



# AIA<sup>®</sup> Document B121<sup>™</sup> – 2018

## **Standard Form of Master Agreement Between Owner and Architect for Services provided under multiple Service Orders**

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year TWO THOUSAND TWENTY-FIVE (2025)  
(In words, indicate day, month, and year.)

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

### **DRAFT FOR PROCUREMENT RFQ ONLY – NOT FOR EXECUTION**

Flour Bluff Independent School District, a political subdivision and public school district of the State of Texas  
2505 Waldron Road  
Corpus Christi, Texas 78418  
Phone: (361) 694-9205

and the Architect: *\*Architect shall mean Engineer herein.*  
(Name, legal status, address, and other information)

### **DRAFT FOR PROCUREMENT RFQ ONLY – NOT FOR EXECUTION**

Firm Legal Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

The Owner and Architect agree as follows:

### **ADDITIONS AND DELETIONS:**

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

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

This document does not contain a description of the Architect's scope of Services and related terms. This document is intended to be used in conjunction with AIA Document B221<sup>™</sup>–2018, Service Order for use with Master Agreement Between Owner and Architect

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**Note:** Any reference herein, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "TM" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

### ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

**§ 1.1** This Master Agreement shall be effective for one year after the date first written above ("Date of this Master Agreement") and shall be subject to renewal and extension by the Owner each year thereafter, for a period of two (2) additional one-year terms, unless sooner terminated in accordance with the terms of this Master Agreement. Such renewals may be exercised by the Owner's Representative to the extent such duty is delegated by the Board of Trustees.

**§ 1.2** This Master Agreement shall apply to all Service Orders agreed to by the Parties within the term of this Master Agreement until completion of the Service Order. In the event of a conflict between terms and conditions of this Master Agreement and a Service Order, the terms of the Service Order shall take precedence for the services provided pursuant to the Service Order. An agreed upon Service Order together with this Master Agreement form a Service Agreement. A Service Agreement represents the entire and integrated agreement between the parties, and supersedes prior negotiations, representations, or agreements, either written or oral. A Service Agreement may be amended or modified only by a Modification.

§ 1.3 The Initial Term of this Master Agreement shall be for three (3) years with the option to renew for two additional one-year terms. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Service Orders under this Master Agreement are completed or terminated.

§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement:

Chris Steinbruck, Superintendent  
Flour Bluff Independent School District  
2505 Waldron Street  
Corpus Christi, Texas 78418  
Phone: (512) 847-2414  
Email:

§ 1.4.1 In each Service Order, the Owner will identify a representative authorized to act on the Owner's behalf with respect to the Service Order.

§ 1.5 The Architect identifies the following representative authorized to act on the Architect's behalf with respect to this Master Agreement:

**DRAFT FOR PROCUREMENT RFQ ONLY – NOT FOR EXECUTION**

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

§ 1.5.1 In each Service Order, the Architect will identify a representative authorized to act on behalf of the Architect with respect to the Service Order.

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

§ 1.7 The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals, including requiring preparation of any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas.

## ARTICLE 2 SERVICE ORDERS

§ 2.1 The Owner is not required to issue any Service Orders under this Master Agreement. Upon the Owner's determination of a need for design and contract administration services in for a specific Project or group of Projects, the Parties agree to execute an individual AIA Document B221™-2018, Service Order for use with Master Agreement Between Owner and Architect (as amended by the Owner), in the form attached hereto as **Exhibit A**, incorporating the District's specific requirements for the individual Project ("Service Order"). The District will not be obligated to place any minimum dollar amount of Requirements Work Orders under this Agreement.

§ 2.2 The Architect may decline to accept any Service Order issued by the Owner.

§ 2.3 The Architect shall perform the services set forth in each agreed upon Service Order, consisting of AIA Document B221-2018, Service Order. Each Service Order shall state the name, location, and detailed description of the Project; describe the Architect's Services and Scope of Work; state the Architect's compensation; and list the attachments and exhibits incorporated by reference.

§ 2.4 For record keeping purposes and ease of reference, each Service Order will be referred to be sequential numbers and year, and the specific Project Name -- e.g. "Service Order No .XX – 2019/Project Name) and each will be appended to this Agreement and made a part thereof as of the date of their respective executions, as **Exhibit D**. The terms of this Agreement shall apply to each Service Order for a Project added to this Agreement, and any reference in

this Agreement to the "Project" shall refer generically to the specific Project identified and described in the Service Order which is relevant to the issue at hand.

### ARTICLE 3 ARCHITECT'S RESPONSIBILITIES

§ 3.1 The Architect shall perform its services with the professional skill and degree of care ordinarily provided by competent architects practicing under the same or similar circumstances and with the same professional license. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the services provided pursuant to a Service Agreement. 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. For purposes of this clause, a defect is a failure to confirm the applicable standard of care. Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflict or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder. 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 Subconsultants for the accuracy and 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, Subconsultants, and agents.

§ 3.2 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 Master Agreement or any Service Agreement.

§ 3.3 The Architect shall provide and maintain the following insurance with indemnification limits not less than the amounts indicated below, in effect, during the performance of the Work under this Master Agreement, and any Service Order issued thereunder, until termination of this Master Agreement, unless otherwise modified in a specific Service Order. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

*(Paragraphs deleted)*

<b>Worker's Compensation:</b>	
(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.
<b>Employer's Liability</b>	\$1,000,000.00 Each Accident \$1,000,000.00 Disease Policy Limit \$1,000,000.00 Disease Each Employee
<b>Professional Liability:</b>	
Architect .....	\$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
<b>Commercial General Liability:</b>	
Each Occurrence .....	\$2,000,000.00
General Aggregate.....	\$4,000,000.00
Personal and Advertising Injury.....	\$2,000,000.00 each person
<b>Automobile Liability</b> .....	\$1,000,000.00 combined single limit
<b>Excess Umbrella Liability</b> .....	\$5,000,000.00

*(Paragraph deleted)*

§ 3.3.1 The required insurance must be written by a company authorized to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the

State Board of Insurance to confirm that the issuing companies are authorized to issue such policies in the State of Texas.

**§ 3.3.2** The primary Commercial General Liability and Automobile policies, and excess or umbrella policies covering Commercial General Liability and Automobile Liability policies so issued in the name of Architect shall also name the Owner as additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability policies and shall apply to both ongoing and completed operations. Evidence of additional insured status will be provided to Owner by providing a copy of the endorsement being utilized to effect the additional insured, and shall be subject to the Owner's reasonable approval. To the extent an Architect's Consultant is named as an additional insured on any policy held by the Architect, separate coverage shall not be required of the Architect's Consultants.

**§ 3.3.3** All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives or agents and shall seek no contribution from any insurance available to Owner. All insurance shall be written on an occurrence basis, if available, and shall contain a by endorsement a waiver of subrogation in favor of Owner on all claims arising out of the Project. A copy of such endorsement or endorsements shall be provided to the Owner at the same time as the Insurance Certificates required above.

**§ 3.3.4** The Architect shall have its insurance carrier(s) provide satisfactory evidence to the Owner of compliance with the requirements in Section 3.3, at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. Satisfactory evidence shall include (1) Certificate(s) of Insurance in a form satisfactory to the Owner, specifying the types and amounts of coverage in effect, the expiration dates of each policy, containing a statement that no insurance will be canceled 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; and, (2) all required Endorsements. Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required, and agrees to notify the Owner of any material change in the Policy within ten (10) days following the change. 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.

**§ 3.3.5** Except where specifically subject to reimbursement by the Owner as provided in Section 3.3, the insurance provided pursuant to Section 3.3 shall be considered a part of the Architect's basic services and shall not be a Reimbursable Expense.

**§ 3.3.6 Statutory Worker's Compensation Provisions**

**.1 Definitions:**

**.1.1 Certificate of coverage ("Certificate").** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

**.1.2 Duration of the Project.** Includes the time from the beginning of the work on the Project until the Architect's work on the Project has been completed and accepted by the Owner.

**.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096).**

Includes all persons or entities performing all or part of the services the Architect has undertaken to perform on the Project, regardless of whether that person contracts directly with the Architect and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

**.2** The Architect shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas

- Labor Code, Section 401.011(44) for all employees of the Architect providing services on the Project, for the duration of the Project.
- .3 The Architect must provide a certificate of coverage to the Owner prior to being awarded the contract.
  - .4 If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
  - .5 The Architect shall obtain from each person providing Services on a Project, and provide to the Owner:
    - .5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
    - .5.2 no later than seven (7) days after receipt by the Architect, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
  - .6 The Architect shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
  - .7 The Architect shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Architect knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
  - .8 The Architect shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
  - .9 The Architect shall contractually require each person with whom it contracts to provide services on a Project, to:
    - .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
    - .9.2 provide to the Architect, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
    - .9.3 provide the Architect, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
    - .9.4 obtain from each other person with whom its contracts, and provide to the Architect:
      - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
      - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
    - .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
    - .9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
    - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.
  - .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Architect is representing to the Owner that all employees of the Architect who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Architect to administrative penalties, criminal penalties, civil penalties, or other civil actions.
  - .11 The Architect's failure to comply with any of these provisions is a breach of contract by the Architect which entitles the Owner to declare the contract void if the Architect does not remedy the breach within

ten (10) days after receipt of notice of breach from the Owner. [Provision required by: 28 TAC Rule §110.110(i)]

§ 3.5 Upon the written request of the Owner, the Architect shall remove from the Project any employee of the Architect to whom the Owner makes a reasonable objection. The Architect shall replace any such employee with an equally qualified employee in a timely manner.

§ 3.6 The Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations orders and other legal requirements including but not limited to all zoning restrictions or requirements of record, building, occupancy, environmental, disabled person accessibility and land use laws, requirements regulations and ordinances relating to the construction use and occupancy of the Project ("Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. Architect shall use reasonable efforts within the applicable standard of care 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.

§ 3.7 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.

§ 3.8 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 4 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 4.1 The Architect's Basic Services are described in this Article 4 and include usual and customary structural, mechanical, civil and electrical engineering services, and such other services identified in the individual Service Orders executed in connection with this Master Agreement and made a part hereof.

§ 4.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 4.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

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

§ 4.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

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

entities providing utility services. Any changes required by governmental authorities, if approved by the Owner, shall be made by the Architect at no additional cost to the Owner.

**§ 4.1.6** The Architect shall be responsible for filing documents required for the approval of governmental authorities having jurisdiction over the Project identified in the applicable Service Order, subject to review and approval of the Owner.

**§ 4.1.7** When the services under this Agreement or any Service Order under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be AIA Document A201-2017, as amended by the Owner for the Project, applicable to the individual Service Order. The Architect shall administer the Project identified in the individual Service Orders in accordance with this Master Agreement, the applicable Service Order as amended for the Project identified in the individual Service Order, and with the AIA A201-2017, General Conditions of the Contract for Construction for the Project identified in the individual Service Orders, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall not be relieved of any obligation to perform in accordance with the standard of care applicable to licensed architects in the State of Texas, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

**§ 4.1.8** 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.

## **§ 4.2**

*(Paragraphs deleted)*

### **Schematic Design Phase Services**

**§ 4.2.1** The Architect shall assist the Owner with the provision of the educational program and educational specifications, which shall be approved by the Owner's Board of Trustees, per 19 Texas Administrative Code Section 61.1036. The Architect shall review the program and other specifications furnished by the Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with the Owner. The Architect shall include all components of Owner's program for the Project unless specific agreement to delete a component is received from the Owner. This review, assistance and understanding shall be performed in connection with each Project identified and/or commenced under an individual Service Order executed in connection with the Master Agreement and made a part hereof, unless otherwise provided in the Service Order executed in connection with this Agreement and made a part hereof.



