

AIA[®] Document B101[®] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the «TWENTY-SIXTH» day of «JANUARY» in the year, TWO THOUSAND TWENTY-SIX
(In words, indicate day, month, and year.)

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

DeSoto Independent School District
A Political Subdivision of the state of Texas and a Legally Constituted
Independent School District School District located in Dallas County, Texas
200 E. Belt Line Rd.
DeSoto, Texas 75115

and the Architect:
(Name, legal status, address, and other information)
WRA Architects
6000 Headquarters Dr., Suite 600
Plano, TX 75024

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

Central Administration and Professional Development (Renovation)
200 E. Belt Line Rd., DeSoto, TX 75115

Katherine Johnson Technology Magnet Academy (Renovation)
1200 Academy Way, DeSoto, TX 75115

Curtistene S. McCowan Middle School (Renovation)
1500 Majestic Meadow Dr., Glenn Heights, TX 75154

Ruby Young Talented and Gifted Academy to STEM Center (Renovation)
707 Young Blvd., DeSoto, TX 75115

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

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

§ 1.1.1 The Owner's program for the Project:

«See Exhibit A»

§ 1.1.2 The Project's physical characteristics:

Central Administration and Professional Development (Renovation)
200 E. Belt Line Rd., DeSoto, TX 75115

Katherine Johnson Technology Magnet Academy (Renovation)
1200 Academy Way, DeSoto, TX 75115

Curtistene S. McCowan Middle School (Renovation)
1500 Majestic Meadow Dr., Glenn Heights, TX 75154

Ruby Young Talented and Gifted Academy to STEM Center (Renovation)
707 Young Blvd., DeSoto, TX 75115

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

«See Exhibit A»

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

- .1 Design phase milestone dates, if any:
 - Pre-Design
 - Scope-to-Budget

- Schematic Design
- Design Development
- Construction Documents
- .2 Construction commencement date: TBD
- .3 Substantial Completion date or dates: TBD
- .4 Other milestone dates:

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

Construction Manager at Risk

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

« N/A »

§ 1.1.6.1 [Paragraph Deleted.]

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

Dr. Usamah Rodgers, DeSoto ISD Superintendent
DeSoto ISD
200 E. Belt Line Rd.
DeSoto, Texas 75115

§ 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:

Program Manager – Construction Manager Agent of Owner
Jason Colley – Sr. Program Director
Procedeo LLC
1450 Hughes Rd. Suite 215
Grapevine, Texas 76051

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

- .1 Geotechnical Engineers
- .2 Civil Engineers
- .3 Structural Engineers
- .4 Surveying Services
- .5 Commissioning Services
- .6 Environmental Consultant Services

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

«See Exhibit E»

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

§ 1.1.11.1 Consultants retained under Basic Services:

«See Exhibit C»

§ 1.1.11.2 Consultants retained under Supplemental Services:

«N/A »

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

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

§ 1.3 The parties may agree upon protocols, in writing, governing the transmission and use of Construction Documents or 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. The Architect shall use the Owner's Project Management software) for management of the Project.

§ 1.3.1 [Paragraph Deleted.]

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect shall also comply with Texas Administrative Code, Title 19 Section 61.1040, pertaining to services and actions required of the Architect. Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties, filed with the Texas Ethics Commission. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees, and agents are eligible to work under federal, state, and local immigration law and regulations.

§ 2.2 The Architect shall use the Architect's best efforts, judgment, and abilities to perform the services with the professional skill and degree of care ordinarily provided by competent architects practicing under the same or similar circumstances and professional license. The Architect shall also act in compliance with all laws, regulations, codes, ordinances, and orders of governmental bodies having jurisdiction, to further the interests of the Owner in accordance with the Owner's requirements and procedures, and to represent that the Project, if built in compliance with the plans and specifications, will comply with all applicable laws, codes, and ordinances. The Architect shall be responsible to the Owner for all costs and damages resulting from: (1) defects in design; (2) non-workability of design details; (3) failure of the Architect to comply with the terms of this Agreement; and (4) errors and omissions of the Architect. Any designs, drawings, or specifications prepared or furnished by Architect that contain errors, conflicts, or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance, use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder. Acceptance of reports or other documents by Owner shall not constitute nor be deemed a release of the responsibility and liability of Architect, its employees, associates, agents or its consultants for the accuracy or competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by Owner for any defect or error in testing, reports, or assessments and work performed by Architect, its employees, agents and consultants. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

§ 2.5 Insurance Requirements

§ 2.5.1 Prior to performing Architect's services under this Agreement, Architects shall procure and maintain in effect during the performance of the Work under the Agreement insurance of the following types and with indemnification limits not less than the amounts indicated:

Worker's Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Architect's employment of workers and anyone for whom Architect shall be liable for Worker's Compensation claims. Worker's Compensation is required, and no "alternative" form of insurance shall be permitted.
Professional Liability: Architect	\$1,000,000.00 per claim and \$2,000,000.00 in the aggregate.
Architect's Consultants	\$1,000,000.00 per claim and \$2,000,000.00 in the aggregate.
Commercial General Liability: Each Occurrence General Aggregate Personal and Advertising Injury	\$1,000,000.00 \$2,000,000.00 \$1,000,000.00 each person
Automobile Liability	\$1,000,000.00 combined single limit
Excess Umbrella Liability	\$5,000,000.00 (minimum, to be determined on a Project-by-Project basis)

§ 2.5.2 The required insurance must be written by a company authorized to do business in Texas at the time the policy is issued and shall be underwritten by a company rated not less than "A" in A.M. Best's Key Rating Guide. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are authorized to issue such policies in the State of Texas.

§ 2.5.3 The Commercial General Liability and Automobile policies issued in the name of Architect shall also name the Owner as additional insured. Evidence of additional insured status will be provided to Owner by providing a copy of the endorsement being utilized to affect the additional and shall be subject to the Owner's reasonable approval.

§ 2.5.4 It is the intent of the parties to this Agreement that all coverage provided herein shall be primary to and shall seek no contribution for all insurance available to Owner, with Owner's insurance being excess, secondary, and non-contributing and shall apply to both ongoing and completed operations. The Commercial General Liability coverage shall be endorsed to provide such primary and non-contributing liability.

