

 **AIA**<sup>®</sup> Document B101<sup>™</sup> – 2017

**Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the 1<sup>st</sup> day of December in the year Two Thousand Eighteen  
*(In words, indicate day, month and year.)*

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

Denton Independent School District  
1307 North Locust Street  
Denton, Texas 76201  
940-369-0000

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

Corgan Associates, Inc.  
401 N Houston Street  
Dallas, Texas 75202  
214-748-2000

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

Denton ISD- Technology Building Renovation  
Middle School #9  
Denton, Texas

The Owner and Architect agree as follows.

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

TABLE OF ARTICLES

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

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

To be determined as part of the planning process between Denton ISD and Corgan Associates, Inc.

§ 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.)*

To be determined as part of the planning process between Denton ISD and Corgan Associates, Inc.

§ 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.)*

Middle School #9 = \$62,000,000.00

Technology Building = \$7,500,000.00

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

- .1 Design phase milestone dates, if any:

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.2 Construction commencement date:

The commencement of construction date shall be determined by Agreement between the Owner and Architect, and Construction Manager at Risk.

.3 Substantial Completion date or dates:

The substantial completion date and Final completion date shall be determined by Agreement between the Owner, Architect, and Construction Manager at Risk.

.4 Other milestone dates:

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

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

Construction Manager at Risk

**§ 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.)*

To be determined as part of the planning process between Denton ISD and Corgan Associates, Inc.

**§ 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.)*

Denton Independent School District

1307 North Locust Street

Denton, Texas 76201

940-369-00

**§ 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.)*

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

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

.1 Geotechnical Engineer:

TBD

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.2 Civil Engineer:

Technology Building- Glenn Engineering  
Middle School #9- TBD

.3 Other, if any:

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

TBD

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

Susan Smith, Associate Principal  
Corgan Associates, Inc.  
401 N Houston Street  
Dallas, Texas 75202  
214-748-2000

§ 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:

Technology Building- LA FUESS  
Middle School #9- TBD

.2 Mechanical Engineer:

Technology Building- IEG  
Middle School #9- TBD

.3 Electrical Engineer:

Technology Building- IEG  
Middle School #9- TBD

§ 1.1.11.2 Consultants retained under Supplemental Services:

TBD

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

TBD

§ 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~~ may mutually agree to 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.~~ compensation, in writing, as deemed appropriate.

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§ 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.

## 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 consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. In compliance with 19 Texas Administrative Code ("TAC") Section 61.1036, Architect shall certify that he has reviewed the standards contained in the regulation and used the best professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the construction documents. The Architect's or engineer's seal and signature on the Construction Documents shall indicate certification of compliance with this section. "Certify" means that the Architect has reviewed the standards contained in Texas Education Agency rules and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the Construction Documents. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

§ 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 maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9. Prior to performing Architect's services under this Agreement, Architect shall procure, maintain and provide insurance certificates, policies and endorsements, in at least the following amounts, to protect Architect and Owner from claims arising out of the performance of the Architect's services under this Agreement and caused by any error, omission, negligent act or omission, or design defect by Architect, such insurance to be in a form approved by the Owner, with an effective date prior to the beginning date of design. Such insurance shall be written on an occurrence basis, if available, and on a claims-made basis, if occurrence basis insurance is not available. Architect shall maintain its insurance in full force and effect and uninterrupted during the term of this Agreement and after the completion of services under this Agreement until the completion of any applicable statute of limitations, such period to be not less than one year from Final Completion of all construction of this Project as to workers compensation, two years from the Final Completion of all construction of this Project as to comprehensive general liability, and comprehensive automobile liability, and not less than ten years from the Final Completion of all construction of this Project (or twelve years, as allowed by Texas Civil Practice and Remedies Code § 16.008), as to errors and omissions insurance. Architect shall furnish to Owner insurance certificates, policies and endorsements upon request at any time. Architect shall name Owner as an additional insured under his policies for comprehensive general liability and comprehensive automotive liability. Insurance shall be obtained from companies licensed to do business in the State of Texas by the Texas Department of Insurance. The policies shall include a waiver of subrogation in favor of the Owner. Any deviation from these requirements can only be approved by Owner's Board of Trustees. Any nonconformity may be grounds for termination or modification of the Contract. To the extent that Architect is unable to procure the insurance designated herein because the insurance is not reasonably available or is~~

cost-prohibitive, then Architect shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million (\$ 2,000,000 ) for each occurrence and Four Million (\$ 4,000,000 ) in the aggregate for bodily injury and property damage.

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

§ 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.

§ 2.5.4 ~~Workers' Compensation at statutory limits: One Million (\$1,000,000) (statutory limits).~~

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

- .1 Duration of the Project includes the time from the beginning of the Work on the Project until the Architect's Work on the Project has been completed and accepted by the Owner.
- .2 Persons providing services on the Project include all persons or entities performing all or part of the services the Architect has undertaken to perform on the Project, regardless of whether that person contracted directly with the Architect and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity that furnishes persons to provide services on the Project.
- .3 Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to the Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- .4 The Architect shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all employees of the Architect providing services on the Project for the duration of the Project.
- .5 The Architect must provide a certificate of coverage to the Owner prior to being awarded the contract.
- .6 If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- .7 The Architect shall obtain from each person providing services on a project, and provide to the Owner:

- .1 A certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2 No later than seven days after receipt by the Architect, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .8 The Architect shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- .9 The Architect shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Architect knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .10 The Architect shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .11 The Architect shall contractually require each person with whom it contracts to provide services on a project, to:
  - .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all of its employees providing services on the Project for the duration of the Project;
  - .2 Provide to the Architect, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
  - .3 Provide the Architect, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .4 Obtain from each other person with whom it contracts, and provide to the Architect:
    - .1 A certificate of coverage, prior to the other person beginning work on the Project; and
    - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
  - .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
  - .6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage for any person providing services on the Project; and
  - .7 Contractually require each person with whom it contracts to perform as required by items 1-7, with the certificates of coverage to be provided to the person for

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whom they are providing services.

