

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 20th day of May in the year 2025
(In words, indicate day, month and year.)

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

Ector County ISD
802 N Sam Houston
Odessa, TX 79762

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

Henthorn Commercial Construction, LLC
2011 Ave C
Lubbock, TX 79404

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

Austin Elementary School – Cafeteria Renovation RFP #25-24
200 W 9th Street
Odessa, TX 79761

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

PARKHILL
3000 Internet BLVD., Ste 550
Frisco, TX 75034

The Owner and Contractor agree as follows.

WHEREAS Ector County Independent School District (hereinafter referred to as “Owner”) and Henthorn Commercial Construction, LLC (hereinafter referred to as “Contractor”) desire to enter into a contract under which Contractor will perform construction services relating the abovereferenced Projects on behalf of Owner;

WHEREAS Owner and Contractor have agreed to enter into AIA Document A101™2017 Standard Form of Agreement between Owner and Contractor (“Contract”) as the basic form for that contract; and

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

ADDITIONS AND DELETIONS:

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

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

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT C Owner Controlled Insurance Program (OCIP) Manual

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), all sections of the Project Manual and Construction Documents, Drawings, Specifications, Geotechnical Reports, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. Any reference to Contract Documents or any documents included in the Contract Documents and/or supplemented for this Project, shall refer to the Contract Documents as amended for this Project. (*Warning: Make sure that any Supplementary Conditions do not contradict the provisions of the A201.*)

“Construction Documents” means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect’s consultants and which set forth in detail the requirements for construction of the Project.

§ 1.2 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner’s Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement shall take precedence over terms and conditions contained in the General Conditions and the terms and conditions in the General Conditions shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

§ 1.3 The Board of Trustees, by majority vote, is the only representative of the 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 to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees, following appropriate Board action: Superintendent or Superintendent’s designee.

§ 1.4 The Board designates the authorized representatives identified in Paragraph 8.3 to act on its behalf in other respects.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Agreement.

☐ A date set forth in a notice to proceed issued by the Owner.

☒ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with Article 11 of AIA Document A201-2017.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☒ Not later than 295 (Two Hundred and Ninety-Five Days) calendar days from the date of commencement of the Work.

☐ By the following date:

Final Completion shall be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
N/A	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Nine Hundred Seventy-five Thousand Dollars and Zero Cents (\$ 1,975,000.00), subject to additions and deductions as provided in the Contract Documents.

(Note: Optional Paragraph)

§ 4.1.1 The Contract Sum contains an Owner's Contingency in the amount of \$50,000. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Owner's authorized representative may approve any expenditure from Owner's Contingency without further Board of Trustees approval. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
N/A	

(Paragraphs Deleted)

(Table Deleted)

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
N/A	

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

\$500/Day

Five Hundred Dollars per Day.

“§ 4.5.1 Substantial Completion. Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Substantial Completion of the Project and Owner shall sustain damages as a result of Contractor's failure, neglect or refusal to achieve said deadlines. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times of Substantial Completion, that such sums are liquidated damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial Completion, shall be construed as a breach of this Agreement. It is expressly agreed as a part of the consideration inducing the Owner to execute this

Agreement that the Owner may deduct from any Payment made to the Contractor a sum equal to \$500 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

§ 4.5.2 Final Completion. In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Agreement within 30 calendar days of the designated or agreed extended date of Substantial Completion. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times for Final Completion, that such sums are liquidated damages and shall not be construed as a penalty. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not finally completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for the following categories of damages to the Owner: potential hazards to students, staff and visitors, additional architectural, engineering, program management fees (and fees of any other consultants); increased administrative or operational expenses; additional attorney's fees; increased maintenance and custodial costs and additional, utilities, security and clean-up costs, and other increased costs. Failure to complete the Work within the designated or agreed extended dates of Final Completion, shall be construed as a breach of this Agreement. Owner and Contractor agree that should Contractor fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Contractor and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of \$500 per day. Owner may deduct such liquidated damages from any Payment made to Contractor before or at Final Payment; or, if sufficient funds are not available, then Contractor shall pay Owner, the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

§ 4.5.3 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 The Contractor shall submit monthly Applications for Payment to the Architect on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect approves the application, then they shall submit a Certificate for Payment to the Owner. The Architect may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect shall have seven (7) days from date of receipt from the Contractor of an Application for

Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect to the Contractor within thirty (30) days of receipt of the Certificate for Payment from the Architect unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum, less any unused Owner's contingency, among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified to the extent approved by the Owner in writing, as provided in Article 7.3.9 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 or amounts certified by the Architect and disputed by the Owner; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner shall withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 5.1.7.1.1 *[Intentionally deleted]*

(Paragraph Deleted)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

NONE

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Final Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7, and Section 9.3.1.3 of the AIA Document A201-2017 as *modified for this Project*.