§ 2.5.5 Architect shall have its insurance carrier(s) furnish to Owner insurance certificates in a form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, the Owner is named as additional insured. Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of the insurance policies required. If Architect neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Architect's expense.

§ 2.5.6 Insurance provided pursuant to this Section shall be considered a part of the Architect's basic services and shall not be a Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.

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

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

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

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission. The Architect's Basic Services consist of those described in this Article 3 and designated as Basic Services in Article 4 and include usual and customary architectural services, structural, mechanical, plumbing, civil and electrical engineering services; landscape design; architectural interior design; audio-visual, data and telecommunications and technology design and distribution; kitchen and food service equipment design; acoustical engineering and design; site feasibility design; programming of new schools, and/or scope of work verification for renovations of existing schools; security planning services; graphics/way-finding planning services; roofing consultant services unless otherwise approved by Owner; accessibility services; estimating by the Architect's independent estimating consultant; record drawings; professional renderings; design and construction database management; Texas Commission on Environmental Quality compliance services, if appropriate, and internal audit and accounting services necessary for Architect to fulfill Architect's responsibilities under this Agreement, and as necessary to complete the Project, and services and/or deliverables necessary to complete the Architect's Instruments of Service, for a project of the type, size, and nature described in ISD Exhibit A – Project Parameters. The Architect's consultants, known as of the execution of this Agreement, are listed in ISD Exhibit C – Architect's Consultants. Architect shall provide all plans and specifications for all site development necessary for the Project, which shall include locating any building on-site, and developing all plans and specifications for site drainage, parking, landscaping, walkways, irrigation, playgrounds, staging areas, and portable buildings, and accompanying infrastructure, when appropriate. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees, and agents are eligible to work under federal, state, and local immigration laws and regulations.

§ 3.1.1 The Architect shall perform and manage the Architect's services and administer the Project, in accordance with this Agreement as amended for this Project, and with the AIA Document A201-2007 or AIA A201-2017, General Conditions of the Contract for Construction, as amended for this Project, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner and Program Manager through the issuance of progress reports to Owner and Contractor, as more specifically defined hereafter. The Architect shall not be relieved of any obligation to perform in accordance with the standard of care applicable to licensed architects in the State of Texas under the same or similar circumstances, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

- .1** Upon request of the Owner's representative, the Architect shall make presentations to Owner's representatives to review the design of the Project. In addition, the Architect shall make monthly presentations to Owner's Board of Trustees as part of its Basic Services.
- .2** Also, as part of its Basic Service, the Architect shall submit design documents to the Owner at intervals appropriate to the design process as designated in this Agreement, as amended, for purposes of evaluation and approval by the Owner's Board of Trustees, as specified herein. The Architect shall be entitled to rely on approvals received from the Owner's Board of Trustees in the further development of

the design, provided that nothing herein shall relieve Architect of responsibility to liability for design defects, errors, or omissions.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants for purposes of and in accordance with 19 TAC Section 61.1040. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information. Architect shall also promptly respond, in writing, to notices from Owner regarding Owner's discovery of errors, omissions, or inconsistencies, and if requested, shall promptly meet with Owner regarding same. Owner's notice or lack of notice shall not relieve Architect of any responsibility or liability for performance of Architect's contracted services.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and Program Manager for the Owner's approval a schedule for the performance of the Architect's services, including the dates of Architect's design services and the completion of documentation required of the Architect. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion and Final Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. The schedule shall also include commencement of construction, times sufficiently to achieve Owner's proposed dates of Substantial Completion and Final Completion as stated in this Agreement, as amended, and within Owner's budget. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's written approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. If Contractor is a Construction Manager-at-Risk, then the Architect shall assist the Construction Manager-at-Risk in the preparation and periodic update of the Project schedule.

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

§ 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 comply with applicable design requirements imposed by those authorities and entities. Any changes required by governmental authorities, if approved by the Owner, shall be made by the Architect at no additional cost to the Owner.

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

§ 3.1.7 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be made available to the architect.

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

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

§ 3.1.9 For new construction, additions, and remodels/expansions, the Architect shall prepare interior finish selections in the form of a color board (Quantity of 2) and exterior finish selections for incorporation in a site mockup as described in the specifications for approval by the Owner. Additionally, the Architect is to provide interior and exterior renderings as appropriate to describe the design intent.

§ 3.1.10 The Architect is not authorized to approve material changes involving major systems previously approved by Owner or Owner's Representative, such as: Heating, Ventilation, and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage; or mechanical equipment, without Owner's prior written consent.

§ 3.1.11 PRE-DESIGN PHASE SERVICES

§ 3.1.11.1 For renovation and addition projects, the Architect and the Consultants required by the Architect shall visually determine the existing conditions of the Project site and/or facility and compare them to the information provided by the Owner. The existing conditions include those areas affected by the scope of work, which are able to be viewed during a walk-through with the moving of furniture, or by limited investigation of accessible concealed conditions via coordination with and the assistance of the Owner's on-site staff, without destructive testing. This includes, but is not limited to, spaces above lay-in ceilings, crawl spaces, pipe chases, roofs, and mezzanines.

§ 3.1.11.2 [Paragraph Deleted.]

§ 3.1.11.3 For new construction projects, the Architect and the Architect's Consultants shall visually determine the existing conditions of the Project site and compare them to the information provided by the Owner. The existing conditions include those areas affected by the scope of work that are able to be viewed during a site visit. This includes, but is not limited to, evaluations of the surrounding neighborhoods and natural features to be preserved.

§ 3.1.11.4 For all projects, the Architect and the Architect's Consultants shall, at the completion of the site visit, prepare a field report including photographs, analysis and recommendations documenting the process. Refer to

Exhibit B for format.

§ 3.1.11.5 For all projects, the Architect shall conduct a Scope-to-Budget validation process and prepare a report to be known as the Scope-to-Budget document. The Scope-to-Budget shall include but not be limited to, as appropriate: the recommended scope of work, anticipated construction cost, an updated project schedule, anticipated bid alternates, and general layout or other diagrams of new construction. For new construction, the scope Scope-to-Budget will also include the recommended facility program.