- .12 By signing this contract or providing or causing to be provided a certificate of coverage, the Architect is representing to the Owner that all employees of the Architect who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Architect to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .13 The Architect's failure to comply with any of these provisions is a breach of contract by the Architect that entitles the Owner to declare the contract void if the Architect does not remedy the breach within ten days after receipt of notice of breach from the Owner.
- .14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996.

28 TAC §110.110(i).

§ 2.5.4.1 INDEMNITY Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subcontractors, for Construction Documents which are sufficient for Owner to complete the construction of the Project and are free from material defects or omissions as required by the Standard of Care, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any defect in the Construction Documents prepared by Architect, its agents, employees, subcontractors, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. In this connection, ARCHITECT SHALL, DURING THE CONSTRUCTION OF SAID PROJECT AND FOR A PERIOD OF TEN YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL TWO YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 16.008(C) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY OWNER AND ALL OF ITS OFFICERS, TRUSTEES, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEY'S FEES, ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY OR ALL PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE OWNER, CONSTRUCTION MANAGER, ARCHITECT, OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, WHICH MAY DIRECTLY ARISE FROM OR BE CONNECTED WITH ANY ACT OF NEGLIGENCE ON THE PART OF ARCHITECT OR ANY BREACH OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT; provided and except, however, that this indemnification provision shall not be construed as requiring Architect to indemnify or hold Owner harmless for any loss, damage, liability, or expense on account of damaged property or injuries, including death to any person, which may arise out of or may be caused by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Architect."

§ 2.5.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000 ) each accident, One Million (\$ 1,000,000 ) each employee, and One Million (\$ 1,000,000 ) policy limit.

§ 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, Five Million (\$ 5,000,000 ) per claim and Seven Million (\$ 7,000,000 ) in the aggregate with a Two Hundred Thousand (\$200,000) deductible.

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**§ 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.

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

### **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, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

**§ 3.1.1** The Architect shall manage the Architect's services, in accordance with this Agreement, all amendments hereto, and the General Conditions of the Contract for Construction, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner through the issuance of progress reports to Owner and Construction Manager at Risk, as more specifically defined hereafter. The Architect shall not be relieved of any obligation to perform in accordance with the standard of care applicable to licensed architects in the State of Texas under the same or similar circumstances, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

**§ 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 is not required to verify and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants, in accordance with 19 TAC Section 61.1036. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 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~~ Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. The Architect shall assist the Construction Manager at Risk in the preparation and periodic update of the Project schedule.

**§ 3.1.4** The Architect shall not be responsible for an Owner's ~~directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.~~ directives or substitutions which are made without the Architect's knowledge and approval. If a change or substitution is proposed by the Owner or the Contractor, through value engineering or otherwise, and the Architect has an objection to such change or substitution, the Architect shall expressly object in writing to such proposed change or substitution, setting forth the specific basis of its objections to such proposed change or substitution. If the Owner then directs the Architect to incorporate such proposed change or substitution into the Contract Documents over the Architect's objection, the Owner agrees to accept these risks and the costs and consequences associated with them and shall defend and indemnify Architect from any such claims arising out of any unapproved directive of substitution.

**§ 3.1.5** The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall ~~respond to comply with~~ applicable design requirements imposed by those authorities and entities.

**§ 3.1.6** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

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### § 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.

§ 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~~. Project, subject to Owner's budgetary restrictions. 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~~ may 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~~ may 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.

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

§ 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, necessitated by Architect's redesign of the Project to comply with Owner's budget, and request the Owner's approval.

#### § 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. 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.

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

§ 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.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 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.

#### § 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 Bidding

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

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding 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 Bidding 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 Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

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### § 3.5.3 Negotiated-Competitive Sealed Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents, as described in section 3.4.1, and the Owner/Construction Manager at Risk, Conditions of the Contract, as amended, (General, Supplementary and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract, other documents listed in the Owner/Contractor Agreement and Modifications issued after execution of the Contract Documents.

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

- .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 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions 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. 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 shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design error or omissions shall be at no additional cost to Owner.

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

#### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become ~~generally~~ familiar with the progress and quality of the portion of the Work completed, and to ~~determine, in general, determine~~ if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall ~~not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. be required to make on-site observations to check the quality and quantity of the Work.~~ Furthermore, at a minimum weekly job site meetings from commencement of construction through Final Completion will be initiated by the Architect. Architect shall inform Owner's Executive Director of Operations and Director of Construction of the dates Architect intends to appear at the job site. Architect or Architect's consultant 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 will

provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Architect will advise Owner of the need for any third party laboratory or testing services to assist the Architect, and will assist Owner in development of Requests for Proposals or other solicitations for any required testing services approved by Owner and the Architect shall not be a guarantor of the Contractor's performance. On the basis of the site visits, and observations by Architect, the Architect shall keep the Owner reasonably-informed about the progress and quality of the portion of the Work completed, and shall promptly orally report to the Owner and Construction Manager at Risk (1) known deviations from the Contract Documents, (2) known deviations Documents and from the most recent construction schedule submitted by the Contractor, and (3) (2) defects and deficiencies observed in the Work.

