

AISD PROJECT NO.: _____

PROJECT TITLE AND ADDRESS:

AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER

This Agreement (“Agreement”) is made as of the _____ day of _____, 20____,

Between: Austin Independent School District
 4000 S. IH 35 Frontage Road
 Austin, Texas 78704
 Attn: Executive Director, Construction Management Department
 Phone: 512-414-8940

herein referred to as “Owner”

and the Architect/Engineer:

herein referred to as “Architect/Engineer”

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ARTICLE I. GENERAL PROVISIONS

A. Description of Services. The Architect/Engineer agrees to perform professional services as herein set forth for the following described “Project” of construction, alteration or repair:

B. Quality of Services. All services performed under this Agreement shall be performed with the professional skill and care ordinarily provided by competent engineers or architects, as applicable, practicing in the same or similar locality and under the same or similar circumstances and professional license, and in compliance with all applicable laws and the terms of this Agreement. Such services shall be performed in accordance with the time frames established by this Agreement, or agreed to by Owner and Architect/Engineer, or if no such time frames have been established, then as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable.

C. Project Construction Budget. The Project Construction Budget (“PCB”), as herein referred to, means the cost for the construction of the Project. If the construction is to be performed under an Agreement for Construction Between Owner and Construction Manager-at-Risk (“Construction Manager at Risk Agreement”), then the term “Project Construction Budget” or PCB shall have the same meaning as the term “Construction Manager’s Portion of the Fixed Construction Budget” as used therein. The PCB for the Project is **XXXXXX and 00/100ths Dollars (\$XXX,XXX.00).**

D. Definitions. Unless the context clearly indicates otherwise, the following terms as used in this Agreement shall be defined as follows:

- (i) “Bid” or “bidding” means the process by which Owner solicits and the Contractor (or subcontractors) submits bids or proposals for the construction of the improvements, and the terms shall include requests for proposal or selection under an alternative construction delivery method in accordance with applicable law.
- (ii) “Solicitation Documents” means the documents used in connection with a solicitation for bids, and include a request for proposals or selection documents for other alternative construction methods, as applicable to the Project.
- (iii) “Construction Documents” means the Solicitation Documents and the Specifications and Drawings prepared pursuant to the terms of this Agreement, setting forth in detail the work required for the architectural, structural, electrical, mechanical, and site improvements and fixed equipment for the Project.
- (iv) “Contract Documents” means the Agreement between Owner and Contractor for Construction, the Owner’s General Conditions of the Contract for Construction (“General Conditions”), and all supplemental conditions, exhibits and attachments thereto, and all documents incorporated therein by reference, including the

Construction Documents, as the same may be amended from time to time by written change order.

- (v) “Contractor” shall mean each and every prime general Contractor performing Work (as defined in the General Conditions) on the Project, including any prime general Contractor that is a Construction Manager at Risk.

E. Ownership and Use of Work Product. The Architect/Engineer agrees that items such as plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which are specified to be delivered under this Agreement, including the Construction Documents, and which are paid for by Owner in accordance with the terms of this Agreement, are subject to the rights of Owner in effect on the date of this Agreement. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purposes, and to have others do so. If an item produced by the Architect/Engineer is copyrightable, the Architect/Engineer may copyright it, subject to the rights of Owner. Architect/Engineer shall deliver to Owner, promptly upon the completion of Architect/Engineer’s work or any earlier termination of this Agreement, complete copies of such work, including reproducible record prints and digital computer document copies in the format specified by Owner. Owner reserves the royalty-free, non-exclusive and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so. Owner’s rights include, but are not limited to, the right to use such items in the event Architect/Engineer is terminated pursuant to the terms of this Agreement, and for any renovation, modification or alteration of the improvements constructed as the Project. It is understood, however, that the Architect/Engineer does not represent such items to be suitable for use for any other project or at any other location, without the Architect/Engineer’s specific, written verification or adaptation. Such reuse will be at the risk of Owner, without liability to the Architect/Engineer. Any such verification or adaptation requested by Owner may be subject to further reasonable compensation at rates agreed upon between Owner and Architect/Engineer as specified below. Should the Architect/Engineer be terminated under this Agreement, Owner shall have the right to continue the Project and to have high quality reproducibles and digital computer document copies in the format specified by Owner, of the Drawings, Specifications and other documents, and to have them completed, corrected, revised or added to by another architect or engineer in accordance with the applicable statutory provisions of the Regulation of Architecture and Related Practices and the regulatory provisions of the Texas Board of Architectural Examiners, or the Texas Engineering Practice Act and Rules. The Architect/Engineer shall include in its contracts with consultants appropriate provisions to achieve the purpose of these Articles.

F. Consultants. Architect/Engineer must submit for Owner’s approval any consultants to be retained by Architect/Engineer for the Project. Approved consultants shall be listed in Exhibit “A” attached hereto and incorporated herein. Architect/Engineer shall not change any of the approved consultants and shall not retain any additional consultants without the prior written approval of Owner. Architect/Engineer shall submit, in each instance, an amended HUB Utilization Report (“HUR”) on the form supplied by Owner (“HUB

Utilization Report (“HUR”)) to reflect each approved change and/or each approved addition of a consultant or sub-consultant under this Agreement.

G. Criminal History Record Information Review of Covered Employees. Architect/Engineer shall, at its sole cost and expense, comply with the provisions of this Subsection G and all provisions of Texas Education Code (“TEC”) §22.08341, as may be amended, regarding criminal history record information review of all covered employees (hereafter defined) in connection with the Project.

1. As used herein, the term “covered employee” shall mean an individual employed by Architect/Engineer or an approved consultant or sub-consultant or an individual Architect/Engineer or individual approved consultant or sub-consultant who has or will have continuing duties on the Project site related to the services to be performed in connection with the Project and has or will have the opportunity for direct contact with students in connection with the individual’s continuing duties. An individual does not have the opportunity for direct contact with students if all the conditions of TEC §22.08341(c) are satisfied. If an individual employed by Architect/Engineer or an approved consultant or sub-consultant or an individual Architect/Engineer or individual approved consultant or sub-consultant will enter the Project site from time to time under this Agreement when one or more students are present on the Project site, such individual is deemed by Owner to be a covered employee for purposes of this Subsection G. If the Architect/Engineer determines that the conditions of a “covered employee” do not apply to an individual, the Architect/Engineer shall make a reasonable effort to ensure that the conditions or precautions that resulted in that determination continue to exist throughout the time the contracted services are provided.
2. Architect/Engineer shall, at its sole cost and expense, comply with the provisions of TEC §22.08341 and the further provisions of this Subsection G with regard to each covered employee. In accordance with TEC §22.08341, but in any event prior to the date such covered employee enters the Project site when one or more students are present, Architect/Engineer shall obtain with respect to its covered employees and cause each consultant and sub-consultant under this Agreement to obtain with respect to their respective covered employees the criminal history record information as required by TEC §22.08341. **[Contact the Texas Department of Public Safety Crime Records Service at (512) 424-5079 for instructions on obtaining national criminal history record information.]**
3. Architect/Engineer shall not assign to, permit or allow on the Project site any covered employee who has a disqualifying criminal history. A covered employee has a “disqualifying criminal history” under this Subsection G if the covered employee has been convicted of one of the following offenses and at the time the offense occurred, the victim of the offense was under 18 years of age or enrolled in a public school: (i) a felony offense under Title 5 of the Texas Penal Code; (ii) an offense on conviction of which a defendant is required to register as a sex offender

under Chapter 62 of the Texas Code of Criminal Procedure; or (iii) an offense under the laws of another state or federal law that is equivalent to an offense under (i) or (ii) above.

