultants to be present on the Project site.

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

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

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

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~~10.10 In any adjudication or claim under this Agreement, reasonable and necessary attorney's fees that are equitable and just may be awarded to the prevailing party.~~

~~10.10.1 When Owner has an applicable claim for construction defects, Owner shall comply with the provisions of Texas Government Code Chapter 2272 related to the provision of notice of defects and the Contractor's or Architect's opportunity to cure.~~

~~10.11 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated, and payment may be withheld if this certification is inaccurate.~~

~~10.12 Pursuant to Texas Education Code section 44.034, Architect must give advance written notice to the Owner if the Architect or an owner or operator of the Architect has been convicted of a felony. The Owner may terminate this Agreement if the Owner determines that the Architect failed to give such notice or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly-held corporation.~~

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

10.14 Intentionally deleted.

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

10.16 If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance here from.

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

10.18 ISRAEL/TERRORIST ORGANIZATION/ANTI-BOYCOTT/DISCRIMINATION

10.18.1 Pursuant to Texas Government Code Chapter 2271, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement.

10.18.2 Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

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

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

10.19 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this agreement, the Architect certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

10.20 CRIMINAL HISTORY RECORD CHECKS

10.20.1 To the extent permitted by law, 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, to the extent permitted by law, 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, or, in the event Architect is not legally permitted to comply with such requirements, Architect shall cooperate with the Owner as set forth below. Upon request by Owner, Architect will provide, in writing, updated certifications and the names of any other requested information regarding covered employees, so that the Owner may obtain criminal history recommended information to the covered employees.

Architect shall assume all expenses associated with obtaining criminal history record information.

10.20.2 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, including any such information shared by Owner, then Architect will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) 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 of Architect's own consultants will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

10.20.3 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 designed 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 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

10.20.4 Any subcontractor entity, as defined by Texas Education Code § 22.08341(a)(3), shall be, to the extent permitted by law, required by the terms of their contract with Architect or any other contracting entity (as defined in Texas Education Code § 22.08341(a)(1)), and by Texas law, to obtain the required criminal history record information on their employees, agents, or applicants, to give required certification to Owner and the contracting entities, and to obtain required certifications from the subcontracting entity's subcontractors.

10.20.5 On request of Owner, Architect and/or its consultants shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Architect and all subcontracting entities, Architect shall update this list on Owner's request. Architect and/or its consultants shall further cooperate in all respects with any reasonable request by Owner to assist Owner in obtaining criminal history record information on the employees of Architect and/or its consultants, including without limitation paying any fees or costs reasonably requested by Owner to enable Owner to obtain needed criminal history record information.

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~~()~~ Five and one quarter percent (5.25) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

...

Per rate schedule referenced in Section 11.7.

...

On a case-by-case basis for each Additional Service as agreed to by the parties in writing.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0 %), or as follows:

...

Schematic Design Phase	<u>fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>thirty-five</u>	percent (	<u>35</u>	%)
Procurement Phase	<u>five</u>	percent (	<u>5</u>	%)

...

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

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

...

See Exhibit D.

...

- ~~.1~~ Transportation and authorized out of town travel and subsistence;
- ~~.2~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- ~~.3~~ Permitting and other fees required by authorities having jurisdiction over the Project; and
- ~~.4~~ .2 Printing, reproductions, plots, and 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, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- ~~.8~~ If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- ~~.9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ Site office expenses;
- ~~.11~~ Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- ~~.12~~ Other similar Project related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

...

N/A

...

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

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

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. ~~Amounts unpaid () days after the invoice date 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. Delinquent payments are subject to the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.~~

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

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative upon request at mutually convenient times. "Direct Personnel Expense" is defined as the direct salaries of the Architect's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

...

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code section 1051.251: "The Texas Board of Architectural Examiners (333 Guadalupe Suite 2-350, Austin, Texas 78701 Telephone:512-305 -9000) has jurisdiction over individuals licensed to practice architecture in the State of Texas."

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code Chapter 1001: "Texas Board of Professional Engineers, 1917 S Interstate 35, Austin, Texas 78741-3702 has jurisdiction over individuals licensed to practice engineering in the State of Texas."

...

- Exhibit A – Cost of Work Budget Sheet – Ball High School
- Exhibit B – Cost of Work Budget Sheet – Natatorium at Ball High School
- Exhibit C – Project Schedule
- Exhibit D – Hourly Rates

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This Agreement entered into as of the ~~day and year first written above.~~ final day all parties have signed below.

GALVESTON INDEPENDENT SCHOOL DISTRICT

PBK ARCHITECTS, INC.

...

Dr. Jerry Gibson, Superintendent

Ron Bailey, Partner

...

Date:

Date:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, John M. Hopkins, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:16:54 ET on 08/19/2022 under Order No. 2114291499 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Attorney

(Title)

08/19/2022

(Dated)