**§ 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 notify the Owner of the necessity~~ 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. Architect shall promptly notify Owner and Contractor, orally and in writing, of any observed fault or defect in the Project or nonconformance with Construction Documents or Contract Documents, upon discovery of the defect or nonconformance, and shall notify Owner of all corrective actions taken or recommended. The testing or inspections required by this Section are subject to the requirements of Chapter 44 of the Texas Education Code.

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

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

**§ 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.~~ The Architect shall promptly render initial written recommendations or interpretations on claims, disputes or other matters in question between the Owner and Construction Manager at Risk as provided in the Contract Documents.

**§ 3.6.3 Certificates for Payment to Contractor Construction Manager at Risk**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the ~~Contractor and shall issue certificates in such amounts.~~ Construction Manager at Risk and shall sign and issue certificates in such amounts, if such amounts are valid, correct and deemed due and owing, in Architect's professional opinion, with three (3) days of receipt of Construction Manager at Risk's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the ~~Contractor's Application for Payment, that, Construction Manager at Risk's Application for Payment, that, in the Architect's professional opinion and to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, 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 Document and Contract Documents, and that the Architect has carefully evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. The foregoing representations are subject to (1) an observation and 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 by the Architect to the Owner.~~

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

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

§ 3.6.3.4 The term "certify" as used by the Architect shall mean to state or declare a professional opinion (in accordance with professional standards exercised by Architects in the State of Texas, of conditions known at the time such certification was made. The Architect's certification of certain information or conditions in no way relieves any other party from meeting requirements imposed by contract or other means, including commonly accepted industry standards.

#### § 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, so as to cause no unreasonable delay in the Work or in the activities of the Owner or Construction Manager at Risk while allowing sufficient time~~ in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the ~~limited purpose~~ of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall request that Construction Manager at Risk to come into compliance. The Architect shall promptly report in writing to the Construction Manager at Risk 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.

§ 3.6.4.3 If the Contract Documents specifically require the ~~Contractor Construction Manager at Risk~~ 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 Construction Manager at Risk 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 Architect shall review and respond to requests for information about the Contract Documents. ~~The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information~~ A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare promptness deemed appropriate by the

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~~Architect, the Architect shall on the Owner's behalf, reproduce, distribute, and issue supplemental Drawings and Specifications in response to the requests for information-information by the Construction Manager at Risk.~~

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

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect ~~may order~~ shall timely review, prepare and make recommendations to Owner regarding all Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents, accompanied by all supporting documentation with prior written notice to the Owner. The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to Section 4.2, the If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe work to be added, deleted, or modified.~~ Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .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 inspection 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 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~~ Prior to the expiration of 6 months (6) from the date of Substantial Completion and, again, prior to the expiration of ten (10) months from the date of Substantial Completion, and upon request of the Owner at any other time with one year from the date of Substantial Completion, ~~Completion~~ the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	<u>Owner/Architect</u>
§ 4.1.1.2 Multiple preliminary designs	<u>Architect</u>
§ 4.1.1.3 Measured drawings	<u>N/A</u>
§ 4.1.1.4 Existing facilities surveys	<u>N/A</u>
§ 4.1.1.5 Site evaluation and planning	<u>Architect</u>
§ 4.1.1.6 Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.7 Development of Building Information Models for post construction use	<u>Architect Reimbursable Expense</u>
§ 4.1.1.8 Civil engineering	<u>Architect Reimbursable Expense</u>
§ 4.1.1.9 Landscape design	<u>Architect</u>
§ 4.1.1.10 Architectural interior design	<u>Architect</u>
§ 4.1.1.11 Value analysis	<u>Architect</u>
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	<u>N/A</u>
§ 4.1.1.14 Conformed documents for construction	<u>Architect</u>
§ 4.1.1.15 As-designed record drawings	<u>Architect</u>
§ 4.1.1.16 As-constructed record drawings	<u>Owner/CMAR</u>
§ 4.1.1.17 Post-occupancy evaluation	<u>Architect/Owner</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>Owner</u>
§ 4.1.1.21 Telecommunications/data design	<u>Architect</u>
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	<u>Owner</u>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<u>Architect</u>
§ 4.1.1.25 Fast-track design services	<u>N/A</u>
§ 4.1.1.26 Multiple bid packages	<u>Architect</u>
§ 4.1.1.27 Historic preservation	<u>N/A</u>
§ 4.1.1.28 Furniture, furnishings, and equipment design	<u>Additional Services, if requested</u>
§ 4.1.1.29 Other services provided by specialty Consultants	<u>N/A</u>
§ 4.1.1.30 Other Supplemental Services	
§ 4.1.1.31 Third Party Shelter Review City Commissioning	<u>Owner/Additional Services, if requested</u>

#### § 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.

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*(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. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- ~~.1~~ Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- ~~.2~~ Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- ~~.3~~ Changing or editing previously prepared Instruments of Service-Construction Documents 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 when those Construction Documents were prepared in accordance with the applicable standard of care;
- ~~.4~~ Services necessitated by the decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or ~~contractors~~;
- ~~.5~~ Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- ~~.6~~ Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- ~~.7~~ Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~.8~~ Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; contractors to the Architect's detriment, which significantly change the services required of the Architect under this Agreement
- ~~.9~~ Evaluation of the qualifications of entities providing bids or proposals;
- ~~.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. ~~.12~~ Required by municipal or other local building codes, fire, safety, and other inspectors after the municipality or other authority has issued a building permit or otherwise approved drawings, specifications or other documents as conforming with applicable municipal or other local regulations.