§ 3.2 Schematic Design Phase Services.

§ 3.2.1 The Architect shall review and assist the Owner with the provision of the educational program and educational specifications, which shall be approved by Owner's Board of Trustees, per 19 Texas Administrative Code Section 61.1040. Based on the approved Scope-to-Budget, 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 as part of its Basic Service. Architect shall include all components of Owner's program in the Project, unless a specific written agreement to delete a component is received from Owner.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, Budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project and to ascertain that they are consistent with the requirements of the Project. The Architect shall notify the Owner and Program Manager in writing of: (1) any inconsistencies discovered in the information; and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present in writing its preliminary evaluation to the Owner and Program Manager and shall discuss with the Owner alternative approaches to the design and construction of the Project. The Architect shall reach a written understanding with the Owner regarding the requirements of the Project.

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

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

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule, and Budget for the Cost of the Work.

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

§ 3.2.6 When the Project requirements have been sufficiently identified, including Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities, the Architect, and if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3. This estimate may be based on current area, volume, or similar conceptual estimating techniques. If any estimate varies from the Budget and the Owner elects not to approve revising the Budget, then the Architect with the assistance of the Owner's Representative shall make scope adjustment recommendations at no additional cost to the Owner.

§ 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, shall refine the Project design, and shall consist of drawings and other documents including plans, typical furniture layouts, 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, technology systems, and other appropriate elements outlined in this Agreement. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 If any estimate varies from the Budget and the Owner elects not to approve revising the Budget, then the Architect with the assistance of the Owner, the Program Manager, or the Owner's Representative shall make scope adjustment recommendations at no additional cost to the Owner. As the design process progresses through the end of the preparation of the Construction Documents, the Architect, and if applicable, the Construction Manager at Risk, shall prepare a preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustment to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. The Architect shall cooperate with the Owner, and if applicable, the Construction Manager at Risk, in developing and designing the Project to satisfy Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs, and usable life of the equipment and facilities. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval as provided in Section 2.3.3, and, in doing so, shall notify Owner in writing of the actions taken to bring the Project into Owner's budget. If Architect is unable to redesign the Project to meet Owner's budgetary programmatic and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget, and the Owner shall cooperate with the Architect in making such adjustments, with Owner having the right to approve or reject such recommendations.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, redesign 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. "Construction Documents" means: all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants which shall set forth, in detail, the requirements of construction of the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning Owner's budgetary constraints, programmatic needs, and expectations as to quality, functionality of systems, maintenance costs, and usable life of equipment and facilities. Said Construction Documents shall reflect the Owner's educational program and educational specifications, the State educational adequacy standard in 19 TAC Section 61.1040 and the standards set forth in Section 3.1.4 of this Agreement. The Architect shall provide Construction Documents which are sufficient for Owner to complete construction of the Project, are free from material defects or omissions, and comply with all applicable laws, ordinances, codes, rules, and regulations, as of the date of issuance of Construction Documents. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples, and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. Owner and Owner's authorized representatives shall be given the opportunity to review all Construction Documents prior to release of the Construction Documents for bidding, proposal, or negotiation purposes. Architect's bid specifications and any subsequent contract shall not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization. Texas Government Code Section 2269.054. Architect shall also add the following language in any document issued to solicit bids or competitive sealed proposals on the Project:

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

§ 3.4.1.1 Errors and Omissions.

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

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

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

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

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents, including without limitation, school facility standards found in 19 Texas Administrative Code, Subchapter CC, Section 61.1040, and Texas Health and Safety Code Section 341.065. Architect shall certify that he/she has reviewed the standards contained in 19 Texas Administrative Code Section 61.1040 and used the best professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the construction documents. Architect shall also certify that the construction documents conform to the provision of 19 Texas Administrative Code Section 61.1040, except as indicated on the certification. Architect's signature and seal on the construction documents shall certify compliance. Architect shall perform a building code search under applicable regulations that may influence the Project and shall certify that the design has been researched before it is final, as required by 19 Texas Administrative Code Section 61.1040.

§ 3.4.2.1 Architect shall also certify that the facilities have been designed according to the provisions of 19 Texas Administrative Code Section 61.1040, based on the educational program, long-range school facility plan, educational specifications, building code specifications, and all document changes to the Construction Documents provided by The District, as required by 19 Texas Administrative Code, Section 61.1040. Architect shall complete the Texas Education Agency's (TEA) Certification of Project Compliance, available on the TEA website. In executing the certifications required under the provisions of this Section Architect shall exercise his/her reasonable professional judgment and care consistent with the practice of architecture in the State of Texas and applicable law. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, federal regulations interpreting the Americans with Disabilities Act, Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the Texas Department of Licensing and Regulation, and all applicable requirements or standards of the American National Standards Institute. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards that become effective prior to the date of Substantial Completion.

§ 3.4.3 [Paragraph Deleted.]

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work. If the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, then the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner and Program Manager for Owner's approval as provided herein, and, in doing so, shall notify Owner, in writing, of the actions taken to bring the Project into Owner's budget. If Architect

is unable to redesign the Project to meet Owner's budgetary, programmatic, and quality needs, then the Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget. Owner shall consider Architect's recommendations but shall decide, in its discretion, what adjustments to make.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner and Program Manager, advise the Owner of any adjustments to any estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

Following the Owner's approval of the Construction Documents, the Architect at the request of the Owner, will attend Bid Previews and other functions to increase bidder interest as a Basic Service.

§ 3.5.2 Procurement

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

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

- .1 [Paragraph Deleted.]
- .2 organizing and conducting a pre-bid conference for prospective bidders; and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Procurement Documents to the prospective bidders in the form of addenda.
- .4 [Paragraph Deleted.]

§ 3.5.2.3 If the bidding documents permit substitutions; the Architect shall review substitution requests as part of Basic Services when the substitution is considered to bring the project within budget. If the substitution is for an alternative solution not related to value engineering, and upon District approval, it may be considered an Additional Service.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents. The Contract Documents are enumerated in the Agreement, as amended, between the Owner and Architect (hereinafter the Agreement) and consist of the Agreement as modified by the Owner, Conditions of the Contract, as amended, (General, Supplementary, and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modification issued after execution of the Contract.