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

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

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

§ 4.2.4.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services as Additional Services.

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

§ 4.2.5 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 7.3.

§ 4.2.6 The Architect shall submit the Schematic Design Documents to the Owner and request the Owner's approval. The Architect shall not proceed to the Design Development Document Phase without the approval of Owner; provided, however, this approval shall not relieve Architect of Architect's responsibility to ultimately provide final construction documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without the approval required by this Section 4.2.6.

### § 4.3 Design Development Phase Services

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

§ 4.3.2 The Architect shall update the estimate of the Cost of the Work. This estimate may be based upon current area, volume or similar conceptual estimating techniques. 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 equipment and facilities. If the estimate of the Cost of the Work exceeds the Owner's budget, and the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify

Owner of the actions taken to bring the Project into Owner's budget. If the Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect (in cooperation the Construction Manager at Risk, if applicable) shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget. Owner shall consider the Architect's recommendations, but shall decide, in its discretion, what adjustments to make and the Owner shall cooperate with the Architect in making such adjustments.

**§ 4.3.3** The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. The Architect shall not proceed to the Construction Documents Phase without the approval of Owner; provided, however, this approval shall not relieve Architect of Architect's responsibility to ultimately provide final construction documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without the approval required by this Section 4.3.3.

#### **§ 4.4 Construction Documents Phase Services**

**§ 4.4.1** 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 all Drawings and 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 set forth in detail the requirements for construction of the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning the Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs and usable life of equipment and facilities. The Construction Documents shall also reflect the Owner's program and educational specifications and the State educational adequacy standards in 19 TAC Section 61.1036. The Architect shall provide Construction Documents which are sufficient for the Owner to complete construction of the Project, are free from material defects or omission, and comply with all applicable laws, ordinances, codes, rules and regulations, as of the effective date of the issuance of the Construction Documents. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with the requirements of this Section 4.4.1.

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

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

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

**§ 4.4.5** The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 7.5, and request the Owner's approval; provided however, this approval shall not relieve Architect of Architect responsibility to provide documents which are

sufficient for Owner to complete the construction of the Project. Architect shall bear full responsibility for and all resulting excess costs incurred by Architect in proceeding without Board approval.

**§ 4.4.6** 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 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.

**§ 4.4.7** Pursuant to 19 Texas Administrative Code § 61.1036, the Architect shall sign and seal the Construction Documents and certify on the Certification of Project Completion form developed by the Texas Education Agency as follows:

- .1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used sound 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 § 61.1036.
- .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 § 61.1036 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.

**§ 4.4.8** 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 4.4.7 above.

## **§ 4.5 Procurement Phase Services**

### **§ 4.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### **§ 4.5.2 Competitive Procurement**

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

**§ 4.5.2.2** If requested by Owner, the Architect shall assist the Owner in the procurement process for Construction Services:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 4.5.2.3** The Architect shall, as a Basic Service, consider requests for substitutions, if the Procurement Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### **§ 4.5.3 Negotiated Proposals**

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

§ 4.5.3.2 If requested by Owner, the Architect shall assist the Owner in obtaining proposals by

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

§ 4.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 4.6 Construction Phase Services

### § 4.6.1 General

§ 4.6.1.1 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 amended by the Owner for the Project and provided to the Architect concurrent with the execution of this Agreement.. If the Owner and Contractor modify AIA Document A201™–2017, other than the modifications provided at the time of this Agreement, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 4.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Notwithstanding the foregoing, the Architect shall be responsible for providing at no additional cost to the Owner architectural services made necessary by major defects or deficiencies in the Contractor’s work which the Architect should have reasonably discovered in providing services within its standard of care.

§ 4.6.1.3 **Jobsite Safety.** Neither the professional activities of the Architect, nor the presence of the Architect, or its employees and consultants at a construction/project site, shall relieve any Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Architect and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Owner agrees that the Contractor shall be solely responsible for jobsite safety, and agrees that this intent shall be carried out in the Owner’s contract with the Contractor.

§ 4.6.1.4 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment

### § 4.6.2 Evaluations Of The Work

§ 4.6.2.1 The Architect or its authorized representative, as a representative of the Owner, shall visit the site at least twice per week (or more often when deemed necessary by the Owner’s representative or when necessary to protect the Owner’s interests), and at other intervals appropriate to the stage of the Contractor’s operations: (1) to observe the progress, quality and quality of the work completed, to reject any observed non-conforming Work; (2) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed; (3) to determine in general if the work is being performed in a manner indicating that the Work, when fully completed will be in accordance with the Contract Documents; and, (5) to document progress of the Work, in written and photographic form. A minimum of two jobsite meetings per month from commencement of construction through Final Completion will be initiated by the Architect. Attendees shall include the Owner, the Contractor’s project manager or superintendent, the Architect’s project representative and the Architect. he Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs and concrete superstructure components, if applicable. Architect or its representative shall also provide on-site observations prior to covering up or

closing up of portions of the construction that, if covered, would conceal problems with the structural integrity of the Project. On the basis of its on-site observations, the Architect shall keep the Owner and the Owner's Contractor informed of the progress and quality of the Work, through the Architect's field reports and shall promptly notify the Owner and Contractor regarding a perceived defect or nonconforming Work which shall be followed by a written notice and recommended corrective action. Notwithstanding the foregoing, the Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractor's rights and responsibilities under the Contract Documents

**§ 4.6.2.2** The Architect shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the Owner, additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Architect shall promptly notify the Owner and Contractor of any observed fault or defect in the Project or non-conformance with the Contract Documents upon discovery and shall notify the Owner of all corrective action taken or recommended.

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

**§ 4.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 4.6.2.5** 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.

#### **§ 4.6.3 Certificates For Payment To Contractor**

**§ 4.6.3.1** The Architect shall observe the progress of the Work evaluate, review and certify the amounts due the Contractor and shall sign and issue Certificates for Payment in such amounts if such amounts are valid, correct and deemed due and owing, in the Architect's professional opinion, within seven (7) days of its receipt of Contractor's properly submitted 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, in the Architect's professional opinion, and to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the amounts shown in the application are valid and correct. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect in writing to the Owner.

**§ 4.6.3.2** 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.

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

#### **§ 4.6.4 Submittals**

**§ 4.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal

schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 4.6.4.2** In accordance with the Architect-approved, Contractor's submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and applicable laws, statutes, codes, regulations, ordinances and requirements applicable to the Architect's design. 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. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then the Architect shall notify the District representative so that the Contractor may be brought in to compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials or mechanical equipment without Owner's prior written consent.

**§ 4.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

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

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

#### **§ 4.6.5 Changes In The Work**

**§ 4.6.5.1** The Architect shall prepare Change Orders, Construction Change Directives and documents authorizing expenditures of contingency funds, with supporting documentation and data if deemed necessary by the Architect, as Basic Services compensated under Section 11.1, for the Owner's approval and execution in accordance with the Contract Documents. With notice and approval of the Owner's representative, the Architect may authorize 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.

**§ 4.6.5.2** The Architect shall review and evaluate Contractor proposals for Work to be performed under a Change Order, counter-proposals by the Contractor, if any, in connection with a Construction Change Directive and Contractor proposals related to funds to be expended from any Contingency or Allowance, to confirm that the form of the proposal and information satisfies the requirements of the Contract Documents and, if the Architect finds the proposal in compliance with the Contract Documents, the price as proposed to be fair and reasonable, it shall prepare the formal Change Order for the Owner's approval and execution. If the Architect shall not be satisfied that the form of the proposal and information satisfies the requirements of the Contract Documents or that the price as proposed is not a fair and reasonable price for such work, the proposal shall be returned to the Contractor with a request for revision

and instructions as to what is required to correct the deficiencies in the proposal. Upon receipt of the revised proposal, the Architect shall again evaluate the proposal in accordance with this Paragraph.

§ 4.6.5.3 The Architect shall maintain records relative to changes in the Work, including, Change Orders, Construction Change Directives and Changes Requested to be paid from any Contingency or Allowance.

§ 4.6.5.4 The Architect shall prepare a set of reproducible record drawings in PDF format, or such other electronic format as agreed by the parties, showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

#### § 4.6.6 Project Completion

§ 4.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Neither the form of final Certificate for Payment nor the Certificate of Final Completion shall release the Contractor, Construction Manager at Risk (if applicable) or any subcontractor for any liability in connection with the Construction.

§ 4.6.6.2 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.

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

§ 4.6.6.4 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.

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

#### ARTICLE 5 OPTIONAL ADDITIONAL SERVICES.

§ 5.1 The Optional Additional Services that can be provided for a Project after execution of a Service Agreement without invalidating the Service Agreement and following written approval by the Owner, include those designated in the table below as "Additional Services. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 5.1 shall entitle the Architect to compensation pursuant to Article 11 and/or as may be more particularly specified in any Service Order.

Basic and Optional Additional Services		Responsibility (Architect, Owner, or not provided)
§ 5.1.1	Programming	Architect – Basic Service
§ 5.1.2	Multiple preliminary designs	Architect – Basic Service
§ 5.1.3	Measured drawings	Optional Additional Services
§ 5.1.4	Existing facilities surveys	Optional Additional Services
§ 5.1.5	Site evaluation and planning	Architect – Basic Service
§ 5.1.6	Building Information Modeling	Architect – Basic Services
§ 5.1.7	Civil engineering	Architect – Basic Services
§ 5.1.8	Landscape design	Architect - Additional Services
§ 5.1.9	Architectural interior design	Architect – Basic Services

Basic and Optional Additional Services		Responsibility (Architect, Owner, or not provided)
§ 5.1.10	Value analysis	Optional Additional Services
§ 5.1.11	Detailed cost estimating	Optional Additional Services
§ 5.1.12	On-site project representation	Architect – Basic Services (Full Time On-Site Representation is an Optional Additional Services)
§ 5.1.13	Conformed documents for construction	Optional Additional Services
§ 5.1.14	As-designed record drawings	Architect – Basic Services
§ 5.1.15	As-constructed record drawings	Architect – Basic Services
§ 5.1.16	Architect’s coordination of the Owner’s consultants	Architect – Basic Services
§ 5.1.17	Telecommunications/data design	Architect – Basic Services
§ 5.1.18	Security evaluation and planning	Optional Additional Services
§ 5.1.19	Commissioning	Owner
§ 5.1.20	Sustainable Project Services	Optional Additional Services
§ 5.1.21	Multiple bid packages	Architect- Basic Services
§ 5.1.22	Historic preservation	Optional Additional Services
§ 5.1.23	Furniture Selection, Specification Bid Evaluation and Punchlist	Architect – Basic Services
§ 5.1.24	Surveys	Owner
§ 5.1.25	Geotechnical Reports	Owner

**§ 5.2** If deemed necessary in the Architect’s professional judgment, in connection with the Project, or upon specific request of the Owner in connection with a Project, the Architect 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; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark. The Architect shall be reimbursed by Owner for the actual cost of such services with markup as provided in Section 11.2.