**§ 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.~~

§ 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 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Minimum once per week ( 1 ) visits to the site by the Architect ~~during construction over the duration of the Project during construction.~~
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion.

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

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

## 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 when required a written program, program~~ which shall set forth the Owner's ~~objectives; objectives,~~ schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; ~~special equipment; systems; and site requirements.~~ relationships, flexibility, expandability, special equipment, systems, and site requirements. The Owner shall furnish the educational program and educational specifications approved by Owner's Board of Trustees, per 19 TAC Section 61.1036. The Architect shall review the program and specifications furnished by Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with Owner. Architect shall include all components of Owner's program in the Project, unless specific written agreement to delete a component is received from Owner.

§ 5.2 The Owner shall establish and periodically update 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. Owner represents and acknowledges that Owner's Designated Representative is qualified to and shall carry out the duties and responsibilities of Owner's Designated Representative. The Owner's Designated Representative is authorized to act on the Owner's behalf with respect to the project and the Architect is entitled to rely on the decisions and instructions of the Owner's Designated Representative. The Owner's Designated Representative shall be reasonably available and present at scheduled meetings in order to provide information and decisions in a timely manner so as to not negatively impact the Architect's schedule and/or the construction schedule. In the event that the Owner's Designated Representative fails to carry out his/her duties and/or changes a previous decision or instruction and/or fails to inform the Architect of the decision in a timely manner and such failure causes the Architect to incur costs, including but not limited to redoing work, the Owner shall reimburse the Architect for all time spent on the rework on an hourly basis.

**§ 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 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 or~~ Owner requests such services are approved by Owner and 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, maintain professional liability insurance as appropriate to the services provided.~~ The Owner shall contract licensed professional consultants for design, construction documentation and other services related to the Project. The contracts between the Owner and the Owner's consultants shall require the consultants to coordinate their drawings and other instruments of service with those the Architect and to advise the Architect of any potential conflicts between such documents. The Architect shall have no responsibility for the components of the Project designed by the Owner's consultants. The Architect' review of the consultant's drawings and other work is solely for consistency with the Architect's design concept for the Project. The Architect shall be entitled to rely on the technical sufficiency and timely delivery of documents and services furnished by the Owner's consultants, as well as on the computations performed by those consultants in connection with such documents and services. The Owner shall require Owner-retained consultants to provide any information and support documentation that the Architect deems reasonably appropriate or necessary. The Architect shall not be liable for damages sustained and losses and expenses incurred by the Owner resulting from any services performed by Owner-retained consultants. Subject to the Standard of Care, Architect remains obligated to thoroughly review documentation to confirm such comports with the requirements of this Agreement, and shall notify Owner, in writing, of any failure of the documents to comport with professional standards and this Agreement.

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

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

§ 5.12 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~~ Construction Manager at Risk otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. The Owner reserves the right to communicate directly with the Construction Manager at Risk and the Architect's consultants.

§ 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~~ Construction Manager at Risk, 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~~ Construction Manager at Risk to provide the Architect access to the Work wherever it is in preparation or progress.

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

## ARTICLE 6 COST OF THE WORK

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

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

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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 The Architect, and the Construction Manager at Risk, if applicable, shall prepare a preliminary estimate of the Cost of the Work, which shall incorporate Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and, if applicable, the Construction Manager at Risk, shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with Owner and, if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, 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 Project with the prior consent of Owner's Board of Trustees; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. 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. budget for the Cost of the Work.

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

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

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

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .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. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, Construction Documents, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights, but, subject to Owner paying Architect all sums due hereunder, the copyright shall jointly belong to both Architect and Owner, and Architect and Architect's consultants shall not use the Construction Documents on another project without Owner's prior written permission. 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 Subject to Owner paying Architect all sums due hereunder, The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service-Construction Documents 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-Project. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, Construction Documents 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. This nonexclusive license shall survive termination of this Agreement, and Architect hereby grants permission to Owner to use the Construction Documents for future renovations, repairs, additions or alterations to the Project. However, if Owner uses the Construction Documents for future renovations, repairs, additions or alterations to the Project without retaining the Architect, such shall be at Owner's sole risk and without liability to Architect.

§ 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. The Construction Documents may be used as a prototype for other facilities by the Owner. The Owner may elect to use the Architect to perform the site adaptation and other professional services involved in reuse of the Construction Documents. If so, then the Architect may agree to perform the work for an additional compensation that will fairly compensate the Architect and its consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Agreement. If the Owner elects to employ a different architect to perform the site adaptation and other professional services involved in reuse of the Construction Documents, 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 Construction Documents, and such architect will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the Construction Documents, approved shop drawings and calculations, and "as built" in performing its work. The Architect will not be responsible for errors and omissions of a subsequent architect. The Architect shall endeavor to commit its consultants to the terms of this Section and shall notify Owner in writing if Architect is unable to do so. In the event of termination of this Agreement for any reason and subject to Owner paying Architects sums due under this Agreement, the Owner shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

§ 7.3.2 In the event the Owner uses the Construction Documents without retaining the author 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 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.