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

- .1 [Paragraph Deleted.]
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 if requested by Owner, the Architect shall organize and participate in selection interviews with prospective contractors and/or participate in negotiations with ranked contractors and prepare any summary reports requested by the Owner related to the results of such processes.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as a Basic Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors and the Owner. The Architect shall review, in conjunction with Owner, the Owner's representative, if appropriate, and the Construction Manager at Risk or Contractor, alternative

approaches to design and construction of the Project in order to preserve the Scope of the Work, the Scope of the Project, and the quality of the construction within Owner's overall budget for the Project.

§ 3.5.4 In the event that the project exceeds the Budget the Architect, without charge to the Owner, and if so, directed by the Owner, shall make such revisions to the drawings and specifications as may be necessary to bring the cost of the project within the Budget. The Architect shall make these revisions to the drawings and specifications as expeditiously as possible.

§ 3.5.5 In the event that the project is below the Budget the Architect, without charge to the Owner, and if so, directed by the Owner, shall make such revisions to the drawings and specifications as may be necessary to bring the cost of the project up to the Budget. The Architect shall make these revisions to the drawings and specifications as expeditiously as possible. The Owner reserves the right to award a construction contract that is below the Budget, if such award is determined by the Owner to be in the Owner's best interest, rather than requiring the Architect to revise the drawings and specifications.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner, a copy of which has been provided to the Architect concurrent with the execution of this Agreement. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. While on Owner's property and throughout Architect's services under this Agreement, the Architect shall comply with all policies, regulations, and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and prohibitions against fraud and financial impropriety.

§ 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, be in charge of, or have the responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Any services by Architect made necessary due to Architect's failure to discover a construction defect or nonconforming work shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

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

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

§ 3.6.1.5 The Architect shall attend and participate in regularly scheduled Owner Architect Contractor meetings during the construction period. Meeting attendance and site visits in this paragraph are within Basic Services.

§ 3.6.2 Evaluations of the Work

, 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, 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. On the basis of the site visits, the Architect shall keep the Owner and Program Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor,

and (3) defects and deficiencies observed in the Work. Architect shall guard Owner against defects and deficiencies in the Work and shall promptly notify Owner and Contractor orally regarding the defect or nonconforming Work, which notice shall be followed by notice in writing of defects and nonconforming Work noted, and corrective actions taken or recommended. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences, or procedures, or safety precautions and programs in connection the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Any services by Architect made necessary due to Architect's failure to discover a construction defect or nonconforming work shall be at no additional cost to Owner. Any services by Architect made necessary by Architect's design errors or omissions shall be at no additional cost to Owner.

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

§ 3.6.2.3 The Architect shall interpret and make recommendations to Owner and Program Manager regarding matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within fifteen (15) days of receipt of request.

§ 3.6.2.4 Interpretations, recommendations, and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations, recommendations, and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

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

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall observe the progress of the Work, critically evaluate, review, and certify the amounts due the Contractor and shall sign and issue Certificates of Payment in such amounts, if such amounts are valid, correct, and deemed due and owing, in Architect's professional opinion, within seven (7) days of receipt of Contractor's application for payment. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Construction Documents and the Contract Documents, and critically evaluated and certified that the amounts requested in the Application for Payment are valid and correct, in the Architect's professional opinion. If Architect disputes the Contractor's payment application in whole or in part, Architect shall provide in writing to Owner and Contractor a detailed statement of the Architect's reason for withholding certification in accordance with Texas Government Code §2251.042(a) and as provided in the AIA A201 for the project. The foregoing representations are subject to: (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; (2) results of subsequent tests and inspections; (3) correction of minor deviations from the Contract Documents prior to completion; and (4) specific qualifications expressed by the Architect.

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

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

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

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

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, for the purpose of checking for general conformance with the Contract Documents. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, within ten (10) calendar days from the submittal date. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then Architect shall require Contractor to come into compliance. The Architect shall promptly report, in writing, to the Owner, Program Manager and Contractor any errors, inconsistencies, and omissions discovered by the Architect in the Shop Drawings, Product Data, and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials, or mechanical equipment without Owner's prior written consent.

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with the 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, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents as Basic Services. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness while allowing sufficient time, and in no case more than fifteen (15) calendar days from the submittal date. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information as Basic Services.

§ 3.6.4.5 The Architect shall maintain 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

§ 4.6.5.1 The Architect shall prepare Change Orders, Construction Change Directives, and any other documents as required, with supporting documentation and data if deemed necessary by the Owner, as Basic Services compensated under Section 11.1, for the Owner's approval and execution in accordance with the Contract Documents. The Architect may order minor changes in the Work (not involving an adjustment in the Contract Sum,

an expenditure of contingency funds, or an extension of the Contract Time) which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce, and distribute Drawings and Specifications to describe Work to be added, deleted, or modified as Basic Services compensated under Section 11.1.

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

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

§ 3.6.5.4 The Architect shall accept requests by the Owner, and shall review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Document or the Contract Documents, then the Architect may issue an order for a minor change in the Work, with prior written notice to the Owner, or recommend to the Owner that the requested change be denied.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion;
- .2 issue Certificates of Substantial Completion and of Final Completion, using Owner's forms;
- .3 receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties, and related documents required by the Contract Documents and assembled by the Contractor;
- .4 issue a final Certificate for Payment based upon a final inspection indicating that the Work complies with the requirements of the Contract Documents; and
- .5 For any Work that exceeds \$50,000, Architect shall schedule and ensure completion of inspections with the Texas Department of Licensing and Regulation as required by Texas Government Code Section 469.105.

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

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid to 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 Prior to the expiration of six (6) months from the date of Substantial Completion, prior to the expiration of ten (10) months from the date of Final Completion, and upon request of the Owner at any other time within one (1) year of Final Completion, the Architect shall, without additional compensation, meet with the Owner and Program Manager to review the facility operations and performance, to identify defects, warranty issues, and proposed corrections; and to make appropriate written recommendations to the Owner.