4. Architect/Engineer shall maintain at all times a list of all covered employees (as updated from time to time, the “List of Covered Employees”) which contains the following information for each covered employee: (i) full name; (ii) whether, in accordance with the applicable requirements of TEC §22.08341, Architect/Engineer obtained the required criminal history record information; (iii) the full name of the covered employee’s employer, if applicable; and (iv) Texas driver’s license or other identification number or such other information as Owner may request from time to time to enable Owner to obtain criminal history record information for the covered employee. The covered employees on the List of Covered Employees shall be grouped by employer, if applicable.
5. Prior to any entry on the Project site by a covered employee, Architect/Engineer shall deliver to Owner, or its designee if directed by Owner, an electronic copy in PDF format of the initial List of Covered Employees for all covered employees, together with Architect/Engineer’s duly completed and executed certification on a form provided by Owner (“Architect/Engineer Certification”) by the terms of which Architect/Engineer certifies to Owner that (i) all information on the List of Covered Employees attached to the Architect/Engineer Certification is true and correct in all respects and all covered employees employed by Architect/Engineer on the Project are included on the List of Covered Employees; (ii) Architect/Engineer has obtained (with respect to its covered employees) and has caused each consultant and sub-consultant under this Agreement to obtain (with respect to their respective covered employees) all required criminal history record information relating to each covered employee on the List of Covered Employees in accordance with TEC §22.08341; (iii) each consultant under this Agreement contracting directly with Architect/Engineer (each a “Consultant”) has duly completed and executed a Consultant Certification (hereafter defined) and each duly completed and executed Consultant Certification is attached to the Architect/Engineer Certification; (iv) if applicable, each Sub-consultant (hereafter defined) on the Project has provided a duly completed and executed Sub-consultant Certification (hereafter defined) to the appropriate Consultant in accordance with this Agreement; and (v) none of the covered employees on the List of Covered Employees has a disqualifying criminal history under this Subsection G. If it is determined that any statement in any Architect/Engineer Certification, Consultant Certification or Sub-consultant Certification is untrue or misrepresented when made or Architect/Engineer otherwise fails to comply with this Subsection G, Architect/Engineer shall be in material default under this Agreement.
6. As used herein, “Consultant Certification” shall mean a duly completed and executed certification on a form provided by Owner by the terms of which Consultant certifies to Owner and Architect/Engineer that (i) all of the covered

employees employed by Consultant on the Project are included on the List of Covered Employees and properly identified as employees of Consultant; (ii) all information on the List of Covered Employees with respect to the covered employees employed by Consultant is true and correct in all respects; (iii) Consultant has obtained all required criminal history record information relating to each covered employee of Consultant on the List of Covered Employees in accordance with TEC §22.0834; (iv) none of the covered employees on the List of Covered Employees employed by Consultant has a disqualifying criminal history under this Subsection G; and (v) if applicable, attached to the Consultant Certification is a duly completed and executed Sub-consultant Certification in the form provided by Owner obtained by Consultant from each sub-consultant employed on the Project by or under Consultant (each a “Sub-consultant”) and employing one or more covered employees. As used herein “Sub-consultant Certification” shall mean a duly completed and executed certification in a form provided by Owner from each Sub-consultant.

7. Architect/Engineer shall, as the Project progresses, comply with the provisions of this Subsection G with respect to each new covered employee to be employed on the Project and not previously listed on the List of Covered Employees. Each new covered employee shall be added to the List of Covered Employees, with the name highlighted and the dated of employment noted. In addition, as the Project progresses, each covered employee on the List of Covered Employees who is no longer employed on the Project shall be marked as “inactive” and the last date of such employee’s employment on the Project shall be noted, and for each covered employee previously designated as “inactive” and once again employed on the Project site, the “inactive” designation shall be removed and the date of reemployment shall be noted. Each time Architect/Engineer makes a change to the List of Covered Employees, Architect/Engineer must submit to Owner, or its designee if directed by Owner, within five (5) business days of the date of such change, an electronic copy in PDF format of the updated List of Covered Employees current as of the third (3rd) business day prior to the date of delivery, together with a fully executed copy of the Architect/Engineer Certification dated within three (3) business days of the date of delivery.
8. If, during the Project, Architect/Engineer, a consultant or sub-consultant under this Agreement, or Owner receives updated criminal history record information for a covered employee that includes a disqualifying criminal history under this Subsection G, or it is determined that a covered employee is on the Project site in violation of this Subsection G, then, notwithstanding anything in Article IX.A hereof or the Contract Documents to the contrary, Architect/Engineer shall immediately remove or cause to be removed such covered employee from the Project site with no requirement of written notice from Owner and shall prohibit such covered employee from future entry on the Project site. Owner reserves the right to cause Owner’s police or other security personnel to remove such employee from Owner’s property.

H. Identification Badges for Persons Entering Project Site. Architect/Engineer shall, at its sole cost and expense, comply and cause each consultant and sub-consultant under this Agreement to comply with the provisions of this Subsection H regarding the issuance of identification badges for all covered employees and non-covered employees (hereafter defined) entering the Project site under this Agreement. Owner has notified Architect/Engineer that Owner has contracted with a provider of workforce screening services (the “Provider”) for, among other things, the issuance of identification badges for all persons entering the Project site under this Agreement. Each individual employed by Architect/Engineer, a consultant or a sub-consultant under this Agreement or an individual Architect/Engineer or individual consultant or sub-consultant under this Agreement must wear a valid and unexpired Austin Independent School District identification badge issued by Provider (each an “AISD badge”) at all times while on the Project site. The following provisions shall apply to the issuance of AISD badges for covered employees and non-covered employees, as applicable. As used herein, the term “non-covered employee” shall mean an individual employed by Architect/Engineer, a consultant or a sub-consultant under this Agreement or an individual Architect/Engineer or individual consultant or sub-consultant under this Agreement who will be entering the Project site at any time under this Agreement and is not a covered employee under Subsection G above.

1. Covered Employees.

- (a) Upon Provider’s receipt of a copy of the List of Covered Employees from Owner and the completed consent and authorization form as required by Provider for each covered employee requiring an initial or renewal AISD badge, Provider will issue an AISD badge for each such covered employee. Architect/Engineer shall be responsible for paying or causing each consultant or sub-consultant under this Agreement to pay, as applicable, to Provider all costs associated with the issuance of AISD badges for the respective covered employees of each such employer.
- (b) As the Project progresses, Architect/Engineer shall deliver to Owner, in accordance with Subsection G above, an electronic copy in PDF format of each updated List of Covered Employees, together with an executed copy of the accompanying Architect/Engineer Certification. If an updated List of Covered Employees includes new covered employees requiring AISD badges, Architect/Engineer shall highlight the new names on the updated List of Covered Employees.
- (c) If during the Project, Architect/Engineer, a consultant or sub-consultant under this Agreement or Owner receives updated criminal history record information for a covered employee that includes a disqualifying criminal history under Subsection G above, Architect/Engineer shall immediately notify Provider in writing that such covered employee is prohibited from future entry on the Project site and return such covered employee’s AISD

badge to Provider. Such covered employee shall thereafter be marked as “inactive” on the List of Covered Employees.

- 2. Non-covered Employees. For each non-covered employee requiring an AISD badge, Architect/Engineer shall submit or cause to be submitted to Provider the full name of the non-covered employee and the name of such employee’s employer, if applicable. Upon Provider’s receipt of the names of such non-covered employees and the completed consent and authorization form as required by Provider for each non-covered employee requiring an initial or renewal AISD badge, Provider will issue an AISD badge for each such non-covered employee. Architect/Engineer shall be responsible for paying or causing each consultant or sub-consultant under this Agreement to pay, as applicable, to Provider all costs associated with the issuance of AISD badges for the respective non-covered employees of each such employer.