§ 7.3.3 The Construction Documents may be used as a prototype for other facilities by the Owner. The Owner may elect to use the Architect to perform the site adaptation and other professional services involved in reuse of the Construction Documents. If so, then the Architect agrees to perform the work for an additional compensation that will fairly compensate the Architect and its consultants only for the additional work involved. It is reasonable to expect that the fair additional compensation will be significantly less than the fee provided for under this Agreement. If the Owner elects to employ a different architect to perform the site adaptation and other professional services involved in reuse of the Construction Documents, 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 Construction Documents, and such architect will be entitled, to the extent allowed by law, to duplicate the design and review and refer to the Construction Documents, approved shop drawings and calculations, and "as built" in performing its work. The Architect will not be responsible for errors and omissions of a subsequent architect. The Architect shall endeavor to commit its consultants to the terms of this Section and shall notify Owner in writing if Architect is unable to do so. In the event of termination of this Agreement for any reason, the Owner shall receive all original documents prepared to the date of termination and shall have the right to use those documents and any reproductions in any way necessary to complete the Project.

§ 7.3.4 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.

§ 7.4 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 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, but in any case not more than ~~10-12~~ years after the date of ~~Substantial~~ Final Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.1.1 All claims, disputes, or matters in controversy between Owner and Architect shall be discussed by the parties in good faith, in an attempt to resolve the claim, dispute, or controversy. In the event such claim, dispute, or controversy cannot be resolved by good faith discussion between the parties, any such claim, dispute or matter in controversy shall be subject to the Owner's grievance policy [GF (LEGAL) and (LOCAL) or other policy as designated by Owner] and the timelines established in the policy. If Architect is dissatisfied with the outcome of Owner's grievance process, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 8.1.1.2 Architect stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and/or liability under the Constitution and laws of the State of Texas. By entering into this

Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

**§ 8.1.2** ~~To Only to~~ the extent damages are 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~~ ~~waives~~ 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.~~ ~~termination of this Agreement.~~ In any litigation arising under this Agreement, the types and amounts of damages recoverable shall be subject to subchapter I of the Texas Local Government Code Chapter 271.

**§ 8.1.3.1** In any adjudication or claim under this Agreement, reasonable and necessary attorneys' fees may be awarded to the prevailing party.

**§ 8.1.4** No representative of the Architect or its Consultants shall be held liable in their individual capacity.

**§ 8.1.5** Indemnity for claims that arise from non-professional services. Architect, to the fullest extent permitted by law, shall defend, indemnify and hold harmless the Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including reasonable attorneys' fees, for bodily injury, sickness or death, and property damage or destruction to the extent resulting from the acts or omissions of Architect, anyone employed directly or indirectly by Architect or anyone for whose acts Architect may be liable. Nothing in this paragraph shall apply to indemnification for claims arising from professional services, which are addressed in article 8.1.6 of this Agreement.

**§ 8.1.6** Indemnity for claims that arise from professional services. To the fullest extent permitted by law, Architect agrees to indemnify and hold the Owner, its officers, directors, shareholders and employees harmless from and against liabilities, damages and costs (including reasonable attorneys' fees) to the extent caused by the negligence of the Architect in performance of professional services. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations. This indemnification expressly excludes the duty to defend the Owner, its officers, directors, shareholders and employees. However, the absence of the duty to defend shall not preclude Owner, its officers, directors, shareholders and employees from seeking its reasonable attorneys' fees as part of its damages where and to the extent such fees are caused by Architect's negligence. Nothing in this section shall apply to indemnification for claims arising from non-professional services which are addressed in article 8.1.5 of this Agreement.

**§ 8.1.6.1** Architect stipulates that Owner is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and/or liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

## **§ 8.2 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 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.~~

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, ~~which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement.~~ mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the 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, ~~notice,~~ 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.~~ The Owner and the Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors or consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation and then litigation as the primary method for dispute resolution between the parties to those agreements. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

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

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

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

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

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#### § 8.3.4 Consolidation or Joinder

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

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

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

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

#### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. ~~If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. Architect shall be allowed to suspend Architect's performance of services under this Agreement for nonpayment by Owner only after the provision of ten (10) days' written notice, in accordance with Texas Government Code section 2251.051 et seq.~~ 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.~~ suspension of services.

§ 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.~~ suspension. The Architect's fees for the remaining services and the time schedules ~~shall may~~ be equitably adjusted.

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

§ 9.4 Either party may terminate this Agreement upon not less than seven 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-21~~ days' written notice to the Architect for the Owner's convenience and without cause.

§ 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.