**§ 5.3** If deemed necessary in the Architect’s professional judgment, in connection with the Project, or upon specific request of the Owner in connection with a Project, the Architect shall furnish services of geotechnical engineers as required for the Project which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations. The Architect shall be reimbursed by Owner for the actual cost of such services with markup as provided in Section 11.7.

**§ 5.4** Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. All services under the terms of this Agreement which would otherwise be constructed as Additional Services will be treated as Basic Services compensated under Section 11.1 for which no additional compensation is authorized, unless such services are requested in writing by the Architect and approved in writing by the Owner prior to the time such services are performed. In the absence of a prior written agreement, the Owner shall have no obligation to pay for any Additional Services claimed to have been performed.

**5.4.1** Unless otherwise provided in a Service Order, upon recognizing the need to perform the following Additional Services, as they relate to the services provided pursuant to the Service Order, 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 material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the



- Owner's schedule or budget for Cost of the Work, or procurement or delivery method after Construction Documents are complete, except when said changes are due to Architect's or Architect's consultant's negligent errors or omissions;
- .2 [Section Deleted];
  - .3 Changing or editing previously prepared Construction Documents necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
  - .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
  - .5 [Section Deleted.];
  - .6 [Section Deleted.];
  - .7 [Section Deleted.];
  - .8 [Section Deleted.];
  - .9 [Section Deleted.];
  - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.
  - .11 [Section Deleted.]

**§ 5.5** 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 Up to two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- .2 It is agreed that the Architect shall visit the site over the duration of the Project during construction and observe the Work at appropriate stages of construction and attend construction meetings as required herein.
- .3 Up to one (1) inspection for any phase of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- .4 Up to one (1) inspection for any phase of the Work to determine Final Completion.

Accurate, detailed and segregated invoicing must be provided by the Architect for all Construction Phase Services exceeding the limits in this Section 5.5, in order to facilitate back-charging Contractor for such Additional Services.

*(Paragraphs deleted)*

## **ARTICLE 6 OWNER'S RESPONSIBILITIES**

**§ 6.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations of each Service Order, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

**§ 6.2** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. 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.

**§ 6.3** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

*(Paragraph deleted)*

**§ 6.4** The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants as designated in an individual Service Order, or authorize the Architect to furnish them as an Additional Service or as a Reimbursable Expense, when the Architect requests such services and demonstrates that in the Architect's professional judgement, they are reasonably required by the scope of the Service Order. The Owner shall require that its consultants and

contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

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

*(Paragraphs deleted)*

§ 6.6 Unless otherwise provided in this Agreement or a Service Order, the Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time to meet the Owner's needs and interests under a Service Agreement.

§ 6.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the services or work related to a Service Agreement, 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, the Owner shall be entitled to rely on the Construction Documents, services and information furnished by the Architect. This section shall not relieve the Architect of any responsibility or liability for performance of Architect's contractual services on the Project.

*(Paragraphs deleted)*

§ 6.8 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

*(Paragraph deleted)*

§ 6.9 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.

§ 6.10 The Architect and the Owner shall at all times have access to the Work wherever it is in preparation or progress.

## ARTICLE 7 COST OF THE WORK

§ 7.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner or, to the extent the Project represented by the Service Order is not completed, the estimated costs to the Owner, to construct all elements of the Project represented by the Service Order, designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work (as defined by the Service Order) or other costs that are the responsibility of the Owner.

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

§ 7.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project or 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); and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner

requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 5.

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

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

**§ 7.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide proposal, the Owner, in its sole discretion, shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 10.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

**§ 7.7** If the Owner chooses to proceed under Section 7.6.4, 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 7.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 7.

## **ARTICLE 8 COPYRIGHTS AND LICENSES**

**§ 8.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use in relation to a Service Agreement. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 8.2** 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 a Service Agreement 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 electronic 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.

**§ 8.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use, retain copies and reproduce the Architect's and Architect's Consultant's Instruments of Service solely and exclusively for purposes of completing, constructing, using, maintaining, altering and adding to the Projects defined by the individual Service Orders under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Master 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 between the Parties, solely and exclusively for use in performing services or construction for the Projects defined by the individual Service Orders under this Agreement. The payment of any 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 and the Architect's consultants' Instruments of Service, for all documents produced pursuant to this Agreement and in existence as of the date of any such payment.

**§ 8.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising

from such uses. The Owner, to the extent permitted by Texas law and the state Constitution, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 8.3.1.

§ 8.4 Except for the licenses granted in this Article 8, no other license or right shall be deemed granted or implied under this Master 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. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Projects defined by the individual Service Orders under this Agreement.

§ 8.5 The Owner and the Architect agree that the attached written agreement included as **Exhibit B**, Agreement for Delivery of Documents in Electronic Form, sets forth the specific conditions governing the format of Architect's documents, instruments of service, or other electronic data, including any special limitations or license not otherwise provided in the Agreement. **Exhibit B** shall also govern Owner provided electronic data for incorporation into the Architect's documents.

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

*(Paragraphs deleted)*

## **ARTICLE 9 CLAIMS AND DISPUTES**

### **§ 9.1 General**

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

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

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

### **§ 9.2 Mediation**

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

§ 9.2.2 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.

§ 9.2.3 The parties shall share the mediator's fee 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.

§ 9.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 7.3 of this Master Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

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

### § 9.3 Arbitration [Paragraph 9.3 and All Sub-Paragraphs Intentionally Deleted]

## ARTICLE 10 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS

(Paragraphs deleted)

(Table deleted)

§ 10.1 If the Owner fails to make payments to the Architect in accordance with a Service Agreement through no fault of the Architect, such failure shall be considered substantial nonperformance and cause for termination of the Service Agreement or, at the Architect's option, cause for suspension of performance of services under the Service Agreement for which the Owner failed to make payment if not cured by the Owner within seven (7) days following notice of any past-due payment. If the Architect elects to suspend services, prior to the suspension of services, the Architect shall give seven (7) days' written notice to the Owner.

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

§ 10.3 If the Owner suspends the services under a Service Agreement for more than ninety (90) consecutive days for reasons other than the fault of the Architect, the Architect may terminate the Service Agreement by giving not fewer than seven (7) days' written notice. Should the Architect elect to so terminate a Service Agreement, the Architect shall be compensated for services actually performed and expenses actually incurred under the Service Agreement prior to notice of such termination

§ 10.4 Either party may terminate a Service Agreement upon not fewer than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of the Service Agreement, through no fault of the party initiating the termination. Termination of a Service Agreement under this Section 10.4 shall not be deemed a termination of other Service Agreements under this Master Agreement.

§ 10.5 The Owner may terminate a Service Agreement, upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 10.6 In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services properly and actually performed and expenses actually incurred under the Service Agreement prior to notice of such termination, together with Reimbursable Expenses actually incurred prior to notice of termination.

§ 10.7 [Paragraph Deleted.]

§ 10.8 The Owner's rights to use the Architect's Instruments of Service in the event of termination of a Service Agreement are set forth in Article 8 and Section 11.8 of this Master Agreement.

## ARTICLE 11 COMPENSATION

§ 11.1 The Owner shall compensate the Architect for the services described in a Service Order pursuant to the Service Order and as set forth in this Article 11. The Compensation in each Service Order will be determined on a project-by-project basis with Compensation for Basic Services for each Project based on the following formulas, with the final amount established in the Service Agreement based on the project parameters:

- .1 For New Construction utilizing a \_\_\_\_\_ ISD prototype or a limited number of \_\_\_\_\_ prototypes (not significantly altered) \_\_\_\_\_ percent (\_\_\_\_%) of Construction Cost at the time of Bidding as defined herein.
- .2 For New Construction utilizing a \_\_\_\_\_ ISD prototype or a limited number of \_\_\_\_\_ prototypes (with significant alternations) \_\_\_\_\_ percent (\_\_\_\_%) of Construction Cost at the time of Bidding as defined herein.

Note: If Owner selects any prototype listed above, architect shall review all change orders and/or allowance expenditure authorizations from the original or subsequent construction projects and modify the construction document (under this contract) to address these issues. This work shall be included under the Architect's Basic Services.

- .3 For additions and renovations \_\_\_\_\_ percent (\_\_\_\_%) of the Construction Cost at the time of Bidding as defined herein.
- .4 For new construction using new designs \_\_\_\_\_ percent (\_\_\_\_%) of the Construction Cost at the time of Bidding as defined herein.

§ 11.2 **Optional Additional Services.** Except as below for furniture selection, specification, bid and punch list assistance, the Architect will be compensated for Optional Additional Services as set out in the individual Service Orders, based on the hourly billing rates for services of the Architect and the Architect's consultants as set forth in the Fixed Rate Schedule attached hereto as **Exhibit C**.

§ 11.3 Except as otherwise set forth in a Service Order, the Owner shall compensate the Architect for Additional Services that may arise during the course of a Project at the hourly billing rates for services of the Architect and the Architect's consultants as set forth in the Fixed Rate Schedule attached hereto as **Exhibit C**.

§ 11.4 Compensation for 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 **Ten** percent (10%), or as otherwise stated below:

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

Facility Study Planning Services/Pre-Bond Issue services	As provided in §§11.1.5 and 11.1.6			
Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty-Five	percent (	25	%)
Construction Documents Phase	Thirty-Five	percent (	35	%)
Proposal Phase	Three	percent (	3	%)
Construction Phase	Twenty	percent (	20	%)
Close-Out	Two	percent (	2	%)
Total Basic Compensation	one hundred	percent (	100	%)

*(Paragraphs deleted)*

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or best value proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the

Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed, whether or not the Construction Phase is commenced.

#### **§ 11.7 Compensation for Reimbursable Expenses**

**§ 11.7.1** Reimbursable Expenses will be allocated to each Service Agreement. Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to a Service Agreement, as follows:

- .1 [Paragraph Deleted.]
- .2 [Paragraph Deleted.]
- .3 [Paragraph Deleted.]
- .4 Printing, reproductions, plots, and standard form documents.
- .5 [Paragraph Deleted.]
- .6 [Paragraph Deleted.]
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner.
- .8 [Paragraph Deleted.]
- .9 [Paragraph Deleted.]
- .10 [Paragraph Deleted.]
- .11 [Paragraph Deleted.]

**§ 11.7.2** For Reimbursable Expenses as described in Section 11.4.1, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus One percent (1%) of the expenses incurred.

**§ 11.7.3 Other Reimbursable Expenses.** For the following Reimbursable Expenses, the compensation shall be as follows:

- .1
- .2

#### **§ 11.8 Compensation For Use Of Architect's Instruments Of Service**

If the Owner terminates the Architect for its convenience under Section 10.5 or for cause, or the Architect terminates this Agreement under Section 9.3, the Owner shall have the right to continued use of the Architect's and Architect's Consultants' Instruments of Service and to make derivative Works thereof, solely for purposes of completing, using and maintaining the Project 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 or the Architect's consultants' Instruments of Service pursuant to this Section, neither the Architect nor its consultants shall bear liability for errors or omissions appearing in such derivative works.