ARTICLE II. COMPENSATION.

A. Compensation for Basic Services. For the professional services required under this Agreement, Owner shall compensate Architect/Engineer as follows:

- (i) Fixed Fee for Basic Services. The fixed fee for Basic Services (the “Fixed Fee”) shall be calculated based on the fee percentages of the PCB listed in the table below as well as the design effort required by Architect/Engineer, the difficulty of design, and other applicable factors in Owner’s discretion. The Fixed Fee will not decrease or increase should the awarded Construction Cost (or Guaranteed Maximum Price) be less than or more than the PCB shown in Article I of this Agreement. For purposes of calculating the Fixed Fee, the costs for construction of the portion of the Project attributable to the Additional Services described in Article II.B.(iii), Article X and, if applicable, subsequent amendments to this Agreement shall be subtracted from the PCB. The Fixed Fee under this Agreement shall be: _____ Dollars (\$ _____).

(ii) Table.

If the PCB shall be: _____	Then, the calculation shall be: _____
Not more than \$200,000	10.0% of PCB
\$200,000 or more but not more than \$499,999	Not more than 10.0% but not less than 8.0%
\$500,000 or more but not more than \$999,999	Not more than 8.0% but not less than 7.25%

\$1,000,000 or more but not more than \$4,999,999	Not more than 7.25% but not less than 6.5%
\$5,000,000 or more	Not more than 6.5%

B. Compensation for Additional Services. For Additional Services (as described in Article IV), if requested by Owner in writing (and exclusive of services remedying errors or omissions of the Architect/Engineer, which shall be provided by Architect/Engineer at no cost to Owner), compensation shall be computed based on one of the following methods:

- (i) For the time of principals and employees of Architect/Engineer and for the time of consultants retained by Architect/Engineer, compensation shall be calculated based on the fully loaded hourly rates set forth on Exhibit “B” attached hereto and incorporated herein or as otherwise mutually agreed to by Owner and Architect/Engineer. In evaluating the hourly rates proposed by Architect/Engineer hereunder, Owner may evaluate the proposed rates in relation to professionally determined prevailing rates for comparable benchmarked services. If required by Owner, a “not to exceed” amount mutually agreed to by Owner and Architect/Engineer shall also be established based on the agreed upon hourly rates.
- (ii) A negotiated percentage of the portion of the PCB attributable to the Additional Services to be compensated. Such compensation may be greater or less than the percentage of PCB established in this Agreement for the Fixed Fee depending on the extent of the Additional Services.
- (iii) For the Additional Services described below, at the compensation stated:
 - a. _____
 - b. _____
 - c. _____

C. Reimbursable Expenses. For reimbursable expenses, amounts expended for Owner’s account as herein specified, a multiple of 1.05 times the amount reasonably billed to the Architect/Engineer for such services listed in the following subparagraphs:

- (i) Reproduction expenses for final plans and specifications required for bidding, files of Architect/Engineer, Contractor, and Owner, and other parties approved by Owner; reimbursable per invoice amounts.
- (ii) Expense of renderings, models and mock-ups requested by Owner.

- (iii) Fees paid for securing approval of governmental authorities having jurisdiction over the Project.
- (iv) With prior written approval of Owner, reasonable expenses of out-of-town transportation in connection with the Project, reasonable living expenses in connection with out-of-town travel, and long distance telephone calls.
- (v) For reimbursable expenses described above, at the allowed compensation stated:
XXXX and 00/100 Dollars, \$X,XXXX.00

ARTICLE III. BASIC SERVICES OF THE ARCHITECT/ENGINEER

A. Basic Services. The Architect/Engineer's Basic Services under this Agreement shall consist of:

- (i) Normal architectural services; civil, structural, mechanical, plumbing, electrical, fire alarm, fire suppression, intrusion alarm, and data/telecommunications/video engineering services; interior and roofing design services;
- (ii) Coordination with Owner's energy/sustainability consultant(s) as necessary to demonstrate achievement of a minimum LEED Silver Certification (with particular attention to indoor air quality, natural daylight, and energy and water conservation) for all new buildings and classroom additions and the inclusion of as many of the components of this rating system as practical in all renovations; and commissioning services for energy/sustainability components of the Project;
- (iii) Services for acoustics, closed circuit television, card reader door access system, food service, landscaping and irrigation;
- (iv) Interior design, performance arts center or equivalent and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment;
- (v) Attendance at public hearings which may be required as a result of proposed changes to the scope of work as outlined in the Bond Program and presentation of any such program changes and schematic plans to various groups;
- (vi) Updating of Construction Documents to reflect accurate, as-built conditions (from information furnished by Contractor) on Record Drawings. Upon completion of construction, the Architect/Engineer shall make changes in the original drawings to show, to the best of its knowledge, information, and belief, the as-built condition of the Project and final location of the mechanical service lines and outlets and shall forward the same to Owner in the format and CAD layering described in the AISD Project Development Manual;

- (vii) Assisting Owner in evaluating for approval or disapproval the Contractor's proposed subcontractors and suppliers; and
- (viii) For non CMR projects provide Detailed Estimates of Construction Cost, analyses of owning and operating costs, or detailed quantity survey or inventories of materials, equipment and labor.

All services performed under this Agreement must be performed in accordance with applicable Owner Education Specifications, and the provisions of the Owner Project Development Manual, including the format of the Drawings and Specifications.

- B. Fast Tracking. Architect/Engineer agrees and understands that Owner may require that the Project be fast-tracked, in which event Architect/Engineer will perform the design services required under this Agreement in accordance with the time-frames established by Owner, Architect/Engineer and Contractor, rather than in accordance with the time frames indicated below for the various Design Phases. Any changes to the time frames or scope of design services in this Agreement, once established, shall be subject to the negotiation and execution of an amendment to this Agreement setting forth any revised time frames, scope of design services and/or compensation, if applicable.
- C. Cooperation During Pre-Construction. If the Project is constructed pursuant to a Construction Manager at Risk Agreement between Owner and the Contractor, the Architect/Engineer will cooperate with the Contractor during the Preconstruction Phase with the goal of achieving a cost-effective and constructible design. Such cooperation shall include providing design information to Contractor in a timely manner to enable Contractor to accurately determine the cost of the Project, reviewing the Contractor's recommendations and replying to requests for information promptly, incorporating changes recommended by the Contractor and approved by Architect/Engineer and Owner in a timely manner, and notifying Owner if the Contractor and the Architect/Engineer are unable to agree on any change requested or recommended by the Contractor.
- D. Pre-Design Phase. The first phase of the Basic Services to be performed by the Architect/Engineer pursuant to this Agreement shall be the Pre-Design Phase. To complete the Pre-Design Phase, the Architect/Engineer shall:
 - (i) Provide a preliminary evaluation of the Owner's Project requirements and the Project Construction Budget, each in terms of the other.
 - (ii) Visit the Project site and inspect the site infrastructure and existing facilities, systems and conditions in coordination with Owner and the requirements of the Solicitation Documents to ensure an accurate understanding of the existing conditions as required.