§ 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:

N/A

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

N/A

~~§ 9.8 Except as otherwise expressly provided herein, including, but not limited to, § Indemnity, 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 and Section 9.7.~~

#### 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. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. located.~~

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction. However, for purposes herein, the term "Work" shall mean those project elements within the Architect's Scope of Services.~~

~~§ 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 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. However, if Architect becomes aware of the existence of hazardous materials at the site, Architect shall give written notice to Owner. It is acknowledged by both parties that Architect's scope of service does not include any services related to asbestos or hazardous or toxic materials. In the event Architect or any other party encounters asbestos or hazardous or toxic materials at the job-site, or should it become known in any way that such materials may be present at the job-site or in any adjacent areas that may affect the performance of Architect's service, Architect may, at his or her option and without liability for consequential or other damages, suspend performance of services on the project until the Owner retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos, hazardous or toxic materials and warrant that the job-site is in full compliance with applicable laws and regulations. Architect shall give written notice to Owner of the discovery of hazardous materials before Architect suspends performance of services on the project. To the extent permitted by law, Owner agrees to indemnify, defend, and hold Architect harmless from all claims, expenses, and damage arising from or related to, hazardous materials including asbestos-containing materials that are or may be found to exist in the Project.~~

~~§ 10.7 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. Notwithstanding the aforementioned, confidential information provided in electronic format (e.g. e-mail) may be copied by a party as part of its normal back-up procedures, and as such, copies cannot be destroyed or returned. Each party agrees that it shall not access or utilize such copies following receipt of a request to return or destroy the confidential information or upon completion of the services. This Section 10.8 shall survive the termination of this Agreement.

**§ 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. Architect makes use of third-party or "cloud-based" services and software for the purpose of enhancing collaboration between stakeholders involved in the production, storage, review, and use of electronic data, including but not limited to images, text, model and drawing files, project communications, and other data used in the production and delivery of project information. Owner agrees and acknowledges that such does not violate any confidentiality obligations of Architect.

**§ 10.9** The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

**§ 10.10** Owner and Architect understand, acknowledge, and agree that Architect shall be acting as an independent contractor at all times during the performance of this Agreement and no provision or obligation expressed or implied in this Agreement shall create an employment or agency relationship.

## 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)

~~( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~  
Architect Fee 6% of the Final Cost of Work which will be based on the Construction Manager at Risk final pay application for the cost of construction of the project, not including any unused portions of the discretionary fund balance. Prior to Board approval of construction contract, Architect fees to be based on Owner's project budget.

~~.3 Other~~  
~~(Describe the method of compensation)~~ 3. Other Consultants to be retained as part of the Architect's basic services are:

Structural Engineer, Mechanical, Electrical, and Plumbing Engineer, and Landscape Architect

§ 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.)*

N/A

§ 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.)*

N/A

§ 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 One percent ( 1.0%), 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	<u>Fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase	<u>Eighteen</u>	percent (	<u>18</u>	%)
Construction Documents Phase	<u>Forty</u>	percent (	<u>40</u>	%)
<del>Procurement Bidding and Negotiation Phase</del>	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Closeout	<u>Two</u>		<u>2</u>	
Total Basic Compensation	<del>one</del> <u>One</u>	hundred percent (	100	%)

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

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Corgan's Hourly Rates - 2018

<b>Employee or Category</b>	<b>Rate (\$0.00)</b>
<u>Managing Principal</u>	<u>\$385</u>
<u>Principal</u>	<u>\$370</u>

<u>Associate Principal</u>	<u>\$335</u>
<u>Senior Architectural Project Manager</u>	<u>\$310</u>
<u>Architectural Project Manager</u>	<u>\$280</u>
<u>Senior Designer</u>	<u>\$250</u>
<u>Designer</u>	<u>\$230</u>
<u>Senior Lighting Designer</u>	<u>\$240</u>
<u>Project Architect</u>	<u>\$230</u>
<u>Project Architectural Staff</u>	<u>\$210</u>
<u>Architect</u>	<u>\$200</u>
<u>Architectural Staff</u>	<u>\$180</u>
<u>Architectural Intern</u>	<u>\$145</u>
<u>Student Architectural Intern</u>	<u>\$100</u>
<u>Senior Interior Design Project Manager</u>	<u>\$275</u>
<u>Interior Design Project Manager</u>	<u>\$225</u>
<u>Project Interior Designer</u>	<u>\$175</u>
<u>Interior Designer</u>	<u>\$155</u>
<u>Interior Design Staff</u>	<u>\$140</u>
<u>Furniture Specialist</u>	<u>\$125</u>
<u>Interior Design Intern</u>	<u>\$125</u>
<u>Student Interior Design Intern</u>	<u>\$100</u>
<u>Education Support Specialist</u>	<u>\$175</u>
<u>Senior Specifications Writer</u>	<u>\$200</u>
<u>Specifications Writer</u>	<u>\$190</u>
<u>Design Applications Specialist</u>	<u>\$175</u>
<u>Senior QA/QC Manager</u>	<u>\$230</u>
<u>QA/QC Coordinator</u>	<u>\$200</u>
<u>Practice Technology Manager</u>	<u>\$200</u>
<u>Practice Technology Specialist</u>	<u>\$175</u>
<u>Project Analyst</u>	<u>\$175</u>
<u>Photographer</u>	<u>\$150</u>
<u>Senior Graphic Designer</u>	<u>\$165</u>
<u>Graphic Designer</u>	<u>\$150</u>
<u>Graphic Design Intern</u>	<u>\$90</u>
<u>Document Control Analyst</u>	<u>\$135</u>
<u>Administrative Assistant</u>	<u>\$140</u>

**§ 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 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .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;

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- .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 1.0 percent ( 1 %) of the expenses incurred.