§ 5.1.8 *[Intentionally deleted]*

§ 5.1.9 Except with the Owner's prior written approval, or as otherwise provided in Section 9.3.2 of the AIA Document A201-2017, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

§ 5.1.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claim.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor after

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201-2017
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 Owner's Board of Trustees has voted to accept the Work and approve the Final Payment.

§ 5.2.2 The Owner's final payment of undisputed sums to the Contractor shall be made no later than 30 days after Owner's Board of Trustees' vote approving Final Payment.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest pursuant to Texas Government Code Section 2251.025.

(Paragraph Deleted)

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

All disputes relating to this Agreement shall be resolved pursuant to the terms of Article 15 of the AIA Document A201-2017, as amended for this Project.

(Paragraph Deleted)

§ 6.2 [Intentionally deleted]

(Paragraphs Deleted)

(Paragraph Deleted)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

(Paragraphs Deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Christopher Bartlett
802 N. Sam Houston Avenue, Odessa, Texas 79761
Christopher.Bartlett@ectorcountyisd.org

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§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Bryan Walters
2011 Ave C
Lubbock, TX 79404
bryan@henthorncommercial.com
806-548-2079

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner has established an Owner Controlled Insurance Program (OCIP). To the extent required by the Owner, Contractor shall fully participate in, and comply with, all requirements of the OCIP. A copy of the OCIP Manual will be provided by the Owner and made part of this Agreement, included as Exhibit C.

§ 8.5.1.1 The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Commercial General Liability, Excess Liability I and Builders' Risk insurance for Contractors and Subcontractors of every tier who have been properly enrolled and are providing direct labor to the Project. A general summary of coverage provided will be detailed in the OCIP Manual (Manual) and made part of the Owner's Contractor's Agreement and incorporated in every subcontract. All terms and conditions will apply during the term of the contract.

§ 8.5.1.2 While the OCIP provides uniform coverages and reasonable limits, the OCIP is not intended to meet all insurance needs of the Contractor and eligible Subcontractors who have been properly enrolled. In addition to any insurance provided by the Owner, the Contractor and all Subcontractors should discuss the OCIP with their insurance agent or consultant to assure that other proper coverages are maintained. Contractor and eligible Subcontractors enrolled in the OCIP agree that the insurance company policy limits of liability, coverage terms and conditions shall determine the scope of coverage provided by the OCIP.

§ 8.5.1.3 Contractors and Subcontractors shall notify the Owner and the OCIP administrator of all subcontractors and ensure they comply with the OCIP enrollment requirements.

§ 8.5.1.4 Survival. The insurance provisions of this Article 8 shall survive any termination of this Contract.

§ 8.5.2 The Contractor shall provide bonds as set forth elsewhere in the Contract Documents and in compliance with Texas Government Code. Chapter 2253

8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given as set forth below:

(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

If to Owner, via electronic mail, with electronic confirmation of receipt, to Christopher Bartlett, Director of Construction, Ector County ISD, at Christopher.Bartlett@ectorcountysd.org

If to Contractor, via electronic mail, with electronic confirmation of receipt, to bryan@henthorncommercial.com

§ 8.7 Other provisions:

Init.

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User Notes:

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§ 8.7.1 The Agreement shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue shall be in Ector County, Texas, or, if no county is specified, then in the county in which the Owner's main administrative office is located.

§ 8.7.2 As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

§ 8.7.3 Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 8.7.4 Section 1.5 of AIA Document A201-2017 shall govern Contractor's use of the Construction Documents.

§ 8.7.5 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract.

§ 8.7.6 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

§ 8.7.7 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

§ 8.7.8 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, applicable ordinances of the municipality in which the Project is located. In addition, if not covered by the municipality's tree ordinance, Contractor shall barricade and protect all trees on the Project.

§ 8.7.9 Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

§ 8.7.10 The Contractor may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Contractor from engaging subcontractors to perform various phases of the Project, but Contractor shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

§ 8.7.11 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 8.7.12 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

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

§ 8.7.14 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 the 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.

§ 8.7.15 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended for the Project.