- (iii) Review laws and standards applicable to the design and construction of the Project and advise the Owner of any Project requirement(s) that may cause a violation of such laws and standards.
 - (iv) Obtain Owner's written approval of this phase before proceeding to the Schematic Design Phase.
- E. Schematic Design Phase. To complete the Schematic Design Phase, the Architect/Engineer shall:
- (i) Consult with Owner to ascertain the requirements and limitation of the Project.
 - (ii) Retain all consultants required for the Project, including the civil, structural, mechanical and/or electrical engineering, and roofing identified in Exhibit "A" hereto, wherein is shown, for each such consultant, (a) its name, (b) its address and telephone number, (c) its type of business organization, (d) its area of consultation, and (e) the extent it is to participate in each phase of the work. The civil, structural, mechanical, electrical and/or roofing consultants shall maintain a local representative throughout the planning and construction phases of the Project, or, until the related phase of work is complete.
 - (iii) Review existing building and site conditions or make measured drawings of existing construction, including such mechanical, electrical, plumbing, and other components as may be required to coordinate proper interfacing of new construction with existing construction.
 - (iv) Prepare schematic design documents, including but not limited to design studies, plans, elevations and other drawings and outline specifications, illustrating the scope of the Project and its relationship to the Project site and any adjacent structures and submit these documents to Owner for approval.
 - (v) In collaboration with Owner, establish a schedule of dates for completion of the various phases of its work. Architect/Engineer shall submit a preliminary schedule for Owner's review no later than 14 days after the execution of this Agreement.
 - (vi) If the Contractor is not a Construction Manager at Risk, prepare and deliver to Owner a written statement of the probable construction cost. When granted advance, written approval by Owner, the Architect/Engineer shall be compensated in as additional services for detailed quantity surveys ("Construction Cost Estimates") obtained from professional estimating firms. The Architect/Engineer shall promptly notify Owner, in writing, if it appears that the Project will exceed the PCB. Unless an increase in the PCB is approved in writing by Owner, Architect/Engineer shall, at his/her cost, in consultation with Owner, revise the schematic plans to bring the Project within the PCB.

- (vii) Review reports, programming information, schematic studies, cost estimates and other documentation developed by Owner.
 - (viii) Review Project schedule and provide, when applicable, draft of construction phasing to facilitate construction operations that will accomplish schedule and minimize impact of school operations.
- F. Design Development Phase. To complete the Design Development Phase, the Architect/Engineer shall:
- (i) Prepare from the approved Schematic Design Studies, the Design Development Documents consisting of plans, elevations and other drawings and outline specifications, to fix and illustrate the size, character and general appearance of the Project. Collaborate with Owner regarding materials, equipment, systems, finishes, and methods of construction.
 - (ii) Submit heating and cooling calculations to Owner for review and approval.
 - (iii) If the Contractor is not a Construction Manager at Risk, prepare and deliver to Owner a revised statement of probable construction cost. When granted advance, written approval by Owner, the Architect/Engineer shall be compensated in accordance with the additional services provisions of this Agreement for estimated construction costs based on detailed quantity surveys obtained from professional estimating firms. The Architect/Engineer shall not be relieved of its responsibility for designing the Project within the PCB. Architect/Engineer shall promptly notify Owner, in writing, if it appears that the Project will exceed the PCB. Unless an increase in the PCB is approved in writing by Owner, Architect/Engineer shall, at his/her cost, in consultation with Owner, revise the Design Development Documents to bring the Project within the PCB.
 - (iv) Assist Owner with the selection of colors for finishes, furniture, and equipment for the Project. The Architect/Engineer shall prepare and submit a color board for Owner's review and approval that clearly illustrates the Architect/Engineer's recommended color scheme.
 - (v) Obtain Owner's written approval of this phase before proceeding to the next phase.
- G. Construction Documents Phase. To complete the Construction Documents Phase, the Architect/Engineer shall:
- (i) Prepare from the approved Design Development Documents, the Construction Documents consisting of the Solicitation Documents and the Specifications and Drawings setting forth in detail the work required for the architectural, structural, electrical, mechanical, and site improvements, and fixed equipment.

- (ii) Collaborate on the Project with Owner on the form and manner in which the Project is presented in the Construction Documents.
 - (iii) If the Contractor is not a Construction Manager at Risk, prepare and deliver to Owner a written statement of the estimated construction cost. When granted advance written approval by Owner, the Architect/Engineer shall be compensated in accordance with the additional services provisions of this Agreement for estimated construction costs based on detailed quantity surveys obtained from professional estimating firms. The Architect/Engineer shall not be relieved of its responsibility for designing the Project within the PCB. Architect/Engineer shall promptly notify Owner, in writing, if it appears that the Project will exceed the PCB. Unless an increase in the PCB is approved in writing by Owner, Architect/Engineer shall, at his/her cost, in consultation with Owner, revise the Construction Documents to bring the Project within the PCB.
 - (iv) Prepare the Construction Documents to be in compliance with requirements of all applicable governmental authorities having jurisdiction over the design of the Project.
 - (v) Provide Owner with five (5) sets of plans and specifications for review and approval.
 - (vi) Upon completion of the Construction Documents and prior to their issuance for bidding, obtain Owner's approval of said Construction Documents (and of the latest statement of estimated construction cost). Acceptance and approval of the Architect/Engineer's Construction Documents by Owner shall not constitute nor be deemed a release of the Architect/Engineer for the accuracy, completeness and competency of the Architect/Engineer's designs, Drawings, Specifications or other documents or services provided under this Agreement. The Architect/Engineer agrees to rework documents as necessary, at no cost to Owner, to correct designs, Drawings, Specifications or other documents found to be inaccurate, incomplete or incompetent.
 - (vii) Upon completion and approval of Construction Documents and prior to bidding, submit plans, specifications, and other documents, as required for issuance of a building permit, to governmental authorities having jurisdiction over the Project.
 - (viii) Upon completion of the Construction Documents and in conjunction with the completion of the Plan Review for Code Compliance, Section 4 of the TEA "Certification of Project Compliance" form [required under the provisions of 19 TAC §61.1036(c)(3)(F)] must be executed by the Architect/Engineer and returned to Owner.
- H. Bidding or Negotiation Phase. In connection with the Bidding or Negotiation Phase, the Architect/Engineer shall:

- (i) if the Contractor is a Construction Manager at Risk, assist in the preparation of the Solicitation Documents as requested by Owner. The Contractor shall be responsible for issuing the Solicitation Documents and soliciting bids from subcontractors. Architect/Engineer shall assist Owner by preparing any necessary addenda, attending any pre-bid conference, and reviewing and making recommendations to Owner on the Contractor's proposed subcontractors and the Contractor's Guaranteed Maximum Price proposal. If the cost of the Work as measured by the Contractor's lowest bona fide Guaranteed Maximum Price proposal, exceeds the PCB set forth herein (or as otherwise approved by the Owner's Board of Trustees) due to reasons other than the default of the Architect/Engineer in its obligations under this Agreement, then Owner shall have the rights and remedies set out in the Agreement between Owner and the Contractor. If the PCB is exceeded due to the default of the Architect/Engineer, then Owner shall have the same four alternatives and the Architect/Engineer shall have the same obligations set forth in Article III.H(ii) below.
- (ii) if the Contractor is not a Construction Manager at Risk, issue Solicitation Documents as requested by Owner, prepare any necessary addenda, attend any pre-bid conference, maintain lists of recipients of documents, and assist Owner in obtaining and evaluating bids or proposals from bidders. Should the lowest bona fide bid or proposal received for the Work exceed the PCB, set forth herein (or as otherwise approved by the Owner's Board of Trustees), Owner may either (1) give written approval of an increase in the PCB if approved by Owner's Board of Trustees, (2) authorize rebidding of the Project within a reasonable period of time, (3) abandon the Project, or (4) cooperate with the Architect/Engineer in revising the scope and quality of the Project to reduce the construction cost. Should the Board of Trustees direct revisions to the Construction Documents as may be necessary to bring the cost within the PCB, the Architect/Engineer shall, without additional charge to Owner, make such revisions no later than 30 days after the date it receives direction from Owner to make the revisions. If Owner requires rebidding of the Project, Architect/Engineer shall do so within a reasonable period of time after it has received direction to do so from Owner, and all services in connection with the rebidding shall be at no additional cost to Owner. Should the lowest bona fide bid or proposal received for the Work on rebidding, or on bidding after the revision to the Construction Documents, exceed the PCB, then Owner shall again have the four alternatives set forth above.
- (iii) If during the Bidding or Negotiation Phase, the Architect/Engineer prepares any addenda that affect the Drawings or Specifications in any way, the Architect/Engineer shall revise the Drawings or Specifications, as applicable, to include all such changes reflected in the addenda ("Conformed Documents"). If the addenda were prepared to correct Drawings or Specifications found to be inaccurate, incomplete or incompetent, the Architect/Engineer agrees to timely prepare the Conformed Documents at no cost to Owner. If the addenda were