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

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

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

ARTICLE 4 BASIC, SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are Basic Services or Supplemental Services as indicated. The Architect shall provide the listed 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.

Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect – Basic Services
§ 4.1.1.2 Multiple preliminary designs	Architect – Basic Services
§ 4.1.1.3 Measured drawings	Architect – Basic Services
§ 4.1.1.4 Existing facilities surveys / Field Verification	Architect – Basic Services
§ 4.1.1.5 Site evaluation and planning	Architect – Basic Services
§ 4.1.1.6 Building Information Model management responsibilities	Architect – Basic Services
§ 4.1.1.7 Development of Building Information Models for post-construction use	Not Provided
§ 4.1.1.8.1 Civil engineering – On-Site	Architect – Basic Services
§ 4.1.1.8.2 Civil engineering – Off-Site	Architect – Supplemental Services
§ 4.1.1.9 Landscape design	Architect – Basic Services
§ 4.1.1.10 Architectural interior design	Architect – Basic Services
§ 4.1.1.11 Value analysis	Architect – Basic Services
§ 4.1.1.12 Detailed cost estimating	Architect – Basic Services
§ 4.1.1.13 On-site project representation (weekly)	Architect – Basic Services
§ 4.1.1.14 Conformed documents for construction	Architect – Basic Services
§ 4.1.1.15 As-designed record drawings	Architect – Basic Services
§ 4.1.1.16 As-constructed record drawings	Architect – Basic Services
§ 4.1.1.17 Post-occupancy evaluation	Architect – Refer to Section 3.6.6.5
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect – Basic Services
§ 4.1.1.21 Telecommunications/data design	Architect – Basic Services

§ 4.1.1.22 Security evaluation and planning	Not Provided
§ 4.1.1.23 Commissioning	Owner Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Architect – Supplemental Services
§ 4.1.1.26 Multiple bid packages	Architect – Basic Services
§ 4.1.1.27 Historic preservation	Architect – Basic Services
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner Provided
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided
§ 4.1.1.31 Surveys	Architect – Supplemental Services
§ 4.1.1.32 Geotechnical Engineering	Owner Provided
§ 4.1.1.33 Kitchen Design	Architect – Basic Services
§ 4.1.1.34 Theatrical Design	Architect – Supplemental Services
§ 4.1.1.35 Roofing Consultant	Architect – Basic Services
§ 4.1.1.36 Environmental Consultant	Owner Provided
§ 4.1.1.37 Platting	Architect – Supplemental Services
§ 4.1.1.38 Renderings	Architect – Basic Services
§ 4.1.1.39.1 Structural Engineer – On-Site	Architect – Basic Services
§ 4.1.1.39.2 Structural Engineer – Off-Site	Architect- Supplemental Services

§ 4.1.2 Description of 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.

«N/A »

§ 4.1.2.1.1 The Architect shall retain the services of a recognized, independent, and specialized company, acceptable to the Owner, to prepare construction cost estimates in a form acceptable to the Owner and the Owner's Representative following the Construction Specifications Institute (CSI) format. The Architect's responsibilities for cost estimating are established in Sections 3.1.13 and 3.2 through 3.4.

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

«N/A »

§ 4.2 Architect's Additional Services

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

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

- 1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity,

- or the Owner's schedule.
- .2 [Paragraph Deleted.]
 - .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws, or regulations that are either: (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit; or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care.;
 - .4 [Paragraph Deleted.]
 - .5 [Paragraph Deleted.]
 - .6 [Paragraph Deleted.]
 - .7 [Paragraph Deleted.]
 - .8 [Paragraph Deleted.]
 - .9 [Paragraph Deleted.]
 - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.
 - .11 [Paragraph Deleted.]

§ 4.2.2 [Paragraph Deleted.]

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

- .1 «Five» («5») reviews of each Shop Drawing, Product Data item, sample, and similar submittals of the Contractor.
- .2 [Paragraph Deleted.]
- .3 «Five» («5») 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 «Five» («5») inspections for any portion of the Work to determine final completion.
- .5 The Architect shall visit the site and observe the Work at appropriate stages of construction no less than weekly. The Architect shall report the results of all observations to the Owner in writing. Any and all observed deficiencies shall immediately be reported to the Owner and Contractor in writing.

§ 4.2.4 [Paragraph Deleted.]

§ 4.2.5 [Paragraph Deleted.]

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, as required by 19 Texas Administrative Code Section 61.1040. The Architect shall review the program and specifications furnished by Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with Owner. Architect shall include all components of Owner's program in the Project, unless specific written agreement to delete a component is received from Owner.

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

§ 5.3 The Owner shall 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's Board of Trustees is the only representative of Owner, an independent school district, having the power to enter into or amend a contract to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's Board of Trustees may designate one or more representatives with authority to sign documents after Board approval and/or to advise and consult with Architect for day-to-day operations under the Agreement.

The Owner's Designated Representative is: PROCEDEO GROUP

§ 5.4 Upon written request of the Architect, 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 [Paragraph Deleted.]

§ 5.7 [Paragraph Deleted.]

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

§ 5.9 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections, and reports required by law or the Contract Documents to be furnished by Owner. To the extent that tests, inspections, and reports are not required by law or the Contract Documents to be furnished by Owner, but are deemed necessary by the Architect or Owner, then they shall be furnished by Architect, unless Architect receives Owner's written permission to charge Owner for the services or Owner agrees to separately contract for the services.

§ 5.10 Unless otherwise provided in this Agreement, the Owner may, in its sole discretion, furnish legal and accounting services, including auditing services, which may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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

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

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

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

§ 5.15 [Paragraph Deleted.]

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of the Architect's compensation, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and constructed by the Owner and shall include contractors' general conditions costs, overhead, and profit. 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 or the Architect's consultants; the costs of the land, rights-of-way, financing, 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, furnishings, and equipment designed by the Architect, at the request of the Owner.