#### **§ 11.9 Payments to the Architect**

##### **§ 11.9.1 Progress Payments**

**§ 11.9.1.1** Unless otherwise agreed, payments for services and reimbursement for Reimbursable Expenses provided pursuant to a Service Agreement shall be made monthly in proportion to services performed and expenses incurred during the previous month. Payments are due and payable upon the Owner's receipt of the Architect's invoice. Amounts unpaid thirty (30) days after the Owner's receipt of the invoice shall bear interest at the rate provided in the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

**§ 11.9.1.2** For projects compensated on a percentage of the Cost of the Work or lump sum fee basis, the Architect will prepare and submit for the Owner's approval a Monthly Basic Services Fee Billing Schedule based on the provisions of this Agreement.

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

**§ 11.9.1.3** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 MISCELLANEOUS PROVISIONS

§ 12.1 Each Service Agreement shall be governed by the laws of the State of Texas. Venue for a dispute arising under any Service Agreement shall lie in the county in which the Project is located. No provision of this Agreement is a waiver of any immunity or defense. No provision of this Agreement is consent to suit.

§ 12.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

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

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

§ 12.5 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

§ 12.6 Unless otherwise required in this Master Agreement or a Service Order, the Architect shall have no responsibility for the handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances 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 a duty to immediately report to the Owner the existence of such materials if actually known by the Architect or the Architect's consultants to be present on the Project site.

§ 12.7 With prior written consent of the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Projects for which services are performed among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Projects 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 Projects. This Section 12.7 shall survive the termination of a Service Agreement unless the Owner terminates a Service Agreement for cause pursuant to Section 10.4.

§ 12.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. 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. The restrictions on use and disclosure of Confidential Information by the Owner or Architect, shall not apply to information which (a) was known by the party receiving the confidential information prior to disclosure by the disclosing party; (b) is or later becomes part of the public domain through no fault of the disclosing party; or (c) is required by law or regulation to be disclosed.



§ 12.9 To the extent permitted by applicable law, 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.

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

§ 12.11 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.

§12.12 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.

§12.13 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.

§12.14 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 herefrom.

§12.15 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. Notwithstanding the foregoing, the Owner's right to inspect, copy and audit shall not extend to documents related to the calculation of the Architect's rates, fees, markups or multipliers agreed upon in this Agreement, but the application of those rates, fees, markups or multipliers at the time of billing is intended to be included.

#### § 12.16 Criminal History Records Checks

§ 12.16.1 Before beginning any work on a Project which is the subject of a Service Agreement, the Architect may be required, if applicable, to comply with the provisions of Texas Education Code section 22.08341, including obtaining Criminal History Record Information ("CHRI"), through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse") for all of the Architect's Covered Employees as defined by the statute.

§ 12.16.2 Covered Employees generally include all employees of Architect, as well as employees of the Architect's subconsultants and independent contractors, who will have ongoing work duties to be performed under this contract and a substantial opportunity for verbal or physical interaction with students, and the person will not be supervised by a certified educator or other professional district employee during such opportunities.

§ 12.16.3 If a Project which is the subject of a Service Agreement, will involve a set of circumstances which will require compliance with Texas Education Code section 22.08341, the Architect agrees to obtain the CHRI on its Covered Employees, provide the required certifications and otherwise, fully and promptly comply with all requirements of the statute, at its sole expense.. The Architect is encouraged to consult its own counsel with regard to whether compliance is required in connection with a specific Service Agreement and shall consult with the Owner, prior to entering into any Service Agreement regarding compliance.

## ARTICLE 13 SPECIAL TERMS AND CONDITIONS

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

**§ 13.1 Purchase Order.** If the Owner issues a purchase order related to the Architect's services, it is understood and agreed that such purchase order is for the Owner's internal accounting purposes only and shall not modify, add to, or delete any of the terms and conditions of this Agreement. When a purchase order is issued, it is understood and agreed that the Architect shall indicate the purchase order number on the invoices sent to the Owner.

**§ 13.2 LEED.** The LEED Green-Building Rating System and similar environmental guidelines are subject to interpretation and achieving levels of compliance involves all parties and includes the Owners use, operation and maintenance of the completed project and the Contractors' performance during construction. The Architect does not warrant that the Project will achieve LEED certification or guarantee a certain level of energy savings but is required to use reasonable care consistent with its professional standard of care projects involving LEED design.

**§ 13.3** Neither the Owner nor the Architect shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, or loss of income.

**§ 13.4** The Architect shall make design and document changes that result from its errors and omissions at no cost to the Owner.

**§ 13.5** In the event of any conflict between the Master Agreement and any Service Order, the language of the Service Order shall control.

**§ 13.6** Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Architect has at least ten (10) full time employees, then the Architect, by its execution of this Agreement represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

**§ 13.7** Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Architect has at least ten (10) full-time employees, then Architect represents and warrants to the District that the Architect does not boycott energy companies and will not boycott energy companies during the term of this Agreement. The section does not apply to a sole proprietorship.

**§ 13.8** Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Architect has at least ten (10) full-time employees, then Architect represents and warrants to the District that the Architect does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This section does not apply to a sole proprietorship.

**§ 13.9** Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect misrepresents its inclusion on the list, then such omissions or misrepresentation shall void this Agreement.

**§ 13.10** 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 a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the Architect agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

## ARTICLE 14 SCOPE OF THIS MASTER AGREEMENT

§ 14.1 This Master 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 Master Agreement may be amended only by written instrument signed by both the Owner and Architect.

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

- .1 AIA Document B121™–2018, Standard Form of Master Agreement Between Owner and Architect as amended by the Owner.
- .2 All Service Orders executed by the parties during the term of this Master Agreement and prepared in the form included as **Exhibit A** to this Master Agreement.
- .3 Exhibits:  
(Clearly identify any other exhibits incorporated into this Master Agreement.)  
**Exhibit A** – Form of AIA Document B221™–2018, Service Order for use with Master Agreement Between Owner and Architect, as amended by the Owner  
**Exhibit B** – Fixed Rate Fee Schedule.  
**Exhibit C** – All Subsequent Service Orders as executed, prepared on the form during the term of this Master Agreement and prepared in the form included as **Exhibit A** to this Master Agreement to be attached and numbered in sequence (C-1, C-2, etc.)
- .4 Other documents: None.  
(List other documents, if any, forming part of the Master Agreement.)

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

FLOUR BLUFF INDEPENDENT SCHOOL DISTRICT

FIRM: \_\_\_\_\_

**DRAFT FOR PROCUREMENT ONLY –  
NOT FOR SIGNATURE**

**DRAFT FOR PROCUREMENT ONLY  
NOT FOR SIGNATURE**

(Row deleted)

Chris Steinbruck, Superintendent  
(Row deleted)

Name: \_\_\_\_\_ Title: \_\_\_\_\_

# Additions and Deletions Report for AIA® Document B121™ – 2018

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:27:20 ET on 05/30/2025.

## PAGE 1

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year TWO THOUSAND TWENTY-FIVE (2025)

...

### **DRAFT FOR PROCUREMENT RFQ ONLY – NOT FOR EXECUTION**

Flour Bluff Independent School District, a political subdivision and public school district of the State of Texas  
2505 Waldron Road  
Corpus Christi, Texas 78418  
Phone: (361) 694-9205

and the Architect: *\*Architect shall mean Engineer herein.*

...

### **DRAFT FOR PROCUREMENT RFQ ONLY – NOT FOR EXECUTION**

Firm Legal Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

The Owner and Architect agree as follows: ~~follows~~ follows:

## PAGE 2

4	<u>SCOPE OF ARCHITECT'S BASIC SERVICES</u>
5	<u>OPTIONAL ADDITIONAL SERVICES</u>
5	<u>6 OWNER'S RESPONSIBILITIES</u>
6	<u>7 COST OF THE WORK</u>
8	<u>COPYRIGHTS AND LICENSES</u>
7	<u>9 CLAIMS AND DISPUTES</u>
8	<u>10 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS</u>
9	<u>11 COMPENSATION</u>
10	<u>12 MISCELLANEOUS PROVISIONS</u>
11	<u>13 SPECIAL TERMS AND CONDITIONS</u>
12	<u>SCOPE OF THIS MASTER AGREEMENT</u>
14	<u>SCOPE OF THIS MASTER AGREEMENT</u>

**Note:** Any reference herein, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of such forms is permitted under license granted to Walsh Gallegos Trevino Kyle & Robinson P.C. for this Project. No use may be made of this AIA document other than as Contract Documents for this Project.

#### **ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES**

#### **ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES**

§ 1.1 This Master Agreement shall be effective for one year after the date first written above ("Date of this Master Agreement"). Agreement") and shall be subject to renewal and extension by the Owner each year thereafter, for a period of two (2) additional one-year terms, unless sooner terminated in accordance with the terms of this Master Agreement. Such renewals may be exercised by the Owner's Representative to the extent such duty is delegated by the Board of Trustees.

#### **PAGE 3**

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. The Initial Term of this Master Agreement shall be for three (3) years with the option to renew for two additional one-year terms. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Service Orders under this Master Agreement are completed or terminated.

...

Chris Steinbruck, Superintendent  
 Flour Bluff Independent School District  
 2505 Waldron Street  
 Corpus Christi, Texas 78418  
 Phone: (512) 847-2414  
 Email:

...

**DRAFT FOR PROCUREMENT RFQ ONLY – NOT FOR EXECUTION**

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

...

**ARTICLE 2 — SERVICE ORDERS**

**§ 1.7** The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals, including requiring preparation of any civil, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas.

**ARTICLE 2 SERVICE ORDERS**

**§ 2.1** The Owner is not required to issue any Service Orders under this Master Agreement. Upon the Owner's determination of a need for design and contract administration services in for a specific Project or group of Projects, the Parties agree to execute an individual AIA Document B221™-2018, Service Order for use with Master Agreement Between Owner and Architect (as amended by the Owner), in the form attached hereto as **Exhibit A**, incorporating the District's specific requirements for the individual Project ("Service Order"). The District will not be obligated to place any minimum dollar amount of Requirements Work Orders under this Agreement.

...

**§ 2.3** The Architect shall perform the services set forth in each agreed upon Service Order, consisting of AIA Document B221-2018, Service Order, or such other document as the Owner and Architect may mutually agree upon. Order. Each Service Order shall state the name, location, and detailed description of the Project; describe the Architect's Services; Services and Scope of Work; state the Architect's compensation; and list the attachments and exhibits incorporated by reference.

**ARTICLE 3 — ARCHITECT'S RESPONSIBILITIES**

**§ 2.4** For record keeping purposes and ease of reference, each Service Order will be referred to be sequential numbers and year, and the specific Project Name -- e.g. "Service Order No .XX – 2019/Project Name) and each will be appended to this Agreement and made a part thereof as of the date of their respective executions, as **Exhibit D**. The terms of this Agreement shall apply to each Service Order for a Project added to this Agreement, and any reference in this Agreement to the "Project" shall refer generically to the specific Project identified and described in the Service Order which is relevant to the issue at hand.

**ARTICLE 3 ARCHITECT'S RESPONSIBILITIES**

**§ 3.1** The Architect shall perform its services ~~consistent~~ with the professional skill and degree of care ordinarily provided by competent architects practicing in ~~under the same or similar locality under the same or similar circumstances.~~ circumstances and with the same professional license. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the services provided pursuant to a Service Agreement. 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. For purposes of this clause, a defect is a failure to confirm the applicable standard of care. Any designs, drawings or specifications prepared or furnished by Architect that contain errors, conflict or omissions will be promptly corrected by Architect at no additional cost to Owner. Owner's approval, acceptance use of or payment for all or any part of Architect's services shall in no way alter Architect's obligations or Owner's rights hereunder. 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 Subconsultants for the accuracy and 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, Subconsultants, and agents.