§ 8.7.16 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the construction of the Work;
- .2 The special shoring requirements, if any, of the Owner; and
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Contract Sum.

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

§ 8.7.18 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

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

§ 8.7.20 Contractor 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 Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

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

§ 8.7.22

- .1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business

day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

.2 The Contractor must:

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

.3 On completion of the Contract, either:

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.”

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

7. As required by Texas Government Code Ann. Chapter 2274, if Contractor has ten (10) or more employees, is not a sole proprietorship, and if the value of Contractor’s bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor’s bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner, unless excepted by that law.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor

.2 Exhibit C, Owner Controlled Insurance Program (OCIP) Manual

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction
, as modified for this project

.4 *[Intentionally deleted]*

(Paragraph Deleted)

.5 Drawings

Number	Title	Date
See Exhibit A		

.6 Specifications

Section	Title	Date	Pages
See Exhibit B			

.7 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

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

☐ The Sustainability Plan:

Title	Date	Pages
-------	------	-------

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

RFP/CONTRACTOR'S PROPOSAL

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

Init.

OWNER *(Signature)*

Dr. Keeley Boyer Superintendent
(Printed name and title)

CONTRACTOR *(Signature)*

Bryan Walters Senior Project Manager
(Printed name and title)



Init.

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User Notes:

(3B9ADA3D)

Additions and Deletions Report for

AIA® Document A101® – 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 12:21:38 ET on 05/16/2025.

PAGE 1

AGREEMENT made as of the 20th day of May in the year 2025

...

Ector County ISD
802 N Sam Houston
Odessa, TX 79762

...

Henthorn Commercial Construction, LLC
2011 Ave C
Lubbock, TX 79404

...

Austin Elementary School – Cafeteria Renovation RFP #25-24
200 W 9th Street
Odessa, TX 79761

...

PARKHILL
3000 Internet BLVD., Ste 550
Frisco, TX 75034

...

WHEREAS Ector County Independent School District (hereinafter referred to as “Owner”) and Henthorn Commercial Construction, LLC (hereinafter referred to as “Contractor”) desire to enter into a contract under which Contractor will perform construction services relating the abovereferenced Projects on behalf of Owner;

...

WHEREAS Owner and Contractor have agreed to enter into AIA Document A101™2017 Standard Form of Agreement between Owner and Contractor (“Contract”) as the basic form for that contract; and

...

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

PAGE 2

EXHIBIT A—INSURANCE AND BONDSC Owner Controlled Insurance Program (OCIP) Manual

...

§ 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), all sections of the Project Manual and Construction Documents, Drawings, Specifications, Geotechnical Reports, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. Any reference to Contract Documents or any documents included in the Contract Documents and/or supplemented for this Project, shall refer to the Contract Documents as amended for this Project. (Warning: Make sure that any Supplementary Conditions do not contradict the provisions of the A201.)

...

“Construction Documents” means: all Drawings, specifications, submittals, transmittals, deliverables, instructions to Contractors, and other documents, including those in electronic form, prepared by the Architect and the Architect’s consultants and which set forth in detail the requirements for construction of the Project.

...

§ 1.2 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner’s Board of Trustees. In the event of conflict, terms and conditions contained in the Agreement shall take precedence over terms and conditions contained in the General Conditions and the terms and conditions in the General Conditions shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

...

§ 1.3 The Board of Trustees, by majority vote, is the only representative of the 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 to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner designates the following as the individual authorized to sign documents on behalf of the Board of Trustees, following appropriate Board action: Superintendent or Superintendent’s designee.

§ 1.4 The Board designates the authorized representatives identified in Paragraph 8.3 to act on its behalf in other respects.

...

☒ Established as follows:

...

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement. The commencement date will be the first business day after the Contractor's receipt of the written notice to proceed. The notice to proceed shall not be issued by Architect until the Agreement has been signed by the Contractor, approved by the Owner's Board of Trustees, signed by the Owner's authorized representative, and Owner and Architect have received all required payment and performance bonds and insurance, in compliance with Article 11 of AIA Document A201-2017.

...

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall diligently prosecute and achieve Substantial Completion of the entire Work:

...

☒ Not later than 295 (Two Hundred and Ninety-Five Days) calendar days from the date of commencement of the Work.

...

Final Completion shall be 30 calendar days after the date of Substantial Completion, subject to adjustments of the Contract Time as provided in the Contract Documents.

...