§ 6.2 The Owner's Budget for the Cost of the Work is provided in Initial Information and may be adjusted throughout the Project as required under Sections 5.2, 6.4, and 6.5. Evaluations of the Owner's Budget for the Cost of the Work, detailed cost estimates of the Cost of the Work, and updated estimates of the Cost of the Work, shall be prepared by the Architect's independent cost estimating company described in Section 4.1.2.1. If the Architect's design is determined to exceed Owner's budget, then Architect agrees to redesign the Project, at Architect's expense and as part of Architect's Basic Services, to meet Owner's budget.

§ 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 and Program Manager 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 Program Manager 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. Estimates of the Cost of Work shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's Budget.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 120 days after the Architect submits the Construction Documents to the Owner, the Owner's Budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, 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 elements of the Project. Architect shall present the redesign to Owner and Program Manager 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 Architect shall make appropriate written recommendations to the Owner to adjust the Project's size, quality, or budget. Owner shall consider Architect's recommendation, but shall decide, in its discretion, what adjustments to make.

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

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

- .2 authorize rebidding or renegotiating of the Project within a reasonable time, and/or authorize a different construction procurement method, consistent with State law;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work;
- .5 implement any other mutually acceptable alternative; or
- .6 direct the Architect to redesign the Project to meet the Owner's budgetary, programmatic, and quality needs.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect without additional compensation shall modify the Construction Documents as necessary to comply with the Owner's Budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the Budget as adjusted under Section 6.6.1 in accordance with Section 3.5.4 and 3.5.5.

§ 6.8 If, after commencement of the Work, the Cost of the Work is exceeded due to the negligent errors or omissions of the Architect, then the Architect shall bear financial responsibility to Owner for the increase in the Cost of the Work, except for all materials, labor, and overhead related to the betterment obtained by the Owner. By way of example, the Architect shall bear responsibility for the difference between what would have been the original cost of that portion of the Work, but for Architect's negligent error or omission, and the actual cost of that portion of the Work performed to remedy the negligent error or omission. Further, Architect shall not be entitled to Architect's fee for the excess Cost of the Work. Unless Architect disputes the amounts due pursuant to the alternative dispute resolution process provided in Article 8 of this Agreement, as amended, Owner shall be entitled to withhold from sums due to Architect the amounts detailed above.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project.

§ 7.3.1 The payment of fees for professional services performed under this Agreement shall constitute full payment for a one-time, perpetual license fee for those uses of the Architect's Instruments of Service, for all documents produced pursuant to this Agreement and in existence as of the date of any such payment.

§ 7.3.2 The Owner shall have the right to use the Architect's Instruments of Service and to make derivative Works thereof for the purpose of completing the project in the event Architect is terminated for cause pursuant to this Agreement, without regard to whether such termination shall subsequently be adjudicated to have been wrongful, or whether such termination is for the convenience of the Owner. In the event the Owner shall make derivative works of the Architect's Instruments of Service pursuant to this Section, the Architect shall bear no liability for errors or omissions appearing in such derivative works.

§ 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 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 this Agreement and applicable federal or state law.

§ 8.1.1.1 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.

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

§ 8.1.3 The Architect waives consequential or special damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages due to Owner's termination of this Agreement. In litigation arising under this Agreement, the types and amounts of damages recoverable shall be subject to Subchapter I of Texas Local Government Code Chapter 271.

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

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

§ 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 non-binding mediation as a condition precedent to the initiation of litigation, unless the filing deadlines under applicable statutes of limitation and/or repose would otherwise expire. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the parties agree to submit the matter to mediation as soon as reasonably possible. Claims for injunctive relief shall not be subject to this Section.

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

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

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

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

☐ [« »] Arbitration pursuant to Section 8.3 of this Agreement

☒ [X] Litigation in a court of competent jurisdiction

☐ [« »] Other:

§ 8.3 Arbitration [Paragraph Deleted.]

§ 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 for undisputed amounts in accordance with this Agreement through no fault of the Architect, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement if not cured by the Owner within fourteen (14) days following notice of any past-due payment. 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 the Texas Government Code Section 2251.051 *et seq.*

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

§ 9.3 If the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect may terminate this Agreement upon not less than fourteen (14) days' written notice. Should the Architect elect to so terminate this Agreement, the Architect shall be compensated for services actually performed and expenses actually incurred prior to notice of such termination.

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated only for services actually performed and reimbursable expenses actually incurred prior to termination.

§ 9.7 [Paragraph Deleted.]

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Texas. Mandatory and exclusive venue for any lawsuit arising under this contract shall be in the state district court of Dallas County. No provision of this Agreement is a waiver of any immunity or defense. No provision of this Agreement is a consent to suit.

§ 10.2 Terms in this Agreement shall have the same meaning as those in the AIA Document A201-2017, General Conditions of the Contract for Construction, as modified. As a material consideration of the making of this Agreement, the Modifications to this Agreement shall not be construed against the maker of said Modifications.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other. Architect shall not assign this Agreement without prior written approval of Owner.

§ 10.4 If the Owner requests the Architect to execute certificates, the language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of execution. The Architect shall execute certificates or consents consistent with the Architect's standard of care pursuant to this Agreement.

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

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

§ 10.7 With prior written consent of the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials but may not photograph students without prior written parental consent. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement. Owner herein designates the following as confidential information: security measures; pending real estate purchases, exchange, lease, or value; any information pertaining to litigation; student likenesses and student record information; employee information; and any other information deemed confidential by law. Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, or present the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants' similar written agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. Owner herein designates the following as confidential information: security measures; security access codes; pending real estate purchases, exchange, lease, or value; and information pertaining to litigation; student likenesses and student records information; employee information; and any other information deemed confidential by law. As to Owner, the parties acknowledge that, as a public entity in the State of Texas, Owner is subject to and, must comply with, the provisions of the Texas Public Information Act, Texas Government Code Chapter 552 *et seq.*, and the Texas Open Meetings Act, Texas Government Code, Chapter 551 *et seq.*

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

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

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

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

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

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

§ 10.14 [Paragraph Deleted.]