**§ 11.8.3 REIMBURSABLE EXPENSES**

Notwithstanding anything herein to the contrary, it is mutually agreed that the following flat-rate charges will apply as in-house expenses:

<u>Out of town Mileage related to project, other than Job site visits</u>	<u>Current IRS mileage rate</u>
<u>Photocopies</u>	<u>\$0.09/copy</u>
<u>Digital Printing – B &amp; W</u>	<u>\$0.30/SF first off</u> <u>\$0.15/SF additional copies</u>
<u>Digital Printing – Redline</u>	<u>\$1.50/SF</u>
<u>Digital Printing – Color</u>	<u>\$3.50/bond media</u> <u>\$6.00/SF glossy media</u>
<u>Review &amp; Presentations (Not for Construction Drawings)</u>	<u>Exact charge will vary with sheet size and will be based on Corgan Associates, Inc.'s prevailing standard rates</u>

Sales Taxes will be charged in accordance with state law.

§ 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.)*

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

§ 11.10.1.1 An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

**§ 11.10.2 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. Amounts unpaid ( ) days after the invoice date on the second (2<sup>nd</sup>) Thursday, if not a school holiday, after presentation of the Architect's invoice to Owner's designated representative. Amounts unpaid sixty ( 60 ) days after the invoice shall bear interest at the rate~~

entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect specified by Texas Government Code, Section 2251.25 or its successor.

*(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 for the amounts in a binding dispute resolution proceeding may withhold payments to the Architect for the purposes of reimbursing Owner for any damages caused by Architect, for changes in the Cost of the Work which result in Architect's compensation being reduced, or for Architect's failure to comply with the provisions of any part of this Agreement. The Owner may also withhold payments to the Architect to secure performance of Architect's services and obligations under any part of this Agreement.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed-performed on the basis of hourly rates shall be available to the Owner at mutually convenient times provided to the Owner upon presentation of Architect's progress payment applications.

## **ARTICLE 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.)*

### **§ 12.1 WARRANTIES**

#### **§ 12.2 RESPONSIBILITY FOR PRODUCT SUITABILITY**

Any language, term or condition of this Agreement to the contrary notwithstanding, with regard to new equipment, materials, and products (herein called products) required by the Architect's construction documents, it is understood the Architect is relying on stated and implied representations made by manufacturers, suppliers and installers of such products as being suitably fit for their intended purposes. The Architect is not responsible for the product's failure to perform consistent with those representations.

#### **§ 12.3 NO FIDUCIARY RESPONSIBILITY OF THE ARCHITECT TO THE OWNER**

The provisions of this agreement constitute the complete responsibilities and define the relationship of the Owner and Architect; moreover, nothing herein establishes a fiduciary responsibility of the Architect to the Owner, **except to the extent provided by law or opined by the Courts of this State.**

#### **§ 12.4 RESPONSIBILITY FOR CONSTRUCTION COST**

For projects on which a General Contractor or Construction Manager is responsible to furnish pricing during the design and subsequent phases of the project, the Architect shall have the right to rely on cost information furnished by the General Contractor or Construction Manager. The Architect shall assist the Owner in the Owner's review of the Contractor's or Construction Manager's pricing, but does not accept responsibility for the accuracy of the Contractor's or Construction Manager's estimates or other pricing work in so doing.

#### **§ 12.5 DESIGN CONSISTENCY**

The Owner understands and acknowledges that although the Instruments of Service shall be prepared within the Standard of Care stated in paragraph 2.2 of this Agreement, the Contractor may require additional information from the Architect to clarify and coordinate the design intent shown in the Construction Documents that result in increases in the Construction Cost.

#### **§ 12.6 OMITTED PROJECT COMPONENT**

If a component of the Project is omitted from the Contract Documents due to the negligence of the Architect, Architect will not be liable to the Owner to the extent of any betterment or value added to the Project. Specifically, the Owner will be responsible for the amount it would have paid for the component if it had been included in the Contract Documents. Further, if it is necessary to replace a component of the Project due to the negligence of the Architect, it will not be liable to the Owner for any enhancement or upgrade of the component beyond what was originally included in the Contract Documents. In addition, if the component has an identifiable useful life that is less than the building



itself, the damages of the Owner shall be reduced to the extent that the useful life of the component will be extended by the replacement thereof.

#### **§ 12.7 RECORD DRAWING DISCLAIMER**

To the extent that the Architect's scope includes preparation of record Drawings, Owner acknowledges and agrees that Architect and its Consultants are relying on the information provided by the Contractor and assumes that the information contained in the as-built drawings provided by the Contractor is accurate and correct. Neither Architect, nor any of its consultants or their employees, makes any warranty, expressed or implied, or assumes any legal liability or responsibility for the accuracy, reliability, completeness and/or usefulness of any information contained in the Contractor's as-built drawings. Architect and Architect's consultants disclaim any responsibility and/or liability for errors contained in the Record Drawings to the extent such error is caused by incorrect information provided by the Contractor.

#### **§ 12.8 LIABILITY APPORTIONED TO COMPENSATION**

#### **§ 12.9 COPYRIGHT INDEMNITY**

Owner warrants to Architect that it is the owner of all material, methods, systems or other information that it provides Architect in connection with this Agreement. Owner shall defend, indemnify, and hold harmless Architect, its agents, employees, affiliates, and representatives from all suits or claims of infringement of any intellectual property rights arising out of any material, methods, systems or other information provided by Owner to the Architect. Owner shall require this same indemnity from the Contractor/Construction Manager to the Architect, its agents, employees, affiliates, and representatives in the Contract for Construction between Owner and Contractor/Construction Manager.