N/A

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Nine Hundred Seventy-five Thousand Dollars and Zero Cents (\$ 1,975,000.00), subject to additions and deductions as provided in the Contract Documents.

...

(Note: Optional Paragraph)

§ 4.1.1 The Contract Sum contains an Owner's Contingency in the amount of \$50,000. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Owner's authorized representative may approve any expenditure from Owner's Contingency without further Board of Trustees approval. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

...

N/A

...

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

...

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

...

Item

Price

Conditions for Acceptance

...

N/A

...

N/A

...

\$500/Day
Five Hundred Dollars per Day.

PAGE 5

“§ 4.5.1 Substantial Completion. Time is of the essence in all phases of the Work. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Substantial Completion of the Project and Owner shall sustain damages as a result of Contractor’s failure, neglect or refusal to achieve said deadlines. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times of Substantial Completion, that such sums are liquidated damages and shall not be construed as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other increased costs, all of which are difficult to exactly ascertain. Failure to complete the Work within the designated or agreed extended dates of Substantial Completion, shall be construed as a breach of this Agreement. It is expressly agreed as a part of the consideration inducing the Owner to execute this Agreement that the Owner may deduct from any Payment made to the Contractor a sum equal to \$500 per day for each and every additional calendar day beyond the agreed date of Substantial Completion.

...

§ 4.5.2 Final Completion. In addition, timely Final Completion is an essential condition of this Agreement. Contractor agrees to achieve Final Completion of the Agreement within 30 calendar days of the designated or agreed extended date of Substantial Completion. It is specifically understood and agreed by and between Owner and Contractor that time is of the essence in the Final Completion of the Project and Owner shall sustain additional damages as a result of Contractor's failure, neglect or refusal to achieve said deadline. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute agreement by Owner and Contractor that the amounts stated below are the minimum value of the costs and damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times for Final Completion, that such sums are liquidated damages and shall not be construed as a penalty. It is expressly understood that the said sum per day is agreed upon as a fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not finally completed within the agreed time, or within the agreed extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only and in no sense shall be considered a penalty, said damages being caused by, but not limited to, additional compensation for the following categories of damages to the Owner: potential hazards to students, staff and visitors, additional architectural, engineering, program management fees (and fees of any other consultants); increased administrative or operational expenses; additional attorney's fees; increased maintenance and custodial costs and additional, utilities, security and clean-up costs, and other increased costs. Failure to complete the Work within the designated or agreed extended dates of Final Completion, shall be construed as a breach of this Agreement. Owner and Contractor agree that should Contractor fail to achieve Final Completion of the Agreement by the deadline, Owner shall continue to be damaged to a greater degree by such delay. Contractor and Owner agree that the amount of liquidated damages for each calendar day Final Completion is delayed beyond the date set for Final Completion shall be the sum of \$500 per day. Owner may deduct such liquidated damages from any Payment made to Contractor before or at Final Payment; or, if sufficient funds are not available, then Contractor shall pay Owner, the amounts specified per day for each and every calendar day the breach continues after the deadline for Final Completion of the Work.

...

§ 4.5.3 Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion may run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.

PAGE 6

§ 5.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment.~~ The Contractor shall submit monthly Applications for Payment to the Architect on AIA Form G702 for approval. Continuation sheets shall be submitted on AIA Form G703. If the Architect approves the application, then they shall submit a Certificate for Payment to the Owner. The Architect may require any additional information deemed necessary and appropriate to substantiate the Application for Payment. Materials that are verified to be on the jobsite or other approved location for use in the Project may also be incorporated into the Application for Payment. The Architect shall have seven (7) days from date of receipt from the Contractor of an Application for Payment to approve or reject all or any part of the Application for Payment. The Owner shall pay the undisputed amounts certified by the Architect to the Contractor within thirty (30) days of receipt of the Certificate for Payment from the Architect unless otherwise provided in the Contract Documents. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

...

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract ~~Sum~~ Sum, less any unused Owner's contingency, among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

- .1 That portion of the Contract Sum properly allocable to completed ~~Work~~ Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values;

...

- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably ~~justified~~ justified to the extent approved by the Owner in writing, as provided in Article 7.3.9 of AIA Document A201™-2017, General Conditions of the Contract for Construction.

...

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201-2017~~ A201-2017 or amounts certified by the Architect and disputed by the Owner; and

...

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner ~~may~~ shall withhold the following amount, as retainage, from the payment otherwise due:

...

Five Percent (5%)

...