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

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

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

§ 10.18 Architect represents and warrants that pursuant to Texas Government Code § 2271.002 and to the extent that Architect is not a sole proprietorship, has greater than ten (10) employees, and this Agreement is for an excess of \$100,000.00, that Architect will not boycott Israel, and agrees not to boycott Israel during the term of the Agreement.

§ 10.19 If Architect is a company with ten (10) or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Architect represents and warrants that, pursuant to Texas Government Code Chapter 2274, it does not and will not boycott energy companies now or at any time during the term of the Agreement.

§ 10.20 If Architect is a company with ten (10) or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Architect represents and warrants that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

§ 10.21 Architect represents and warrants that pursuant to Texas Government Code § 2252.152, it is not and/or does not support any of the listed terrorist organizations identified on a list published and maintained by the Texas Comptroller of Public Accounts at the time of signing and agrees not to support any of the listed terrorist organizations at any time during the Agreement's term. If Architect misrepresents its inclusion on the list, then such omissions or misrepresentation shall void this Agreement.

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

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

.2 The Architect must:

- .1 Preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the District for the duration of the Contract;
- .2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Architect upon request of the District; and,
- .3 On completion of the Contract, either:
 - .1 Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the Architect; or
 - .2 Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.

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

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

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

§ 10.23 The parties agree that no architect, engineer, mechanic, contractor, materialman, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever, in any manner, have claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas, or upon any funds of Owner.

§ 10.24 It is understood and agreed that the relationship of Architect to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to 1) make Architect the servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Architect. Any direction or instruction by Owner or any of its authorized representatives in respect to the Architect's services shall relate to the results the Owner desires to obtain from the Architect and shall in no way affect the Architect's independent contractor status.

§ 10.25 CRIMINAL HISTORY RECORD CHECKS

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

information.

§ 10.25.2 Architect will not assign any “covered employee” with a “disqualifying criminal history,” as those terms are defined below, to work on the Project. If Architect receives information that a covered employee has a reported disqualifying criminal history, then Architect will immediately remove the covered employee from the Project and notify the Owner in writing within three (3) business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee’s criminal history record information, then Architect agrees to discontinue using that covered employee to provide services on Owner’s Project. If Architect has taken precautions or imposed conditions to ensure that the employees of Architect and any Architect consultant will not become covered employees, Architect will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.25.3 For the purposes of this Section, “covered employees” means employees, agents, or subcontractors of Architect or any of Architect’s consultants who has or will have continuing duties related to the services to be performed on Owner’s Project and has or will have direct contact with Owner’s students. The Owner will decide what constitutes direct contact with Owner’s students. “Disqualifying criminal history” means any conviction or other criminal history information designed by the Owner, or one of the following offenses; if at the time of the offense, the victim was under 18 years of age or enrolled in a public school; a felony offense under Texas Penal Code Title 5 Offense Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

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

§ 10.25.5 On request of Owner, Architect shall provide all necessary identifying information to allow Owner to obtain criminal history record information for covered employees of the Architect and all subcontracting entities, Architect shall update this list on Owner’s request.

§ 10.25.6 The Contractor certifies that it is not listed as ineligible to receive a State contract or investment and certifies compliance with Chapter 808, 809, 2155.04, 2252, 2270, 2271, 2274, 2275, or 2276, Texas Government Code.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect for all undisputed amounts, as set forth below. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured in accordance with Texas Government Code Section 2251.051(c) and (d). Owner shall further have the right to withhold payments as specified in Section 6.8 and 11.10.2.2 of this Agreement.

- .1** Stipulated Sum
«N/A »
- .2** Percentage Basis

The Estimated Construction Cost of Central Administration and Professional Development (Renovation) Project is «\$2,477,049.00». The Fee for Basic Services is «9.15»% of the Cost of Work which equals to «\$226,649.98».

The Estimated Construction Cost of Katherine Johnson Technology Magnet Academy (Renovation) Project is «\$606,605.00». The Fee for Basic Services is «10.15»% of the Cost of Work which equals to «\$61,570.41».

The Estimated Construction Cost of Curtistene S. McCowan Middle School (Renovation) Project is «\$4,450,532.00». The Fee for Basic Services is «8.65»% of the Cost of Work which equals to «\$384,971.02».

The Estimated Construction Cost of Ruby Young Talented and Gifted Academy to STEM Center (Renovation) Project is «\$572,118.00». The Fee for Basic Services is «10.15»% of the Cost of Work which equals to «\$58,069.98».

The Fee for Basic Services shall be the percent of the Cost of Work set out below:

Table 12.1

Cost of Work	New Construction	Additions and/or Renovations
\$0 - \$249,999	8.75%	11.15%
\$250,000-\$499,999	8.25%	10.65%
\$500,000 - \$999,999	7.75%	10.15%
\$1,000,000 - \$1,999,999	7.25%	9.65%
\$2,000,000 - \$3,999,999	6.75%	9.15%
\$4,000,000 - \$5,999,999	6.50%	8.65%
\$6,000,000 - \$11,999,999	6.25%	8.15%
\$12,000,000 - \$23,999,999	6.00%	7.90%
Over \$24,000,000	5.75%	7.65%

.3 Other
«N/A »

§ 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:

«Pursuant to Section 11.7»

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

« As agreed between the parties in writing, executed prior to the Architect beginning performance of the Additional Services. »

§ 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 and one-tenth» percent («1.10»%), or as follows:

«NA »

§ 11.5 Progress payments for completion of the Architect's Services shall be made according to the percentages provided in Table 11.5.

Table 11.5

Project Phase	New Construction	Additions and/or Renovations
Pre-Design	10%	15%
Schematic Design	10%	10%
Design Development	15%	10%
50% Construction Documents	5%	5%

100% Construction Documents	20%	20%
Bidding or Negotiation	5%	5%
Construction Phase Services	30%	30%
Post Construction	5%	5%
Total	100%	100%

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be fixed for the term of this Agreement.

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

«See Exhibit E. »

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 [Paragraph Deleted.]
- .2 [Paragraph Deleted.]
- .3 Permitting and other fees required by authorities having jurisdiction over the Project.
- .4 [Paragraph Deleted.]
- .5 Postage, handling, and delivery.
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner.
- .7 [Paragraph Deleted.]
- .8 [Paragraph Deleted.]
- .9 [Paragraph Deleted.]
- .10 [Paragraph Deleted.]
- .11 [Paragraph Deleted.]
- .12 [Paragraph Deleted.]