prepared to make changes to Drawings or Specifications based on scope revisions requested by the Owner, the Architect/Engineer will be compensated for preparing the Conformed Documents as an Additional Service. If the addenda were prepared due to the fault of both Architect/Engineer and Owner or for reasons other than as set forth above, the Architect/Engineer's compensation will be equitably adjusted through negotiation to prepare the Conformed Documents.

I. Construction Phase. In connection with the Construction Phase, the Architect/Engineer shall:

- (i) Perform all functions of the Architect/Engineer as described in the Contract Documents for the Project, including but not limited to preparation of change orders for Owner's approval and execution. Architect/Engineer shall provide written interpretations, written responses to requests for clarifications, and clarification drawings, necessary for the proper execution or progress of the Work. Change orders requiring material changes to the drawings and specifications shall be compensated as provided in Article IV, unless they result from errors or omissions in the services provided under this Agreement.
- (ii) Together with its consultants, critically review and report to Owner or take other appropriate action upon the Contractor's timely submittals such as Shop Drawings, Product Data and Samples required by the Construction Documents, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. All such action shall be taken within the time periods established by the Contract Documents, or if no time periods are established, with reasonable promptness so as to cause no delay.
- (iii) Visit the Project site at intervals appropriate to the stage of construction, but in no event less frequently than once per week, and critically observe the Work performed and materials supplied by the Contractor, to the extent appropriate to determine whether the performance by the Contractor is in material conformity with the Contract Documents, and promptly report to Owner (with a copy to Contractor) any deficiencies or problems identified, together with the Architect/Engineer's recommendations for correction. The Architect/Engineer will record each of its Project site visits and promptly submit written reports to Owner (with a copy to Contractor), such written report to include at a minimum the time of arrival at Project site, current and recent weather conditions, trades active on the Project, status of construction, status of previously identified deficiencies in the Work, any new deficiencies or issues related to the Work, any other significant observations or pertinent actions needed based on the observations from the Project site visit, and the time of departure from Project site. The Architect/Engineer shall require each engineer or other consultant who prepares plans for the Project to visit the Project site as necessary when construction involves the engineer's or consultant's design work, and to certify, at the appropriate stage, that the Work has been performed in material accordance with the engineer's or consultant's plans. To the

extent that the Architect/Engineer shall delegate this function to consultants, the Architect/Engineer shall require the consultants to submit written reports through the Architect/Engineer to Owner (with a copy to Contractor). While the Architect/Engineer will inform the Contractor of the Architect/Engineer's findings, it is expressly understood that it is not the function of the Architect/Engineer to direct or control the Contractor in the performance of the construction contract. The Architect/Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures for the construction work.

- (iv) Render written decisions, within the time specified by the Contract Documents or if none is specified, within a reasonable time, on all claims, disputes, and other matters in question between Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.
- (v) Review each Contractor's Estimate for Partial Payment, and determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Estimate for Partial Payment, and recommend approval or disapproval of payment by Owner in accordance with the Contract Documents. The issuance of an Estimate for Partial Payment, signed by the Architect/Engineer shall constitute a representation by the Architect/Engineer to Owner that the Work has progressed to the point indicated, and that, to the best of the Architect/Engineer's knowledge, information or belief, based on its review of the Estimate for Partial Payment and its observation of the Work, that the Work has been performed in a good and workmanlike manner in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.
- (vi) On projects where Owner employs a full-time Project Inspector to provide continuous on-site inspection, the Architect/Engineer shall coordinate its observations with this Owner representative; however, this shall not diminish the Architect/Engineer's responsibilities to critically observe the Work in progress, nor to follow established procedures in the handling of submittals, applications for payment, change orders, etcetera, or the Contractor's requests for information, clarification or assistance.
- (vii) Upon receipt of notification by the Contractor that Contractor believes the Project is Substantially Complete, the Architect/Engineer shall conduct a review, performed by the appropriate members of its staff and its professional and/or engineering consultants. As a result of this review, the Architect/Engineer shall prepare a list of the items observed needing completion or correction in order to be substantially in compliance with the consultant's Drawings and Specifications. After the Contractor has performed the required completion or corrections, the Architect/Engineer shall notify Owner in writing that the Contract has been materially performed according to the Contract Documents and is ready for Final Inspection, to be scheduled by Owner. The Architect/Engineer shall accompany Owner on the Final Inspection to determine whether the Project has been completed

in material accordance with the Contract Documents. Architect/Engineer shall review all warranties, guarantees, bonds, equipment operating instructions and similar required materials and documents to make sure that all such materials and documents are received and that they meet the requirements of the Specifications, after which they shall be transmitted to Owner. After determining that, to the best of its knowledge, information, and belief, the requirements of the Contract Documents have been met, the Architect/Engineer shall so state in writing and shall recommend the Contractor's Final Estimate for Partial Payment.

- (viii) During the eleventh month of the warranty period set out in each prime general contract for the Project (and notwithstanding prior payment in full of the compensation of the Architect/Engineer), the Architect/Engineer will arrange for a warranty inspection tour of the entire Project by authorized representatives of Owner, the Architect/Engineer and any required consultants, and of each prime Contractor engaged upon the Project. The Architect/Engineer will then prepare a list of work observed needing to be performed by each Contractor to satisfy that Contractor's warranty obligations to Owner.

J. **Obligations.** At any and all times throughout the Project, as part of the Basic Services, Architect/Engineer shall:

- (i) Attend such meetings with Owner personnel, the Contractor, and meetings of Owner's Board of Trustees, as may be necessary or reasonably required in order for the Architect/Engineer to accomplish the Basic Services, including obtaining any required approvals by Owner's Board of Trustees.
- (ii) At the request of Owner, attend up to two public hearings on the Project.
- (iii) Perform any and all other services inferable from or incidental to the above specified services, or which are customarily furnished in accordance with generally accepted architectural or engineering practice.
- (iv) If the Project is being constructed pursuant to a Construction Manager at Risk Agreement between Owner and the Contractor, the Architect/Engineer shall perform all obligations required of the Architect/Engineer under such Construction Manager at Risk Agreement, a copy of which has been provided to Architect/Engineer and the provisions of which are incorporated herein by reference.
- (v) Perform all obligations of Architect/Engineer set forth in the General Conditions, a copy of which has been provided to Architect/Engineer and the provisions of which are incorporated herein by reference.
- (vi) Maintain all insurance required under this Agreement.

ARTICLE IV. ADDITIONAL SERVICES.