§ 5.1.7.1.1 The following items are not subject to retainage: [Intentionally deleted]

...

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

PAGE 7

NONE

...

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon ~~Substantial~~ Final Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section ~~5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:~~ 5.1.7, and Section 9.3.1.3 of the AIA Document A201-2017 as

...

(Insert any other conditions for release of retainage upon Substantial Completion.)modified for this Project.

...

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.~~[Intentionally deleted]~~

...

§ 5.1.9 Except with the Owner’s prior written approval, or as otherwise provided in Section 9.3.2 of the AIA Document A201-2017, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

...

§ 5.1.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

...

§ 5.1.11 If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claim.

...

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, minus disputed sums, authorized deductions and liquidated damages, shall be made by the Owner to the Contractor ~~when~~after

...

- .1** the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

...

- .2** the Contractor has provided all documents required by Sections 3.5 et seq. and 9.10.2 et seq. of AIA Document A201-2017

...

- .2—3** a final Certificate for Payment has been issued by the ~~Architect~~Architect; and

...

- .4** Owner’s Board of Trustees has voted to accept the Work and approve the Final Payment.

...

§ 5.2.2 The Owner's final payment of undisputed sums to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, ~~or as follows: Owner's Board of Trustees' vote approving Final Payment.~~

...

Payments due and unpaid under the Contract shall bear interest ~~from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located,~~ pursuant to Texas Government Code Section 2251.025.

...

(Insert rate of interest agreed upon, if any.)

...

~~%~~

PAGE 8

The Architect will serve as the Initial Decision Maker *pursuant to Article 15 of AIA Document A201-2017*, unless the parties appoint below another individual, not a party to *this* Agreement, to serve as the Initial Decision Maker. All disputes relating to this Agreement shall be resolved pursuant to the terms of Article 15 of the AIA Document A201-2017, as amended for this Project.

...

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

...

§ 6.2 Binding Dispute Resolution[Intentionally deleted]

...

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

...

(Check the appropriate box.)

...

☐ — Arbitration pursuant to Section 15.4 of AIA Document A201-2017

...

☐ — Litigation in a court of competent jurisdiction

...

[]—Other (*Specify*)

...

If the Owner and Contractor 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, Claims will be resolved by litigation in a court of competent jurisdiction.

...

~~§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:~~

...

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

...

Christopher Bartlett
802 N. Sam Houston Avenue, Odessa, Texas 79761
Christopher.Bartlett@ectorcountysd.org

PAGE 9

Bryan Walters
2011 Ave C
Lubbock, TX 79404
bryan@henthorncommercial.com
806-548-2079

...

~~§ 8.5.1 The Owner and the Contractor shall purchase~~ has established an Owner Controlled Insurance Program (OCIP). To the extent required by the Owner, Contractor shall fully participate in, and comply with, all requirements of the OCIP. A copy of the OCIP Manual will be provided by the Owner and made part of this Agreement, included as Exhibit C.

...

and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment § 8.5.1.1 The Owner has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Commercial General Liability, Excess Liability 1 and Builders' Risk insurance for Contractors and Subcontractors of every tier who have been properly enrolled and are providing direct labor to the Project. A general summary of coverage provided will be detailed in the OCIP Manual (Manual) and

made part of the Owner's Contractor's Agreement and incorporated in every subcontract. All terms and conditions will apply during the term of the contract.

...

is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. § 8.5.1.2 While the OCIP provides uniform coverages and reasonable limits, the OCIP is not intended to meet all insurance needs of the Contractor and eligible Subcontractors who have been properly enrolled. In addition to any insurance provided by the Owner, the Contractor and all Subcontractors should discuss the OCIP with their insurance agent or consultant to assure that other proper coverages are maintained. Contractor and eligible Subcontractors enrolled in the OCIP agree that the insurance company policy limits of liability, coverage terms and conditions shall determine the scope of coverage provided by the OCIP.

...

§ 8.5.1.3 Contractors and Subcontractors shall notify the Owner and the OCIP administrator of all subcontractors and ensure they comply with the OCIP enrollment requirements.

...

§ 8.5.1.4 Survival. The insurance provisions of this Article 8 shall survive any termination of this Contract.

...

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents elsewhere in the Contract Documents and in compliance with Texas Government Code, Chapter 2253

...

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

...

If to Owner, via electronic mail, with electronic confirmation of receipt, to Christopher Bartlett, Director of Construction, Ector County ISD, at Christopher.Bartlett@ectorcountyisd.org

...