#### **§ 12.10 ACCELERATED DELIVERY PROCESS (Delete if project is not fast track or phased with an accelerated schedule):**

In the event Owner chooses to take advantage of the time and cost saving benefits of an accelerated project delivery process, Owner acknowledges that it has been advised that the project will be affected by such a process. Some of the effects of an accelerated project delivery process include the necessity of making early or premature commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding, and construction purposes in order to maintain a fast track or accelerated schedule, or the actual progress of the work of the General Contractor. Owner acknowledges that it has been advised that the project, if developed on an accelerated project delivery basis, may require associated coordination, design, and redesign of parts of the project after construction documents are issued and the construction contract is executed, and may require removal of work in place, all of which events may cause an increase in the cost of the work and/or an extension of the project construction schedule. Therefore, Owner acknowledges and understands that change orders arising from the accelerated project delivery process should be expected as a part of and related to this process; and Owner understands the necessity of including sufficient contingencies in the budget for the cost of the work to account for additional costs and construction schedule extensions arising from this process and agrees to include such contingencies in the project construction budget commensurate with industry standards for projects of similar scope and quality of this project.

#### **§ 12.11 LEED CERTIFICATION SERVICES (Delete if scope does not include LEED services):**

The Owner acknowledges that the LEED Green Building Rating System, and other similar environmental guidelines (collectively "LEED"), utilizes certain design and usability recommendations on a project in order to promote an environmental friendly and energy efficient facility. Owner further acknowledges that Architect has advised of such and Owner wants to move forward. In addressing these guidelines, the Architect shall perform its services with that degree of skill and care involved in the design of similar projects in the same locale as the Project. The Owner acknowledges and understands, however, that LEED is subject to various and possibly contradictory interpretation. Furthermore, compliance may involve factors beyond the control of the Architect, including but not limited to the Owner's use and operation of the completed Project. The Architect will use reasonable care consistent with the foregoing standard in interpreting and designing in accordance with LEED, but does not warrant or represent that the project will actually achieve LEED certification. The Architect shall not be responsible for the Construction Manager at Risk's failure to adhere to the Contract Documents and any applicable laws, codes, and regulations incorporated therein, nor for any changes to the design made by the Owner without the direct participation and written approval of the Architect. Likewise, the Architect shall not be responsible for any environmental or energy issues arising out of the Owner's use and operation of the completed Project. Furthermore, Architect specifically disclaims any warranty or promise of certain energy savings resulting from the design of the Project.

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The Owner and Architect acknowledge that Project may pursue LEED certification, and in doing so may include new or innovative products, technologies or methods in order to accomplish this objective. The Owner acknowledges that such innovative products, technologies and methods may lack a proven long-term history of successful application and due their innovative nature, it is therefore possible that they may carry with them collateral consequences or may not realize their intended objectives. The Owner agrees that it has weighed the relative risks and rewards, and accepts the potential risks in order to incorporate such innovative products, technologies or methods as necessary to achieve desired level of LEED certification. If Architect is to act as the "registrant" for the project, Owner agrees to execute the Confirmation of Agent's Authority document provided by USGBC.

#### **§ 12.12 MARKETING**

Owner gives Corgan Associates, Inc.'s communications representatives permission to externally promote and market the architectural design and/or services provided by the firm to media outlets, industry organizations and other external target audiences on a national and global scale. Corgan Associates, Inc.'s PR department shall coordinate efforts with the Owner before commencing with communications strategies.

#### **§ 12.13 TAX COMPLIANCE**

To assist in Corgan Associates, Inc.'s tax compliance, upon final acceptance, the Contracting Officer or an Authorized Representative of the Owner of the building agrees to execute any documents related to Section 179D of the Internal Revenue Code. Corgan Associates, Inc. will be responsible for preparing these documents, all accompanying documentation and the contents therein. Corgan Associates, Inc. will be designated the sole Section 179D beneficiary.

#### **§ 12.14 ISRAEL ANTI-BOYCOTT**

Pursuant to Chapter 2270, Title 10 of the Government Code, Architect hereby verifies that it (1) does not boycott Israel; and (2) that it will not boycott Israel during the term of this contract.

#### **§ 12.15 STATEMENT OF JURISDICTION**

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects or interior designers in Texas. The Board may be contacted: P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, Phone: 512-305-9000; or [www.tbae.state.tx.us](http://www.tbae.state.tx.us).

### **ARTICLE 13 SCOPE OF THE AGREEMENT**

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. 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.)*

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User Notes:

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.2 Other documents:

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

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

\_\_\_\_\_  
OWNER *(Signature)*

Mia Price, Board President  
*(Printed name and title)*



\_\_\_\_\_  
ARCHITECT *(Signature)*

Susan Smith, Associate Principal  
*(Printed name, title, and license number, if required)*

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**Certification of Document's Authenticity**  
AIA® Document D401™ – 2003

I, Susan Smith, Associate Principal, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:11:01 ET on 12/07/2018 under Order No. 5904879941 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 changes shown in the attached final document by underscoring added text and striking over deleted text.

  
\_\_\_\_\_  
(Signed)

*ASSOCIATE PRINCIPAL*  
\_\_\_\_\_  
(Title)

*12/7/18*  
\_\_\_\_\_  
(Dated)