The following Additional Services are not included in Basic Services and shall be provided by the Architect/Engineer if authorized or confirmed in writing by Owner, and they shall be paid for by Owner as provided in this Agreement, in addition to the compensation for Basic Services:

- A. Providing a material change to the Drawings, Specifications and supporting data in connection with change orders or as otherwise requested in writing by Owner (exclusive of services remedying errors or omissions of the Architect/Engineer).
- B. Providing design services of consultants for other than the normal architectural, civil, structural, mechanical, and electrical and other services for the Project as described in Article III.A.
- C. Developing a detailed program (unless specifically mentioned elsewhere) which shall address Owner's requirements regarding design objectives and relationships, flexibility and expendability, special equipment and systems, site conditions, and construction budget.
- D. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural or engineering practice.
- E. Any other Additional Services described in Article X below.

ARTICLE V. OWNER RESPONSIBILITIES.

- A. Owner shall provide information as to the requirements for the Project, the long-range facility plan and/or Educational Specifications, approved by Owner's Board of Trustees, and procedures to be followed.
- B. Owner shall examine documents submitted by the Architect/Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect/Engineer's work.
- C. When requested by the Architect/Engineer, Owner shall, with reasonable promptness, furnish to the Architect/Engineer a complete and accurate survey of the site or pertinent parts thereof, giving, as required, grades and lines of streets and other physical improvements, both on and adjoining the site, boundaries and contours of the land, locations of trees, and full information as to sewer, water, gas and electrical lines and services. Owner shall, when deemed necessary by Owner, obtain and pay for test borings and laboratory analysis of soil foundation conditions.
- D. Owner shall furnish to the Architect/Engineer, for reproduction and inclusion in the Contract Documents, one copy of each of Owner's applicable solicitation forms and Contract Documents.

E. Owner shall designate an Authorized Representative to whom the Architect/Engineer shall address all communications and who shall be authorized to bind Owner in matters relating to the administration of this Agreement (other than those matters for which this Agreement requires approval of the Owner’s Board of Trustees). Unless the Board of Trustees shall by resolution provide otherwise, Owner’s Authorized Representative shall be the Executive Director of Contract and Procurement Services (or a delegate so designated in writing by the Executive Director of Contract and Procurement Services).

ARTICLE VI. PROJECT CONSTRUCTION BUDGET.

- A. Unless expressly authorized by the Owner’s Board of Trustees, the PCB shall not exceed the amount given in Article I.
- B. The PCB shall not include any amounts payable under this Agreement or any fees, costs and reimbursable expenses payable to any Special Consultant. The term “Special Consultant” shall mean any engineer or other consultant not described in Article III.A, or any other consultant hired to perform specialized design, engineering or similar services.
- C. The PCB shall not include the costs of any furniture, materials, equipment, or services furnished by Owner.

ARTICLE VII. PAYMENTS TO THE ARCHITECT/ENGINEER.

A. Payments for Basic Services will be made promptly by Owner in proportion to the services performed to increase the compensation for services to the following percentages of the total:

<u>NON-ROOFING PROJECTS</u>		<u>PHASE</u>	<u>TOTALS</u>
(i)	Completion of Pre-Design Phase	5%	5%
(ii)	Completion of Schematic Design Phase	10%	15%
(iii)	Completion of Design Development Phase	15%	30%
(iv)	Completion of Construction Documents Phase	40%	70%
(v)	Bidding or Negotiation Phase	5%	75%
(vi)	Construction Phase (to be paid upon monthly statements based on percentage of completion of the Project)	25%	100%
<u>ROOFING PROJECTS</u>		<u>PHASE</u>	<u>TOTALS</u>

(i)	Completion of Pre-Design Phase	5%	5%
(ii)	Completion of Schematic Design Phase	10%	15%
(iii)	Completion of Construction Documents Phase	40%	55%
(iv)	Bidding or Negotiation Phase	5%	60%
(v)	Construction Phase (to be paid upon monthly statements based on percentage of completion of the Project)	40%	100%

Approved progress payments within each phase (excluding Bidding or Negotiation Phase) shall be made monthly, subsequent to payment request by Architect/Engineer. Each payment request by Architect/Engineer during the Construction Phase shall identify, in addition to the amount of the payment requested, the percentage completion of the Project to date, the percentage completion from the prior payment request, the total Construction Phase payments received by Architect/Engineer to date, and any other information reasonably requested by Owner. Payment for the services performed in the Bidding or Negotiation Phase shall be paid upon completion of the services for this Phase. A HUB Utilization Report (“HUR”) confirming payment amounts to HUB firms shall be submitted with each payment request.

- B. Payments for the Additional Services as defined in Article IV, and for Reimbursable Expenses as defined in Article II.C shall be made only monthly upon presentation of the Architect/Engineer’s statement of services rendered or expenses incurred accompanied by invoices, time sheets, and other evidence of expenses as requested by Owner.
- C. Undisputed payments not paid when due shall accrue interest in accordance with the provisions of Section 2251.021 et seq. of the Texas Government Code.
- D. Owner may withhold, amend, or nullify any request for payment by the Architect/Engineer under conditions that include those described below:
 - (i) Owner’s receipt of evidence that one or more of the Architect/Engineer consultants has not been duly paid for its services in connection with this Project subsequent to the Owner having disbursed compensation to the Architect/Engineer in consideration of and stemming from efforts extended by the consultants.
 - (ii) At Owner’s discretion, Owner may withhold a portion of the Architect/Engineer's fee in connection with Construction Phase Services until the Architect/Engineer has reviewed at the job site the Contractor's list of Work items needing correction or completion to render the Project completed in accordance with Contract Documents.

- (iii) Losses incurred by Owner as a result of the failure of the Architect/Engineer to render any service required by this Agreement in accordance with the provisions of Article I.B., including the failure to perform services in a timely manner. The Architect/Engineer agrees to negotiate the amount of loss to the Owner, itemized costs of which shall be provided to the Architect/Engineer by the Owner. Owner will endeavor to provide the Architect/Engineer with written notification of damages resulting from Architect/Engineer's delay in performance as the cost is being incurred, to the extent such information can be determined by Owner.
 - (iv) Failure of the Architect/Engineer to submit timely records of Project conference proceedings as specified in this Agreement.
 - (v) Failure of the Architect/Engineer to submit timely reports of its job site observations containing detailed information as specified in this Agreement.
 - (vi) Failure of the Architect/Engineer to provide updated record drawings (if required to be provided by Owner) within 30 days after details of deviations from Contract Documents have been provided to the Architect/Engineer by the Contractor.
 - (vii) Failure of the Architect/Engineer to design for compliance with applicable local, State or federal laws as specified in this Agreement, such that subsequent compliance costs exceed expenditures which would have been involved had services been properly executed by the Architect/Engineer.
 - (viii) Failure of the Architect/Engineer to make final modifications to original Construction Documents subsequent to Owner having provided marked up Construction Documents (or a separate critique list) to the Architect/Engineer prior to bidding, and failure of the Architect/Engineer to return marked up Construction Documents to Owner.
 - (ix) Losses incurred as a result of defects, deficiencies, errors and omissions in the design, working drawings, specifications or other documents prepared by the Architect/Engineer to the extent that the financial losses are greater than Owner would have originally paid had there not been defects, errors and omissions in the documents.
 - (x) Architect/Engineer's breach of an obligation under this Agreement which continues past any cure period required by this Agreement or provided by Owner.
 - (xi) Failure of the Architect/Engineer to submit HUB Utilization Report ("HUR")s, as required, confirming payment amounts to HUB firms.
- E. Owner has the right to suspend or terminate this Agreement for its convenience. If Owner suspends the Project for more than three months through no fault of Architect/Engineer, or terminates this Agreement for its convenience and through no fault of the

Architect/Engineer, then the Architect/Engineer shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than three months, the Architect/Engineer's compensation may be equitably adjusted through negotiation.

ARTICLE VIII. ARCHITECT/ENGINEER'S ACCOUNTING RECORDS.