**PAGE 4**

**§ 3.3** The Architect shall ~~maintain the following insurance until termination of this Master Agreement, provide and maintain the following insurance with indemnification limits not less than the amounts indicated below, in effect, during the performance of the Work under this Master Agreement, and any Service Order issued thereunder, until termination of this Master Agreement, unless otherwise modified in a specific Service Order.~~ If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall ~~pay the Architect as set forth in Section 9.4.~~ reimburse the Architect for any additional cost:  
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

1 — General Liability

\_\_\_\_\_

2 — Automobile Liability

\_\_\_\_\_

3 — Workers' Compensation

\_\_\_\_\_

4 — Professional Liability

<b><u>Worker's Compensation:</u></b> (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.
<b><u>Employer's Liability</u></b>	\$1,000,000.00 Each Accident \$1,000,000.00 Disease Policy Limit \$1,000,000.00 Disease Each Employee
<b><u>Professional Liability:</u></b>	
Architect .....	\$2,000,000.00 per claim and \$2,000,000.00 in the aggregate.
<b><u>Commercial General Liability:</u></b>	
Each Occurrence .....	\$2,000,000.00
General Aggregate.....	\$4,000,000.00
Personal and Advertising Injury.....	\$2,000,000.00 each person
<b><u>Automobile Liability</u></b> .....	\$1,000,000.00 combined single limit
<b><u>Excess Umbrella Liability</u></b> .....	\$5,000,000.00

**§ 3.4** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.3.1** The required insurance must be written by a company authorized to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative will contact the State Board of Insurance to confirm that the issuing companies are authorized to issue such policies in the State of Texas.

§ 3.3.2 The primary Commercial General Liability and Automobile policies, and excess or umbrella policies covering Commercial General Liability and Automobile Liability policies so issued in the name of Architect shall also name the Owner as additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability policies and shall apply to both ongoing and completed operations. Evidence of additional insured status will be provided to Owner by providing a copy of the endorsement being utilized to effect the additional insured, and shall be subject to the Owner's reasonable approval. To the extent an Architect's Consultant is named as an additional insured on any policy held by the Architect, separate coverage shall not be required of the Architect's Consultants.

§ 3.3.3 All insurance required herein shall, by endorsement, be primary and non-contributory insurance with respect to the Owner, its officers, employees, representatives or agents and shall seek no contribution from any insurance available to Owner. All insurance shall be written on an occurrence basis, if available, and shall contain a by endorsement a waiver of subrogation in favor of Owner on all claims arising out of the Project. A copy of such endorsement or endorsements shall be provided to the Owner at the same time as the Insurance Certificates required above.

§ 3.3.4 The Architect shall have its insurance carrier(s) provide satisfactory evidence to the Owner of compliance with the requirements in Section 3.3, at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. Satisfactory evidence shall include (1) Certificate(s) of Insurance in a form satisfactory to the Owner, specifying the types and amounts of coverage in effect, the expiration dates of each policy, containing a statement that no insurance will be canceled 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; and, (2) all required Endorsements. Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required, and agrees to notify the Owner of any material change in the Policy within ten (10) days following the change. 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.

§ 3.3.5 Except where specifically subject to reimbursement by the Owner as provided in Section 3.3, the insurance provided pursuant to Section 3.3 shall be considered a part of the Architect's basic services and shall not be a Reimbursable Expense.

#### § 3.3.6 Statutory Worker's Compensation Provisions

##### .1 Definitions:

.1.1 Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Architect's work on the Project has been completed and accepted by the Owner.

.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096).

Includes all persons or entities performing all or part of the services the Architect has undertaken to perform on the Project, regardless of whether that person contracts directly with the Architect and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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



- .4 If the coverage period shown on the Architect's current certificate of coverage ends during the duration of the Project, the Architect must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.
- .5 The Architect shall obtain from each person providing Services on a Project, and provide to the Owner:
- .5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .5.2 no later than seven (7) days after receipt by the Architect, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- .6 The Architect shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- .7 The Architect shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Architect knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .8 The Architect shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .9 The Architect shall contractually require each person with whom it contracts to provide services on a Project, to:
- .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
- .9.2 provide to the Architect, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- .9.3 provide the Architect, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .9.4 obtain from each other person with whom its contracts, and provide to the Architect:
- (a) a certificate of coverage, prior to the other person beginning work on the Project; and
- (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
- .9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.
- .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Architect is representing to the Owner that all employees of the Architect who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Architect to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .11 The Architect's failure to comply with any of these provisions is a breach of contract by the Architect which entitles the Owner to declare the contract void if the Architect does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [Provision required by: 28 TAC Rule §110.110(i)]

§ 3.5 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval. Upon the written request of the Owner, the Architect shall remove from the Project any employee of the Architect to whom the Owner makes a reasonable objection. The Architect shall replace any such employee with an equally qualified employee in a timely manner.

#### **ARTICLE 4 — ADDITIONAL SERVICES**

§ 3.6 The Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations orders and other legal requirements including but not limited to all zoning restrictions or requirements of record, building, occupancy, environmental, disabled person accessibility and land use laws, requirements regulations and ordinances relating to the construction use and occupancy of the Project ("Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. Architect shall use reasonable efforts within the applicable standard of care 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.

§ 3.7 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.

§ 3.8 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 4 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 4.1 The Architect may provide Additional Services after execution of a Service Order without invalidating the Service Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Article 4 shall entitle the Architect to compensation pursuant to Section 9.3. Architect's Basic Services are described in this Article 4 and include usual and customary structural, mechanical, civil and electrical engineering services, and such other services identified in the individual Service Orders executed in connection with this Master Agreement and made a part hereof.

§ 4.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 4.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

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

§ 4.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 4.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. Any changes required by governmental authorities, if approved by the Owner, shall be made by the Architect at no additional cost to the Owner.

§ 4.1.6 The Architect shall be responsible for filing documents required for the approval of governmental authorities having jurisdiction over the Project identified in the applicable Service Order, subject to review and approval of the Owner.

§ 4.1.7 When the services under this Agreement or any Service Order under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be AIA Document A201-2017, as amended by the Owner for the Project, applicable to the individual Service Order. The Architect shall administer the Project identified in the individual Service Orders in accordance with this Master Agreement, the applicable Service Order as amended for the Project identified in the individual Service Order, and with the AIA A201-2017, General Conditions of the Contract for Construction for the Project identified in the individual Service Orders, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall not be relieved of any obligation to perform in accordance with the standard of care applicable to licensed architects in the State of Texas, regardless of whether or not a specific responsibility or task is included or identified in this Agreement.

§ 4.1.8 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.

§ 4.2 Unless otherwise provided in a Service Order, upon recognizing the need to perform the following Additional Services, as they relate to the services provided pursuant to the Service Order, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the

- applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- ~~.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~
  - ~~.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;~~
  - ~~.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~
  - ~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~
  - ~~.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~
  - ~~.9 Evaluation of the qualifications of entities providing bids or proposals; or~~
  - ~~.10 Consultation concerning replacement of Work resulting from fire or other cause during construction.~~

#### **Schematic Design Phase Services**

§ 4.2.1 The Architect shall assist the Owner with the provision of the educational program and educational specifications, which shall be approved by the Owner's Board of Trustees, per 19 Texas Administrative Code Section 61.1036. The Architect shall review the program and other specifications furnished by the Owner to ascertain the specific requirements of the Project and shall arrive at a mutual written understanding of such requirements with the Owner. The Architect shall include all components of Owner's program for the Project unless specific agreement to delete a component is received from the Owner. This review, assistance and understanding shall be performed in connection with each Project identified and/or commenced under an individual Service Order executed in connection with the Master Agreement and made a part hereof, unless otherwise provided in the Service Order executed in connection with this Agreement and made a part hereof.

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

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

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

§ 4.2.4.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services as Additional Services.

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

§ 4.2.5 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 7.3.

**§ 4.2.6** The Architect shall submit the Schematic Design Documents to the Owner and request the Owner's approval. The Architect shall not proceed to the Design Development Document Phase without the approval of Owner; provided, however, this approval shall not relieve Architect of Architect's responsibility to ultimately provide final construction documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without the approval required by this Section 4.2.6.

### **§ 4.3 Design Development Phase Services**

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

**§ 4.3.2** The Architect shall update the estimate of the Cost of the Work. This estimate may be based upon current area, volume or similar conceptual estimating techniques. 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 equipment and facilities. If the estimate of the Cost of the Work exceeds the Owner's budget, and the Architect shall redesign elements to achieve cost savings within the Scope of the Work, but in doing so, shall not delete any essential element of the Project. Architect shall present the redesign to Owner for Owner's approval and, in doing so, shall notify Owner of the actions taken to bring the Project into Owner's budget. If the Architect is unable to redesign the Project to meet Owner's budgetary, programmatic and quality needs, then the Architect (in cooperation the Construction Manager at Risk, if applicable) shall make appropriate written recommendations to the Owner to adjust the Project's size, quality or budget. Owner shall consider the Architect's recommendations, but shall decide, in its discretion, what adjustments to make and the Owner shall cooperate with the Architect in making such adjustments.

**§ 4.3.3** The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. The Architect shall not proceed to the Construction Documents Phase without the approval of Owner; provided, however, this approval shall not relieve Architect of Architect's responsibility to ultimately provide final construction documents which are sufficient for Owner to complete construction of the Project, and are free from material defects or omissions. Architect shall bear full responsibility for, and all resulting excess costs incurred by Architect in, proceeding without the approval required by this Section 4.3.3.

### **§ 4.4 Construction Documents Phase Services**

**§ 4.4.1** 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 all Drawings and 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 set forth in detail the requirements for construction of the Project. The Construction Documents shall reflect all agreements between Owner and Architect concerning the Owner's budgetary constraints, programmatic needs and expectations as to quality, functionality of systems, maintenance costs and usable life of equipment and facilities. The Construction Documents shall also reflect the Owner's program and educational specifications and the State educational adequacy standards in 19 TAC Section 61.1036. The Architect shall provide Construction Documents which are sufficient for the Owner to complete construction of the Project, are free from material defects or omission, and comply with all applicable laws, ordinances, codes, rules and regulations, as of the effective date of the issuance of the Construction Documents. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with the requirements of this Section 4.4.1.

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

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

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

§ 4.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 7.5, and request the Owner's approval; provided however, this approval shall not relieve Architect of Architect responsibility to provide documents which are sufficient for Owner to complete the construction of the Project. Architect shall bear full responsibility for and all resulting excess costs incurred by Architect in proceeding without Board approval.

§ 4.4.6 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 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.

§ 4.4.7 Pursuant to 19 Texas Administrative Code § 61.1036, the Architect shall sign and seal the Construction Documents and certify on the Certification of Project Completion form developed by the Texas Education Agency as follows:

- .1 It has reviewed the standards contained in 19 TAC Chapter 61 and has used sound 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 § 61.1036.
- .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 § 61.1036 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.

§ 4.4.8 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 4.4.7 above.