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus One and one-tenth percent (1.10%) of the expenses incurred.

§ 11.9 Compensation For Use Of Architect's Instruments Of Service. The parties agree that Architect's compensation for Basic Services include all licensing fees for Owner's use of the Construction Documents, including use after termination of this Agreement

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

§ 11.10.1.2 [Paragraph Deleted.]

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made in accordance with table 11.1 for compensation structure. Payments for undisputed amounts are due and payable upon presentation of the Architect's undisputed invoice. Delinquent payments are subject to the Texas Prompt Pay Act, TEXAS GOVERNMENT CODE, Chapter 2251.

§ 11.10.2.2 The Owner may withhold payments, after appropriate notice as to the reason for the withholding to the Architect for the purposes of reimbursing Owner for any damages caused by the Architect, for changes in the Cost of the Work which results in the Architect's compensation being reduced, for Architect's failure to comply with the provisions of any part of this Agreement, if a claim has been filed against Architect, or to secure performance of

Architect's services and obligations under any part of this Agreement.

§ 11.10.2.3 The Architect shall not submit an invoice for 100% completion of a Project phase, nor proceed with a subsequent Project phase, without written approval from the Owner.

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

§ 11.10.2.5 The Owner shall make final payment for services upon receipt of the Architect's undisputed final invoice. Acceptance of the Owner's final payment shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which the Architect, its consultants, or successors have or may have against the Owner under the provisions of the Agreement, except those previously made in writing and identified by the Architect as unsettled at the time of the final request for payment.

§ 11.10.2.6 Architect shall reasonably cooperate with Owner, at no additional cost to Owner, in connection with a legal proceeding against Owner that relates to the Project.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

(Include other terms and conditions applicable to this Agreement.)

§12.1 INDEMNIFICATION. Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subcontractors, for Construction Documents which are sufficient for Owner to complete the construction of the Project, and are free from material defects or omissions, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any defect in the Construction Documents prepared by Architect, its agents, employees, subcontractors, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ARCHITECT SHALL AND DOES AGREE TO INDEMNIFY, PROTECT AND HOLD HARMLESS OWNER, OWNER'S, ITS BOARD OF TRUSTEES, OFFICIALS, TRUSTEES, EMPLOYEES, AGENTS, REPRESENTATIVES, ALL IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES, OWNER'S PROJECT MANAGER, AND EACH OF THE AFOREMENTIONED PARTIES' RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, TRUSTEES, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FOR, FROM AND AGAINST ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, LIENS, FINES, PENALTIES, COSTS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING COURT COSTS, REASONABLE ATTORNEY'S AND EXPERT FEES AND EXPENSES, COURT COSTS, AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER BY ARCHITECT OR ANYONE EMPLOYED BY ARCHITECT, OR ANYONE OVER WHICH ARCHITECT CONTROLS OR EXERCISE CONTROLS E. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS.**

§12.1.1 THE PROVISIONS OF ARTICLE 12 IN ITS ENTIRETY SHALL SURVIVE THE COMPLETION, TERMINATION, OR EXPIRATION OF THIS CONTRACT.

§12.1.2 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Paragraph 12.1, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

§12.1.3 It is understood and agreed that Subparagraph 12.1 above is subject to, and expressly limited by, the terms and conditions of Tex. Civ. Prac. & Rem. Code Ann. Sec. 130.001 to 130.005, as amended.

§ 12.2 COMMUNICATIONS. All communication and documentation from the Architect to the Owner must flow through the Owner's Representative, except as specifically stated herein, or when the Architect has reasonable belief that an issue of material, design, construction, safety, or similar significance has not been adequately conveyed to the Owner by the Owner's Representative. The Owner's Representative and the Architect will each have a single point-of-contact. Each point-of-contact may designate secondary points of contact for specific issues to expedite the flow of technical information. Communications by the Architect or its consultants outside this established channel are not acceptable, and individuals who are identified as repeatedly bypassing the Owner's Representative shall be removed from the Project upon the request of the Owner.

§ 12.3 Paragraph Deleted.

§ 12.4 Architect shall keep all accounting and construction records on the Project for a period of at least twelve (12) years after Final Completion of the Project, and thereafter shall offer the records to the Owner, in writing, in order for Owner to comply with its records retention requirements, per the Texas Government Code Section 441.158 *et seq.* and the Texas Library and Archives Commission's Local Schedule GR (Government Records). In the alternative, Architect may provide such records to Owner for retention at any time if Owner agrees, in writing, to accept such records in lieu of Architect's retention under this Section.

§ 12.5 COMPLAINTS The Texas Board of Architectural Examiner has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas under the Architects Registration Law. Texas Occupation Code Chapter 1051. The Texas Board of Architectural Examiners can be reached at P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, by phone at (512) 305-9000, by fax at (512) 305-8900, or on the web at <http://tbac.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
- .3 Exhibits:
 - ISD EXHIBIT A – PROJECT PARAMETERS
 - ISD EXHIBIT B – A/E ORIENTATION PACKAGE
 - ISD EXHIBIT C – ARCHITECT'S CONSULTANTS
 - ISD EXHIBIT D – SCHEDULE
 - ISD EXHIBIT E – ARCHITECT HOURLY BILLING
 - ISD EXHIBIT F – COMPENSATION FOR SPECIAL PROJECTS
 - ISD EXHIBIT G – NOT USED
 - ISD EXHIBIT H – INSURANCE CERTIFICATES
- .4 » Other documents:
 - RFQ Architectural and Engineering Professional Services for the Program and Projects funded as a result of the Bond Election
 - Certificated of Interested Parties Form 1295
 - DeSoto ISD Required Forms

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

OWNER *(Signature)*

BY: Dr. Usamah Rodgers, Superintendent
(Printed name and title)



ARCHITECT *(Signature)*

Seth Stevens, AIA, TX#23814
(Printed name, title, and license number if required)