- A. The Architect/Engineer agrees to maintain appropriate accounting records of costs, expenses, and payrolls of employees working on the Project for a period of three years after warranty period services have been completed, and all other pending matters concerning this Agreement have been closed. The Architect/Engineer further agrees that the Owner shall have access during normal business hours and upon reasonable notice to any and all books, documents, papers and records of the Architect/Engineer which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits and examinations.

ARTICLE IX. DEFAULT

- A. Upon a default by the Architect/Engineer, Owner will provide the Architect/Engineer with 10-days written notice of default and opportunity to cure. If the default is not cured within said time period then Owner shall have (i) the rights and remedies set forth in this Agreement, (ii) the right to terminate this Agreement, and (iii) the right to pursue any other remedies at law or equity. All of such rights are cumulative and not exclusive and may be exercised concurrently or successively.
- B. Upon a default by Owner, the Architect/Engineer will provide Owner with 10-days written notice of default and opportunity to cure. If the default is not cured within said time period, then the Architect/Engineer will have the rights set forth herein or the right to pursue any other remedies at law or equity. All of such rights are cumulative and not exclusive and may be exercised concurrently or successively.
- C. The parties agree to mediate any dispute arising in connection with this Agreement or the Contract Documents in good faith prior to filing suit for damages.

ARTICLE X. OTHER ADDITIONAL SERVICES

The Additional Services described below or in an attached proposal from the Architect/Engineer dated [REDACTED], 20[REDACTED], shall be performed by Architect/Engineer in connection with this Agreement (any terms and conditions that may be contained in an attached proposal, other than the description of the Additional Services and compensation amount for such Additional Services, are not a part of this Agreement):

_____ [describe Additional Services or provide a summary statement for an attached proposal, or if none, write “None”].

ARTICLE XI. INSURANCE AND INDEMNIFICATION

A. Architect/Engineer shall maintain insurance in the types, and with coverage in amounts not less than those described below for the duration of the Agreement, and shall require all consultants to maintain insurance required by Owner for consultants. If Owner does not require specific coverage for consultants, then Architect/Engineer shall require its consultants to maintain commercially reasonable professional liability, commercial general liability and other appropriate insurance. Owner’s requirements are minimum requirements, and Architect/Engineer may maintain additional or greater coverage.

1. **Workers' Compensation and Employers' Liability Insurance** coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) and minimum policy limits for Employers Liability Insurance of \$500,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$500,000 bodily injury by disease each employee. The Architect/Engineer's policy shall apply to the State of Texas and include these endorsements in favor of the Owner:

- (a) Waiver of Subrogation in favor of the Owner.
- (b) 30-day Notice of Cancellation.

2. **Commercial General Liability Insurance** with a minimum combined bodily injury and property damage per occurrence limit of \$1,000,000 and a general aggregate limit of \$2,000,000, products/completed operations aggregate limit of \$2,000,000, and Personal and Advertising Injury limit of \$1,000,000. The policy shall contain the following provisions:

- (a) Contractual liability coverage for liability assumed under this Agreement and all contracts relative to this Project.
- (b) Contractors/Subcontractors Work coverage.
- (c) Aggregate limits of insurance per project endorsement.
- (d) Owner listed as an additional insured. Such coverage shall provide for Owner to be covered against claims arising out of construction operations and completed operations without further restriction and such coverage shall be endorsed to be primary and non-contributory insurance coverage to Owner.

- (e) 30-day Notice of cancellation, nonrenewal or substantial modification in favor of the Owner.
 - (f) Waiver of Transfer Right of Recovery Against Others in favor of the Owner.
3. **Business Automobile Liability Insurance** for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$1,000,000 bodily injury per accident and at least \$250,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the Owner:
- (a) Waiver of Subrogation endorsement in favor of Owner.
 - (b) 30-day Notice of Cancellation endorsement.
 - (c) Additional Insured endorsement in favor of Owner.
4. **Professional Liability Insurance.** Throughout the period of the Architect/Engineer's responsibility under this Agreement and for three years thereafter (if available), Architect/Engineer shall maintain in force Architects and Engineers Professional Liability Insurance with a minimum limit as stated below per claim and in aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs, Drawings or Specifications prepared by the insured. The policy shall provide for limits on any one claim of not less than \$1,000,000 and a deductible of not more than 2.0 percent of the policy limits, unless a different minimum policy limit or deductible is otherwise approved in writing by the Executive Director of Contract and Procurement. In the event the Executive Director of Contract and Procurement determines that coverage in higher amounts is needed to protect Owner, the Executive Director may require different limits and deductibles with any additional premiums treated as a reimbursable expense. The policy shall contain an "awareness" clause to the effect that, if the insured shall, during the policy period, become aware of and give notice to the insurer of any circumstances during the policy period which may give rise to subsequent claim, any subsequent claim arising out of those circumstances will be deemed to have been made during the policy period. Like coverages will be provided for all civil, structural, mechanical, and/or electrical consultants to the Architect/Engineer. The policy shall provide for 30-day notice of cancellation in favor of the Owner.
5. All required insurance shall be evidenced by a certificate or certificates of insurance completed and forwarded to Owner on forms approved or deemed approved by the Texas Department of Insurance under Chapter 1811 of the Texas Insurance Code and provided or approved by Owner. The Architect/Engineer must forward such

certificate(s) of insurance and all required endorsements to Owner before the Agreement is executed, as verification of all coverage required above. The Architect/Engineer shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by Owner. Approval of insurance by Owner shall not relieve or decrease the liability of the Architect/Engineer hereunder and shall not be construed to be a limitation of liability on the part of the Architect/Engineer.

6. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The Architect/Engineer shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months following substantial completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Architect/Engineer shall, on at least an annual basis, provide Owner with a certificate of insurance as evidence of such insurance.
7. The Architect/Engineer's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of A VII or better. Owner will accept workers' compensation coverage written by the Texas Mutual Insurance Company (f/k/a Texas Workers Compensation Insurance Fund).
8. All endorsements naming Owner as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance shall indicate:

**Austin Independent School District
c/o Executive Director, Contract and Procurement Services
4000 S. IH 35 Frontage Road
Austin, Texas 78704**

9. If insurance policies are not written for amounts specified above, the Architect/Engineer shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
10. Owner reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Architect/Engineer.

11. The Architect/Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
 12. The Architect/Engineer shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.
 13. The Architect/Engineer shall provide the Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
 14. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of the Architect/Engineer.
- B. The Architect/Engineer hereby expressly agrees to indemnify, defend and hold harmless Owner, and its officers, agents, employees and members of its governing body, from and against liability for damage, including all claims, demands, costs, causes of action and reasonable attorney's fees for the defense of such claims and demands, to the extent that the damage is caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Architect/Engineer, or Architect/Engineer's agents, consultants under contract, or another entity over which the Architect/Engineer exercises control.
- C. Article XI.B above shall in no way obligate Architect/Engineer to defend Owner or its officers, agents, employees or members of its governing body against a claim based wholly or partly on the negligence of, fault of, or breach of contract by Owner, Owner's officers, agents, employees or members of its governing body, or other entity over which Owner exercises control, excluding Architect/Engineer and Architect/Engineer's agents, employees or subconsultants. Provided, however, once liability has been determined in connection with such claim and if it is determined that Architect/Engineer is liable in whole or in part, Architect/Engineer shall promptly upon demand reimburse Owner for the reasonable attorneys' fees incurred by Owner in defense of such claim in proportion to Architect/Engineer's liability.
- D. Notwithstanding anything contained in Article XI.C above to the contrary, Architect/Engineer acknowledges and agrees that Article XI.C shall not affect Owner's rights to defense as an additional insured under the requirements of Article XI.A.2 and Article XI.A.3 above.