## **§ 4.5 Procurement Phase Services**

### **§ 4.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

## **§ 4.5.2 Competitive Procurement**

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

**§ 4.5.2.2** If requested by Owner, the Architect shall assist the Owner in the procurement process for Construction Services:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 4.5.2.3** The Architect shall, as a Basic Service, consider requests for substitutions, if the Procurement Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

## **§ 4.5.3 Negotiated Proposals**

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

**§ 4.5.3.2** If requested by Owner, the Architect shall assist the Owner in obtaining proposals by

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

**§ 4.5.3.3** The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## **§ 4.6 Construction Phase Services**

### **§ 4.6.1 General**

**§ 4.6.1.1** 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 amended by the Owner for the Project and provided to the Architect concurrent with the execution of this Agreement.. If the Owner and Contractor modify AIA Document A201™–2017, other than the modifications provided at the time of this Agreement, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

**§ 4.6.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. Notwithstanding the foregoing, the Architect shall be responsible for providing at no additional cost to the Owner architectural services made necessary by major defects or deficiencies in the Contractor’s work which the Architect should have reasonably discovered in providing services within its standard of care.

**§ 4.6.1.3 Jobsite Safety.** Neither the professional activities of the Architect, nor the presence of the Architect, or its employees and consultants at a construction/project site, shall relieve any Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The Architect and its personnel have no authority

to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Owner agrees that the Contractor shall be solely responsible for jobsite safety, and agrees that this intent shall be carried out in the Owner's contract with the Contractor.

**§ 4.6.1.4** Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment

#### **§ 4.6.2 Evaluations Of The Work**

**§ 4.6.2.1** The Architect or its authorized representative, as a representative of the Owner, shall visit the site at least twice per week (or more often when deemed necessary by the Owner's representative or when necessary to protect the Owner's interests), and at other intervals appropriate to the stage of the Contractor's operations: (1) to observe the progress, quality and quality of the work completed, to reject any observed non-conforming Work; (2) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed; (3) to determine in general if the work is being performed in a manner indicating that the Work, when fully completed will be in accordance with the Contract Documents; and, (5) to document progress of the Work, in written and photographic form. A minimum of two jobsite meetings per month from commencement of construction through Final Completion will be initiated by the Architect. Attendees shall include the Owner, the Contractor's project manager or superintendent, the Architect's project representative and the Architect. he Architect or his authorized representative will provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs and concrete superstructure components, if applicable. Architect or its representative shall also provide on-site observations prior to covering up or closing up of portions of the construction that, if covered, would conceal problems with the structural integrity of the Project. On the basis of its on-site observations, the Architect shall keep the Owner and the Owner's Contractor informed of the progress and quality of the Work, through the Architect's field reports and shall promptly notify the Owner and Contractor regarding a perceived defect or nonconforming Work which shall be followed by a written notice and recommended corrective action. Notwithstanding the foregoing, the Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are the Contractor's rights and responsibilities under the Contract Documents

**§ 4.6.2.2** The Architect shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend to the Owner, additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. The Architect shall promptly notify the Owner and Contractor of any observed fault or defect in the Project or non-conformance with the Contract Documents upon discovery and shall notify the Owner of all corrective action taken or recommended.

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

**§ 4.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 4.6.2.5** 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.



### **§ 4.6.3 Certificates For Payment To Contractor**

**§ 4.6.3.1** The Architect shall observe the progress of the Work evaluate, review and certify the amounts due the Contractor and shall sign and issue Certificates for Payment in such amounts if such amounts are valid, correct and deemed due and owing, in the Architect's professional opinion, within seven (7) days of its receipt of Contractor's properly submitted 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, in the Architect's professional opinion, and to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the amounts shown in the application are valid and correct. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect in writing to the Owner.

### **ARTICLE 5 — OWNER'S RESPONSIBILITIES**

**§ 4.6.3.2** 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.

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

### **§ 4.6.4 Submittals**

**§ 4.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 4.6.4.2** In accordance with the Architect-approved, Contractor's submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and applicable laws, statutes, codes, regulations, ordinances and requirements applicable the Architect's design.. 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. If it is determined that any submittal does not comply with the requirements of the Contract Documents, then the Architect shall notify the District representative so that the Contractor may be brought in to compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples. The Architect is not authorized to approve changes involving major systems such as HVAC, roof, foundation, outward appearance, color schemes, floor plans, building materials or mechanical equipment without Owner's prior written consent.

**§ 4.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 4.6.4.4** The Architect shall review and respond to requests for information about the Contract Documents as Basic Services. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such

requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information as Basic Services.

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

#### **§ 4.6.5 Changes In The Work**

**§ 4.6.5.1** The Architect shall prepare Change Orders, Construction Change Directives and documents authorizing expenditures of contingency funds, with supporting documentation and data if deemed necessary by the Architect, as Basic Services compensated under Section 11.1, for the Owner's approval and execution in accordance with the Contract Documents. With notice and approval of the Owner's representative, the Architect may authorize 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.

**§ 4.6.5.2** The Architect shall review and evaluate Contractor proposals for Work to be performed under a Change Order, counter-proposals by the Contractor, if any, in connection with a Construction Change Directive and Contractor proposals related to funds to be expended from any Contingency or Allowance, to confirm that the form of the proposal and information satisfies the requirements of the Contract Documents and, if the Architect finds the proposal in compliance with the Contract Documents, the price as proposed to be fair and reasonable, it shall prepare the formal Change Order for the Owner's approval and execution. If the Architect shall not be satisfied that the form of the proposal and information satisfies the requirements of the Contract Documents or that the price as proposed is not a fair and reasonable price for such work, the proposal shall be returned to the Contractor with a request for revision and instructions as to what is required to correct the deficiencies in the proposal. Upon receipt of the revised proposal, the Architect shall again evaluate the proposal in accordance with this Paragraph.

**§ 4.6.5.3** The Architect shall maintain records relative to changes in the Work, including, Change Orders, Construction Change Directives and Changes Requested to be paid from any Contingency or Allowance.

**§ 4.6.5.4** The Architect shall prepare a set of reproducible record drawings in PDF format, or such other electronic format as agreed by the parties, showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

#### **§ 4.6.6 Project Completion**

**§ 4.6.6.1** The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Neither the form of final Certificate for Payment nor the Certificate of Final Completion shall release the Contractor, Construction Manager at Risk (if applicable) or any subcontractor for any liability in connection with the Construction.

**§ 4.6.6.2** 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.

**§ 4.6.6.3** When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 4.6.6.4** 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.

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

## **ARTICLE 5 OPTIONAL ADDITIONAL SERVICES.**

**§ 5.1** The Owner shall provide information in a timely manner regarding requirements for and limitations of each Service Order. Optional Additional Services that can be provided for a Project after execution of a Service Agreement without invalidating the Service Agreement and following written approval by the Owner, include those designated in the table below as "Additional Services. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 5.1 shall entitle the Architect to compensation pursuant to Article 11 and/or as may be more particularly specified in any Service Order.

<b>Basic and Optional Additional Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
<b>§ 5.1.1</b> Programming	Architect – Basic Service
<b>§ 5.1.2</b> Multiple preliminary designs	Architect – Basic Service
<b>§ 5.1.3</b> Measured drawings	Optional Additional Services
<b>§ 5.1.4</b> Existing facilities surveys	Optional Additional Services
<b>§ 5.1.5</b> Site evaluation and planning	Architect – Basic Service
<b>§ 5.1.6</b> Building Information Modeling	Architect – Basic Services
<b>§ 5.1.7</b> Civil engineering	Architect – Basic Services
<b>§ 5.1.8</b> Landscape design	Architect - Additional Services
<b>§ 5.1.9</b> Architectural interior design	Architect – Basic Services
<b>§ 5.1.10</b> Value analysis	Optional Additional Services
<b>§ 5.1.11</b> Detailed cost estimating	Optional Additional Services
<b>§ 5.1.12</b> On-site project representation	Architect – Basic Services (Full Time On-Site Representation is an Optional Additional Services)
<b>§ 5.1.13</b> Conformed documents for construction	Optional Additional Services
<b>§ 5.1.14</b> As-designed record drawings	Architect – Basic Services
<b>§ 5.1.15</b> As-constructed record drawings	Architect – Basic Services
<b>§ 5.1.16</b> Architect's coordination of the Owner's consultants	Architect – Basic Services
<b>§ 5.1.17</b> Telecommunications/data design	Architect – Basic Services
<b>§ 5.1.18</b> Security evaluation and planning	Optional Additional Services
<b>§ 5.1.19</b> Commissioning	Owner
<b>§ 5.1.20</b> Sustainable Project Services	Optional Additional Services
<b>§ 5.1.21</b> Multiple bid packages	Architect- Basic Services
<b>§ 5.1.22</b> Historic preservation	Optional Additional Services
<b>§ 5.1.23</b> Furniture Selection, Specification Bid Evaluation and Punchlist	Architect – Basic Services
<b>§ 5.1.24</b> Surveys	Owner
<b>§ 5.1.25</b> Geotechnical Reports	Owner

**§ 5.2** 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. If deemed necessary in the Architect's professional judgment, in connection with the Project, or upon specific request of the Owner in connection with a Project, the Architect 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; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;

and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark. The Architect shall be reimbursed by Owner for the actual cost of such services with markup as provided in Section 11.2.

**§ 5.3** The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants as designated in an individual Service Order, 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 Service Order. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided. If deemed necessary in the Architect's professional judgment, in connection with the Project, or upon specific request of the Owner in connection with a Project, the Architect shall furnish services of geotechnical engineers as required for the Project which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations. The Architect shall be reimbursed by Owner for the actual cost of such services with markup as provided in Section 11.7.

**§ 5.4** The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time to meet the Owner's needs and interests under a Service Agreement. Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. All services under the terms of this Agreement which would otherwise be constructed as Additional Services will be treated as Basic Services compensated under Section 11.1 for which no additional compensation is authorized, unless such services are requested in writing by the Architect and approved in writing by the Owner prior to the time such services are performed. In the absence of a prior written agreement, the Owner shall have no obligation to pay for any Additional Services claimed to have been performed.

**5.4.1** Unless otherwise provided in a Service Order, upon recognizing the need to perform the following Additional Services, as they relate to the services provided pursuant to the Service Order, 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 material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method after Construction Documents are complete, except when said changes are due to Architect's or Architect's consultant's negligent errors or omissions;
- .2** [Section Deleted];
- .3** Changing or editing previously prepared Construction Documents necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4** Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5** [Section Deleted.];
- .6** [Section Deleted.];
- .7** [Section Deleted.];
- .8** [Section Deleted.];
- .9** [Section Deleted.];
- .10** Consultation concerning replacement of Work resulting from fire or other cause during construction.
- .11** [Section Deleted.]

**§ 5.5** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the services or work related to a Service Agreement, including errors, omissions or inconsistencies in the Architect's Instruments of Service. 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 Up to two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
- .2 It is agreed that the Architect shall visit the site over the duration of the Project during construction and observe the Work at appropriate stages of construction and attend construction meetings as required herein.
- .3 Up to one (1) inspection for any phase of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
- .4 Up to one (1) inspection for any phase of the Work to determine Final Completion.

Accurate, detailed and segregated invoicing must be provided by the Architect for all Construction Phase Services exceeding the limits in this Section 5.5, in order to facilitate back-charging Contractor for such Additional Services.

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

## **ARTICLE 6 — COPYRIGHTS AND LICENSES**

### **ARTICLE 6 OWNER'S RESPONSIBILITIES**

§ 6.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use in relation to a Service Agreement. Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations of each Service Order, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 6.2 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 a Service Agreement is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. 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.