If to Contractor, via electronic mail, with electronic confirmation of receipt, to bryan@henthorncommercial.com

PAGE 10

§ 8.7.1 The Agreement shall be governed by the laws of the State of Texas, and any litigation shall be conducted in state district court. Mandatory and exclusive venue shall be in Ector County, Texas, or, if no county is specified, then in the county in which the Owner's main administrative office is located.

...

§ 8.7.2 As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

...

§ 8.7.3 Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

...

§ 8.7.4 Section 1.5 of AIA Document A201-2017 shall govern Contractor's use of the Construction Documents.

...

§ 8.7.5 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. As part of that responsibility, Contractor shall enforce the Owner's alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor's employees, subcontractors, and all other persons carrying out the Contract.

...

§ 8.7.6 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall contain a current photograph and the worker's full name in a typeface large enough to be seen from a reasonable distance.

...

§ 8.7.7 Contractor shall require all construction workers, whether Contractor's own forces or the forces of Contractor's subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's campus principal. Any vehicles not parked in the appropriate locations shall be towed at the vehicle owner's sole expense.

...

§ 8.7.8 Contractor shall follow, and shall require all employees, agents or subcontractors to follow, applicable ordinances of the municipality in which the Project is located. In addition, if not covered by the municipality's tree ordinance, Contractor shall barricade and protect all trees on the Project.

...

§ 8.7.9 Contractor shall institute a theft deterrence program designed to restrict construction worker access to properties of Owner that are currently in use, to maintain supervision of Contractor's and Contractor's subcontractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from Contractor's forces or Contractor's subcontractor's forces' actions, omissions, or failure to secure the Work or connecting or adjacent property of Owner.

...

§ 8.7.10 The Contractor may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent Contractor from engaging subcontractors to

perform various phases of the Project, but Contractor shall be fully responsible to Owner for the work, actions and omissions of all such subcontractors.

...

§ 8.7.11 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

...

§ 8.7.12 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants and conditions as modified and contained in the Contract Documents.

...

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

PAGE 11

§ 8.7.14 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 the 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.

...

§ 8.7.15 Unless otherwise noted, terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201-2017, General Conditions of the Contract for Construction, as amended for the Project.

...

§ 8.7.16 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

...

.1 The Occupational Safety and Health Administration standards for trench safety in effect for the construction of the Work;

...

.2 The special shoring requirements, if any, of the Owner; and

...

.3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.

...

.4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used. Said cost shall be included within the Contract Sum.

...

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

...

§ 8.7.18 Contractor stipulates that Owner is a political subdivision of the State of the Texas, and, as such, enjoys immunities from suit and liability as provided by the constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein, and as specifically authorized by law.

...

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

...

§ 8.7.20 Contractor 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 Contractor has misrepresented its inclusion on the Comptroller's list, such omission or misrepresentation will void this Contract.

...

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

...

§ 8.7.22

.1 By entering into this Contract, pursuant to Texas Government Code 552, Subchapter J, the Contractor agrees to be bound by the following terms if the Contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the Contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to this Contract that is in the possession or custody of the Contractor and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the Contractor that Contractor provide that information to the District.

...

.2 The Contractor must:

...

.1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;

...

.2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Contractor upon request of the District; and,

...

.3 On completion of the Contract, either:

...

.1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Contractor; or

...

.2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

...

.3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with the requirements of that subchapter.

...

.4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or

awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.

...

.5 If a Contractor fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Contractor in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if Contractor fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.”

...

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

...

7. As required by Texas Government Code Ann. Chapter 2274, if Contractor has ten (10) or more employees, is not a sole proprietorship, and if the value of Contractor’s bid or proposal has a value of \$100,000 or more, Contractor certifies by submitting Contractor’s bid or proposal that it does not boycott energy companies and will not during the term of any contract with the Owner, unless excepted by that law.

...

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds Exhibit C, Owner Controlled Insurance Program (OCIP) Manual

...

, as modified for this project

...

.4 Building information modeling exhibit, dated as indicated below: [Intentionally deleted]

...

(Insert the date of the building information modeling exhibit incorporated into this Agreement.)

PAGE 13

See Exhibit A

...

See Exhibit B

...

RFP/CONTRACTOR'S PROPOSAL

...

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

PAGE 14

Dr. Keeley Boyer Superintendent

Bryan Walters Senior Project Manager

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Liz Lonngren, 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 12:21:38 ET on 05/16/2025 under Order No. 2114629153 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)