ARTICLE XII. MISCELLANEOUS

- A. This Agreement is performable in Travis County, Texas and venue for litigation arising in connection with this Agreement or the Contract Documents shall be in the courts of

competent jurisdiction in Travis County, Texas or in the Federal courts in Austin, Travis County, Texas.

- B. Architect/Engineer certifies pursuant to Texas Government Code Section 2252.151 *et al.* that it is not identified on the Texas Comptroller’s list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization. Architect/Engineer further certifies that it will not take any action that would cause it to be included on the Texas Comptroller’s list, and that any such action will result in immediate termination of this Agreement by Owner.
- C. Architect/Engineer certifies and verifies that prior to or contemporaneously with the execution of this Agreement, it has delivered to Owner a fully executed written verification in accordance with Texas Gov’t Code Section 2270.001 *et al.*, and attached hereto as Exhibit “C” verifying that Architect/Engineer or any affiliate, subsidiary, or parent company of Architect/Engineer, if any, does not boycott Israel and will not boycott Israel during the term of this Agreement. If Architect/Engineer violates the verification, it will result in immediate termination of this Agreement by Owner. Owner will not execute this Agreement until such verification is fully executed and delivered to Owner.
- D. Terms in this Agreement not specifically defined herein shall have the same meaning as those in the General Conditions.
- E. Time is of the essence of this Agreement.
- F. If any word, phrase, clause, sentence or provision of this Agreement, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid, void or unenforceable, that finding shall only affect such word, phrase, clause, sentence or provision, and such finding shall not affect the remaining portions of this Agreement, this being the intent of the parties in entering into this Agreement, and all provisions of this Agreement are declared to be severable for this purpose.
- G. All notices under this Agreement shall be in writing and shall be delivered to the party entitled to receive the same by hand (including Federal Express or other courier service) or U.S. Certified Mail, return receipt requested, addressed as follows (or as amended in writing in the future):

to Owner:

Austin Independent School District
 4000 S. IH 35 Frontage Road
 Austin, Texas 78704
 Attn: Exec Dir, Contr & Procurement
 Phone: 512-414-2161
 E-mail: _____

to Architect/Engineer:

 Attn: _____
 Phone: _____
 E-mail: _____

Notice sent prepaid, by certified mail, return receipt requested, properly addressed as provided herein, with copy sent concurrently by e-mail, shall be deemed delivered, whether or not actually received, upon deposit in the U.S. mail. Notice sent by any other manner will be deemed delivered if and when actually received. Any party may change its address for notice by providing written notice of address change in the manner provided by this Section. Such change will be deemed effective 14 days after it is delivered.

- H. This Agreement, together with the documents referenced and incorporated into this Agreement, and all Exhibits thereto constitute the entire agreement between the parties hereto as to the subject matter hereof. This Agreement shall be binding upon, and inure to the benefit of Owner, the Architect/Engineer, their respective successors, assigns and legal representatives. Neither the Architect/Engineer nor Owner shall assign, sublet or transfer any interest in this Agreement without the prior written consent of the other party.
- I. If any provision in this Agreement is for any reason determined to be unenforceable, void or invalid, this Agreement shall be reformed to the greatest extent necessary to make the offending provision valid and enforceable, or if this offending provision cannot be modified so as to be valid and enforceable, this Agreement shall be reformed to exclude the offending provision from this Agreement, if it can be done without destroying the basis of the bargain between the parties. As so reformed, the Agreement shall be binding upon and enforceable by both Owner and the Architect/Engineer. No additional consideration shall be due to either party by reason of any such reformation.
- J. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
- K. The persons signing this Agreement on behalf of a party represent and warrant that they are duly authorized to execute this Agreement on behalf of such party, without the consent or joinder of any other person or entity.

Executed to be effective as of the date first set forth above, which shall be filled in by Owner upon its execution of this Agreement.

Nothing in the Contractor’s proposal, even if signed or accepted by a District representative, shall be interpreted as superseding any terms or conditions in this document. Any terms or conditions, including but not limited to, dispute resolution, choice of law, venue, limitations of warranty/liability provisions contained in Contractor’s Proposal are not included, and are hereby expressly excluded from this Agreement unless such terms, conditions or limitations are restated in the main body of this Agreement document. The appearance of such matters in any the Proposal is ineffective, as the acceptance or inclusion of Contractor’s Proposal as part of the contract documents is intended to only provide information relating to the scope, deliverables, deadlines and prices relating to Contractor’s services.

ARCHITECT/ENGINEER:

OWNER:

AUSTIN INDEPENDENT SCHOOL DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: **President, Board of Trustees** _____

Date: _____

Date: _____

STATEMENT OF CERTIFICATION

The Texas Board of Architectural Examiners, P. O. Box 12337, Austin, Texas 78701-2337, Telephone (512) 305-9000, has jurisdiction over individuals licensed as architects under the Regulation of Architect and Related Practices, Chapter 1051 of the Texas Occupations Code.

The Texas Board of Professional Engineers, 1917 IH 35 South, Austin, Texas 78741, Telephone (512) 440-7723, Fax (512) 442-1414 has jurisdiction over individuals licensed as Professional Engineers under *TEXAS ENGINEERING PRACTICE ACT AND RULES*.

EXHIBIT “A”

STRUCTURAL ENGINEERING CONSULTANT:

Name: _____

Address: _____

Telephone No.: _____

Email: _____

Type of Business Organization: _____

MECHANICAL ENGINEERING CONSULTANT:

Name: _____

Address: _____

Telephone No.: _____

Email: _____

Type of Business Organization: _____

ELECTRICAL ENGINEERING CONSULTANT:

Name: _____

Address: _____

Telephone No.: _____

Email: _____

Type of Business Organization: _____

CIVIL ENGINEERING CONSULTANT:

Name: _____

Address: _____

Telephone No.: _____

Email: _____

Type of Business Organization: _____

OTHER CONSULTANT:

Name: _____

Address: _____

Telephone No.: _____

Email: _____

Type of Business Organization: _____

OTHER CONSULTANT:

Name: _____

Address: _____

Telephone No.: _____

Email: _____

Type of Business Organization: _____

EXHIBIT “B”

ARCHITECT/ENGINEER:

POSITION

FULLY LOADED HOURLY RATE

CONSULTANTS RETAINED BY ARCHITECT/ENGINEER:

1. CONSULTANT’S NAME: _____

POSITION

FULLY LOADED HOURLY RATE

2. CONSULTANT’S NAME: _____

POSITION

FULLY LOADED HOURLY RATE

3. CONSULTANT’S NAME: _____

POSITION

FULLY LOADED HOURLY RATE

4. CONSULTANT’S NAME: _____

POSITION

FULLY LOADED HOURLY RATE

5. CONSULTANT’S NAME: _____

POSITION

FULLY LOADED HOURLY RATE

EXHIBIT “C”
TEX. GOV’T CODE CHAPTER 2270 VERIFICATION

Date: _____

Name of Undersigned: _____

Title of Undersigned: _____

Business Name of Consultant (“Consultant”): _____

County of Consultant: _____

The undersigned hereby verifies that the following statements are true in accordance with the terms, definitions, and conditions of Texas Government Code Chapter 2270 (“Chapter 2270”):

- 3. Undersigned is authorized by Consultant to execute this document.
- 4. Undersigned is fully aware of the facts stated herein.
- 5. The Consultant does not currently boycott Israel.
- 6. The Consultant will not boycott Israel during the term of the contract with Austin Independent School District in accordance with Chapter 2270.

Signature