§ 6.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under the Service Agreement, including prompt payment of all sums when due pursuant to Articles 8 and 9. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Master 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 10.9, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates a Service Agreement for cause as provided in Section 8.4, the license granted in this Section 6.3, and related to the terminated Service Agreement, shall terminate. Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 6.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 6.3.1. The terms of this Section 6.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 8.4.

**§ 6.4** Except for the licenses granted in this Article 6, no other license or right shall be deemed granted or implied under this Master 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. The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants as designated in an individual Service Order, or authorize the Architect to furnish them as an Additional Service or as a Reimbursable Expense, when the Architect requests such services and demonstrates that in the Architect's professional judgement, they are reasonably required by the scope of the Service Order. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

**§ 6.5** Except as otherwise stated in Section 6.3, the provisions of this Article 6 shall survive the termination of this Master Agreement. Unless otherwise provided in this Agreement or a Service Order, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

## **ARTICLE 7 — CLAIMS AND DISPUTES**

### **§ 7.1 General**

**§ 7.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to any Service Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Master Agreement and within the period specified by applicable law, but in any case not more than 10 years after the completion of the services provided pursuant to a specific Service Agreement, whichever is sooner. Completion of the services pursuant to a specific Service Agreement shall be the date of Substantial Completion of construction related to the services performed pursuant to the Service Agreement or, where there is no construction work related to a Service Agreement, the date the Architect completes its services under the Service Agreement. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

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

**§ 7.1.3** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to a Service Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of a Service Agreement, except as specifically provided in Section 8.6.

### **§ 7.2 Mediation**

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

**§ 7.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Master Agreement. A request for mediation shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If

an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 7.2.3** 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.

**§ 7.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 7.3 of this Master Agreement

☐ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

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

### **§ 7.3 Arbitration**

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

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

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

**§ 6.6** Unless otherwise provided in this Agreement or a Service Order, the Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time to meet the Owner's needs and interests under a Service Agreement.

**§ 6.7** The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the services or work related to a Service Agreement, 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, the Owner shall be entitled to rely on the Construction Documents, services and information furnished by the Architect. This section shall not relieve the Architect of any responsibility or liability for performance of Architect's contractual services on the Project.

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

#### **§ 7.3.4 Consolidation or Joinder**

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

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

**§ 6.8** Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

**§ 7.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 7.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Master Agreement.

**§ 6.9** 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.

**§ 6.10** The Architect and the Owner shall at all times have access to the Work wherever it is in preparation or progress.

#### **ARTICLE 7 COST OF THE WORK**

**§ 7.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner or, to the extent the Project represented by the Service Order is not completed, the estimated costs to the Owner, to construct all elements of the Project represented by the Service Order, designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work (as defined by the Service Order) or other costs that are the responsibility of the Owner.

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

**§ 7.3** In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project or 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); and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 5.

**§ 7.4** The provisions of this Article 7 shall survive the termination of a Service Agreement. If the Bidding or Proposal Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner,



through no fault of the Architect, the Owner's budget for the Cost of the Work may be adjusted, if necessary, to reflect changes in the general level of prices in the applicable construction market.

## **ARTICLE 8 — TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS**

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

§ 7.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide proposal, the Owner, in its sole discretion, shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 10.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 7.7 If the Owner chooses to proceed under Section 7.6.4, 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 7.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 7.

## **ARTICLE 8 COPYRIGHTS AND LICENSES**

§ 8.1 If the Owner fails to make payments to the Architect in accordance with a Service Agreement, such failure shall be considered substantial nonperformance and cause for termination of the Service Agreement or, at the Architect's option, cause for suspension of performance of services under the Service Agreement for which the Owner failed to make payment. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use in relation to a Service Agreement. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 8.2 If the services under a Service Agreement have been suspended by the Owner, the Architect shall be compensated for services performed prior to notice of such suspension. When the services under the Service Agreement are resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. 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 a Service Agreement 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 electronic 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.

§ 8.3 If the Owner suspends the services under a Service Agreement for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate the Service Agreement by giving not less than seven days' written notice. Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use, retain copies and reproduce the Architect's and Architect's Consultant's Instruments of Service solely and exclusively for purposes of completing, constructing, using, maintaining, altering and adding to the Projects defined by the individual Service Orders under this Agreement. The Architect shall obtain similar nonexclusive licenses from

the Architect's consultants consistent with this Master 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 between the Parties, solely and exclusively for use in performing services or construction for the Projects defined by the individual Service Orders under this Agreement. The payment of any 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 and the Architect's consultants' Instruments of Service, for all documents produced pursuant to this Agreement and in existence as of the date of any such payment.

§ 8.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by Texas law and the state Constitution, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 8.3.1.

§ 8.4 Either party may terminate a Service Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of the Service Agreement, through no fault of the party initiating the termination. Termination of a Service Agreement under this Section 8.4 shall not be deemed a termination of other Service Agreements under this Master-Except for the licenses granted in this Article 8, no other license or right shall be deemed granted or implied under this Master 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. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Projects defined by the individual Service Orders under this Agreement.

§ 8.5 The Owner may terminate a Service Agreement, upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause, and the Architect agree that the attached written agreement included as Exhibit B, Agreement for Delivery of Documents in Electronic Form, sets forth the specific conditions governing the format of Architect's documents, instruments of service, or other electronic data, including any special limitations or license not otherwise provided in the Agreement. Exhibit B shall also govern Owner provided electronic data for incorporation into the Architect's documents.

§ 8.6 In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. The provisions of this Article 8 shall survive the termination of this Master Agreement.

§ 8.7 In addition to any amounts paid under Section 8.6, if the Owner terminates a Service Agreement for its convenience pursuant to Section 8.5, or the Architect terminates a Service Agreement pursuant to Section 8.3, the Owner shall pay to the Architect the following fees:  
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 — Termination Fee:

\_\_\_\_\_

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

\_\_\_\_\_

~~§ 8.8 Except as otherwise expressly provided herein, a Service Agreement shall terminate one year from the date of Substantial Completion.~~

~~§ 8.9 The Owner's rights to use the Architect's Instruments of Service in the event of termination of a Service Agreement are set forth in Article 6 and Section 9.5 of this Master Agreement.~~

## **ARTICLE 9 — COMPENSATION**

~~§ 9.1 The Owner shall compensate the Architect for the services described in a Service Order pursuant to the Service Order and as set forth in this Article 9.~~

~~§ 9.2 Except as otherwise set forth in a Service Order, the hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.~~

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

## **ARTICLE 9 CLAIMS AND DISPUTES**

### **§ 9.1 General**

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

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

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

### **§ 9.2 Mediation**

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

§ 9.2.2 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.

§ 9.2.3 The parties shall share the mediator's fee 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.

§ 9.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 7.3 of this Master Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

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

### **§ 9.3 Arbitration [Paragraph 9.3 and All Sub-Paragraphs Intentionally Deleted]**

## **ARTICLE 10 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS**

**Employee or Category**

**Rate (\$0.00)**

**§ 9.3** Except as otherwise set forth in a Service Order, the Owner shall compensate the Architect for Additional Services designated in Article 4 as follows:

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

### **§ 9.4 Compensation for Reimbursable Expenses**

**§ 9.4.1** Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to a Service Agreement, as follows:

- .1** — Transportation and authorized out-of-town travel and subsistence;
- .2** — Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3** — Permitting and other fees required by authorities having jurisdiction over the Project;
- .4** — Printing, reproductions, plots, and standard form documents;
- .5** — Postage, handling, and delivery;
- .6** — Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7** — Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8** — If required by the Owner, and with the Owner's prior written approval, the Architect's consultant's expense of professional liability insurance dedicated exclusively to the Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect or the Architect's consultants, and disclosed by the Architect in writing prior to execution of this Master Agreement or a related Service Agreement;
- .9** — All taxes levied on professional services and on reimbursable expenses;
- .10** — Site office expenses; and
- .11** — Other similar Project-related expenditures.

**§ 9.4.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus — percent (— %) of the expenses incurred.

**§ 9.4.3** Reimbursable Expenses will be allocated to each Service Agreement.

### **§ 9.5 Payments to the Architect**

#### **§ 9.5.1 Progress Payments**

**§ 9.5.1.1** Unless otherwise agreed, payments for services provided pursuant to a Service Agreement shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (—) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

**§ 9.5.1.2** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. In any event, the Owner shall not withhold payments to the Architect pertaining to a Service Agreement to offset amounts in dispute under a separate Service Agreement.

**§ 9.5.1.3** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## **ARTICLE 10 — MISCELLANEOUS PROVISIONS**

**§ 10.1** Each Service Agreement shall be governed by the law of the place where the Project described in the Service Order is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.3. If the Owner fails to make payments to the Architect in accordance with a Service Agreement through no fault of the Architect, such failure shall be considered substantial nonperformance and cause for termination of the Service Agreement or, at the Architect's option, cause for suspension of performance of services under the Service Agreement for which the Owner failed to make payment if not cured by the Owner within seven (7) days following notice of any past-due payment. If the Architect elects to suspend services, prior to the suspension of services, the Architect shall give seven (7) days' written notice to the Owner.

**§ 10.2** Notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission. This Agreement may be terminated by Owner if Architect engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies.

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to each Service Agreement. Neither the Owner nor the Architect shall assign a Service Agreement without the written consent of the other, except that the Owner may assign a Service Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under the Service Agreement, including any payments due to the Architect by the Owner prior to the assignment. If the Owner suspends the services under a Service Agreement for more than ninety (90) consecutive days for reasons other than the fault of the Architect, the Architect may terminate the Service Agreement by giving not fewer than seven (7) days' written notice. Should the Architect elect to so terminate a Service Agreement, the Architect shall be compensated for services actually performed and expenses actually incurred under the Service Agreement prior to notice of such termination

**§ 10.4** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with the Service Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of the Service Agreement. Either party may terminate a Service Agreement upon not fewer than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of the Service Agreement, through no fault of the party initiating the termination. Termination of a Service Agreement under this Section 10.4 shall not be deemed a termination of other Service Agreements under this Master Agreement.

**§ 10.5** Unless otherwise required in a Service Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Owner may terminate a Service Agreement, upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause.

**§ 10.6** The Architect shall have the right to include photographic or artistic representations of the design of the Projects for which services are performed among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Projects 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 Projects. This Section 10.6 shall survive the termination of a Service Agreement unless the Owner terminates a Service Agreement for cause pursuant to Section 8.4. In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services properly and actually performed and expenses actually incurred under the Service Agreement prior to notice of such termination, together with Reimbursable Expenses actually incurred prior to notice of termination.

**§ 10.7** ~~If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it 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 10.7.~~ [Paragraph Deleted.]

**§ 10.8** 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 Owner's rights to use the Architect's Instruments of Service in the event of termination of a Service Agreement are set forth in Article 8 and Section 11.8 of this Master Agreement.

## **ARTICLE 11 COMPENSATION**

**§ 11.1** The Owner shall compensate the Architect for the services described in a Service Order pursuant to the Service Order and as set forth in this Article 11. The Compensation in each Service Order will be determined on a project-by-project basis with Compensation for Basic Services for each Project based on the following formulas, with the final amount established in the Service Agreement based on the project parameters:

- .1 For New Construction utilizing a \_\_\_\_\_ ISD prototype or a limited number of \_\_\_\_\_ prototypes (not significantly altered) \_\_\_\_\_ percent ( \_\_\_\_\_ %) of Construction Cost at the time of Bidding as defined herein.
- .2 For New Construction utilizing a \_\_\_\_\_ ISD prototype or a limited number of \_\_\_\_\_ prototypes (with significant alternations) \_\_\_\_\_ percent ( \_\_\_\_\_ %) of Construction Cost at the time of Bidding as defined herein.

Note: If Owner selects any prototype listed above, architect shall review all change orders and/or allowance expenditure authorizations from the original or subsequent construction projects and modify the construction document (under this contract) to address these issues. This work shall be included under the Architect's Basic Services.

- .3 For additions and renovations \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Construction Cost at the time of Bidding as defined herein.
- .4 For new construction using new designs \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Construction Cost at the time of Bidding as defined herein.

**§ 11.2 Optional Additional Services.** Except as below for furniture selection, specification, bid and punch list assistance, the Architect will be compensated for Optional Additional Services as set out in the individual Service Orders, based on the hourly billing rates for services of the Architect and the Architect's consultants as set forth in the Fixed Rate Schedule attached hereto as **Exhibit C**.

**§ 11.3** Except as otherwise set forth in a Service Order, the Owner shall compensate the Architect for Additional Services that may arise during the course of a Project at the hourly billing rates for services of the Architect and the Architect's consultants as set forth in the Fixed Rate Schedule attached hereto as **Exhibit C**.

**§ 11.4** Compensation for 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 **Ten percent (10%)**, or as otherwise stated below:

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**User Notes:**

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**§ 11.5** here compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Facility Study Planning Services/Pre-Bond Issue services	As provided in §§11.1.5 and 11.1.6			
Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty-Five	percent (	25	%)
Construction Documents Phase	Thirty-Five	percent (	35	%)
Proposal Phase	Three	percent (	3	%)
Construction Phase	Twenty	percent (	20	%)
Close-Out	Two	percent (	2	%)
Total Basic Compensation	one hundred	percent (	100	%)

**§ 10.9** The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

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

**§ 10.10** For each Service Agreement, terms not defined in this Master Agreement or in the Service Order shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

## **ARTICLE 11 — SPECIAL TERMS AND CONDITIONS**

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

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

## **ARTICLE 12 — SCOPE OF THIS MASTER AGREEMENT**

**§ 11.6** When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or best value proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed, whether or not the Construction Phase is commenced.

## **§ 11.7 Compensation for Reimbursable Expenses**

**§ 11.7.1** Reimbursable Expenses will be allocated to each Service Agreement. Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to a Service Agreement, as follows:

- .1 [Paragraph Deleted.]
- .2 [Paragraph Deleted.]
- .3 [Paragraph Deleted.]
- .4 Printing, reproductions, plots, and standard form documents.
- .5 [Paragraph Deleted.]
- .6 [Paragraph Deleted.]
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner.
- .8 [Paragraph Deleted.]
- .9 [Paragraph Deleted.]
- .10 [Paragraph Deleted.]
- .11 [Paragraph Deleted.]

**§ 11.7.2** For Reimbursable Expenses as described in Section 11.4.1, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus One percent (1%) of the expenses incurred.

**§ 11.7.3 Other Reimbursable Expenses.** For the following Reimbursable Expenses, the compensation shall be as follows:

.1

.2

#### **§ 11.8 Compensation For Use Of Architect's Instruments Of Service**

If the Owner terminates the Architect for its convenience under Section 10.5 or for cause, or the Architect terminates this Agreement under Section 9.3, the Owner shall have the right to continued use of the Architect's and Architect's Consultants' Instruments of Service and to make derivative Works thereof, solely for purposes of completing, using and maintaining the Project 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 or the Architect's consultants' Instruments of Service pursuant to this Section, neither the Architect nor its consultants shall bear liability for errors or omissions appearing in such derivative works.

#### **§ 11.9 Payments to the Architect**

##### **§ 11.9.1 Progress Payments**

**§ 11.9.1.1** Unless otherwise agreed, payments for services and reimbursement for Reimbursable Expenses provided pursuant to a Service Agreement shall be made monthly in proportion to services performed and expenses incurred during the previous month. Payments are due and payable upon the Owner's receipt of the Architect's invoice. Amounts unpaid thirty (30) days after the Owner's receipt of the invoice shall bear interest at the rate provided in the Texas Prompt Payment Act, Texas Government Code, Chapter 2251.

**§ 11.9.1.2** For projects compensated on a percentage of the Cost of the Work or lump sum fee basis, the Architect will prepare and submit for the Owner's approval a Monthly Basic Services Fee Billing Schedule based on the provisions of this Agreement.

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

**§ 11.9.1.3** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### **ARTICLE 12 MISCELLANEOUS PROVISIONS**

**§ 12.1** This Master 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 Master Agreement may be amended only by written instrument signed by both the Owner and Architect. Each Service Agreement shall be governed by the laws of the State of Texas. Venue for a dispute arising under any Service Agreement shall lie in the county in which the Project is located. No provision of this Agreement is a waiver of any immunity or defense. No provision of this Agreement is consent to suit.

**§ 12.2** This Master Agreement is comprised of the following documents identified below: Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

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

**§ 12.4** If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests



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

**§ 12.5** 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

**§ 12.6** Unless otherwise required in this Master Agreement or a Service Order, the Architect shall have no responsibility for the handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances 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 a duty to immediately report to the Owner the existence of such materials if actually known by the Architect or the Architect's consultants to be present on the Project site.

**§ 12.7** With prior written consent of the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Projects for which services are performed among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Projects 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 Projects. This Section 12.7 shall survive the termination of a Service Agreement unless the Owner terminates a Service Agreement for cause pursuant to Section 10.4.

**§ 12.8** If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. 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. The restrictions on use and disclosure of Confidential Information by the Owner or Architect, shall not apply to information which (a) was known by the party receiving the confidential information prior to disclosure by the disclosing party; (b) is or later becomes part of the public domain through no fault of the disclosing party; or (c) is required by law or regulation to be disclosed.

**§ 12.9** To the extent permitted by applicable law, 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.

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

**§ 12.11** 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.

**§12.12** 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.

**§12.13** 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.

**§12.14** 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 herefrom.

**§12.15** 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. Notwithstanding the foregoing, the Owner's right to inspect, copy and audit shall not extend to documents related to the calculation of the Architect's rates, fees, markups or multipliers agreed upon in this Agreement, but the application of those rates, fees, markups or multipliers at the time of billing is intended to be included.

#### **§ 12.16 Criminal History Records Checks**

**§ 12.16.1** Before beginning any work on a Project which is the subject of a Service Agreement, the Architect may be required, if applicable, to comply with the provisions of Texas Education Code section 22.08341, including obtaining Criminal History Record Information ("CHRI"), through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse") for all of the Architect's Covered Employees as defined by the statute.

**§ 12.16.2** Covered Employees generally include all employees of Architect, as well as employees of the Architect's subconsultants and independent contractors, who will have ongoing work duties to be performed under this contract and a substantial opportunity for verbal or physical interaction with students, and the person will not be supervised by a certified educator or other professional district employee during such opportunities.

**§ 12.16.3** If a Project which is the subject of a Service Agreement, will involve a set of circumstances which will require compliance with Texas Education Code section 22.08341, the Architect agrees to obtain the CHRI on its Covered Employees, provide the required certifications and otherwise, fully and promptly comply with all requirements of the statute, at its sole expense.. The Architect is encouraged to consult its own counsel with regard to whether compliance is required in connection with a specific Service Agreement and shall consult with the Owner, prior to entering into any Service Agreement regarding compliance.

### **ARTICLE 13 SPECIAL TERMS AND CONDITIONS**

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

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

**§ 13.1 Purchase Order.** If the Owner issues a purchase order related to the Architect's services, it is understood and agreed that such purchase order is for the Owner's internal accounting purposes only and shall not modify, add to, or delete any of the terms and conditions of this Agreement. When a purchase order is issued, it is understood and agreed that the Architect shall indicate the purchase order number on the invoices sent to the Owner.

**§ 13.2 LEED.** The LEED Green-Building Rating System and similar environmental guidelines are subject to interpretation and achieving levels of compliance involves all parties and includes the Owners use, operation and maintenance of the completed project and the Contractors' performance during construction. The Architect does not warrant that the Project will achieve LEED certification or guarantee a certain level of energy savings but is required to use reasonable care consistent with its professional standard of care projects involving LEED design.

**§ 13.3** Neither the Owner nor the Architect shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of services on this

Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, or loss of income.

§ 13.4 The Architect shall make design and document changes that result from its errors and omissions at no cost to the Owner.

§ 13.5 In the event of any conflict between the Master Agreement and any Service Order, the language of the Service Order shall control.

§ 13.6 Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the Architect has at least ten (10) full time employees, then the Architect, by its execution of this Agreement represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 13.7 Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Architect has at least ten (10) full-time employees, then Architect represents and warrants to the District that the Architect does not boycott energy companies and will not boycott energy companies during the term of this Agreement. The section does not apply to a sole proprietorship.

§ 13.8 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Architect has at least ten (10) full-time employees, then Architect represents and warrants to the District that the Architect does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This section does not apply to a sole proprietorship.

§ 13.9 Architect verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Architect misrepresents its inclusion on the list, then such omissions or misrepresentation shall void this Agreement.

§ 13.10 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 a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the Architect agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.

#### **ARTICLE 14 SCOPE OF THIS MASTER AGREEMENT**

§ 14.1 This Master 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 Master Agreement may be amended only by written instrument signed by both the Owner and Architect.

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

- .1 AIA Document B121™–2018, Standard Form of Master Agreement Between Owner and Architect as amended by the Owner.
- .2 Building Information Modeling Exhibit, if completed:

All Service Orders executed by the parties during the term of this Master Agreement and prepared in the form included as **Exhibit A** to this Master Agreement.

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*(Clearly identify any other exhibits incorporated into this Master Agreement.)*

**Exhibit A – Form of AIA Document B221™–2018, Service Order for use with Master Agreement Between Owner and Architect, as amended by the Owner**

**Exhibit B – Fixed Rate Fee Schedule.**

**Exhibit C – All Subsequent Service Orders as executed, prepared on the form during the term of this Master Agreement and prepared in the form included as **Exhibit A** to this Master Agreement to be attached and numbered in sequence (C-1, C-2, etc.)**

.4 Other documents: None.

**FLOUR BLUFF INDEPENDENT SCHOOL DISTRICT**

**DRAFT FOR PROCUREMENT ONLY –  
NOT FOR SIGNATURE**

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

\_\_\_\_\_  
Chris Steinbruck, Superintendent  
*(Printed name and title)*

**FIRM:** \_\_\_\_\_

**DRAFT FOR PROCUREMENT ONLY  
NOT FOR SIGNATURE**

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

\_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_  
*(Printed name, title, and license number, if required)*

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

***AIA® Document D401™ – 2003***

I, Kelley L. Kalchthaler, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:27:20 ET on 05/30/2025 under Order No. 3104241723 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B121™ – 2018, Standard Form of Master Agreement Between Owner and Architect for Services provided under multiple Service Orders, other than those additions and deletions shown in the associated Additions and Deletions Report.

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

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*