

TEXLINE INDEPENDENT SCHOOL DISTRICT
302 E. Pine
Texline, TX 79087



REQUEST FOR QUALIFICATIONS
2021-01

for
Architect/Engineer To Serve As
District's Independent Representative
Related to Construction of a new Gymnasium

The Board of Trustees of the Texline ISD is requesting qualifications for:

ARCHITECT/ENGINEER SERVICES

For:

An Independent Representative for Texline Gymnasium Project, including:
The design and construction of a new gymnasium.

Qualifications will be accepted until 1:00 p.m. on Tuesday, August 17, 2021 to:

Texline ISD

ATTN: Terrell Jones, Superintendent

Mailing: PO Box 60, Texline, TX 79087

Hand Delivery: 302 E. Pine, Texline, TX 79087

All responses must be annotated with the following:

**GYMNASIUM PROJECT
ARCHITECT/ENGINEER SERVICES
RFQ #2021-01**

Please enclose one (1) original and two (2) copies of your response in an opaque envelope with the appropriate annotation to the address above.

Questions regarding this qualifications package should be directed to:

Texline ISD

ATTN: Terrell Jones, Superintendent

Mailing: PO Box 60, Texline, TX 79087

Hand Delivery: 302 E. Pine, Texline, TX 79087

Ph: (806) 362-4667

Fax: (806) 362-4538

Email: terrell.jones@texlineisd.net

INTRODUCTION

Texline Independent School District (“Texline ISD” or “District”) desires to construct a new gymnasium, and potential other improvements depending on budget, through the Design/Build Delivery method as set out in Texas Government Code Chapter 2269, Subchapter G. The District is seeking statements of qualifications to retain an architect/engineer (“A/E”) to act as the District’s independent representative for the duration of this project pursuant to Texas Government Code Section 2269.305.

The District invites interested A/Es to submit statements of qualifications for this work, as outlined below.

SCOPE OF SERVICES

Texline ISD is seeking an A/E to provide design review, construction administrative and related services as its Independent Representative pursuant to Texas Government Code Section 2269.305 in conjunction with the design-build project described below:

Texline ISD intends to build a new gymnasium at 302 East Pine St., Texline, Texas. (the “Project”). The District intends to select a design-build firm for the Project (hereinafter, the “Design-Builder”) in accordance with applicable law and a Request for Qualifications for Design-Build Services to be issued for the Project.

The estimated design and construction budget for the Project is \$1,700,000.

Texline ISD now seeks statements of qualifications from architectural firms to act as the District’s Independent Representative pursuant to Texas Government Code Section 2269.305 for the duration of the above-described Project. The Design-Builder shall submit all design elements related to the Project to the Independent Representative for review and determination of scope compliance before or concurrently with construction as required by Texas Government Code 2269.309 and the A/E selected as the Independent Representative shall provide contract administration services through the construction phase and one year following final completion of the Project.

SELECTION PROCESS FOR ARCHITECT AS INDEPENDENT REPRESENTATIVE

As required by law, the selection of an A/E as the District’s Independent Representative will be made on the basis of demonstrated competence and qualifications in accordance with Texas Government Code Section 2254.004. Texline ISD will evaluate each Statement of Qualifications submitted, as per the terms of this RFQ, to determine responsiveness to the District’s needs. The District shall select the most highly qualified architect to serve as its Independent Representative based on the evaluation criteria detailed in this RFQ.

Pursuant to Texas Government Code Section 2269.053, the Board of Trustee for Texline ISD (the “Board”) has delegated to the Superintendent, Mr. Terrell Jones, the authority to issue this RFQ, to receive responses and recommend how responding firms should be ranked. However, the final ranking and selection of an A/E to serve as the District’s Independent Representative is reserved for the Board. Following the Board’s ranking of A/Es, the Superintendent shall attempt to negotiate a contract with highest ranked A/E at a fair and reasonable price. If a satisfactory contract cannot be reached, the Superintendent shall formally end negotiations and proceed to negotiate with the next highest ranked A/E until a suitable contract can be presented to the Board for its consideration and approval.

EVALUATION CRITERIA

The decision to select an A/E will be based on demonstrated competence and qualifications as required by Texas Government Code § 2254.004. Among other things, respondents' competence shall be evaluated on the following criteria:

<u>CRITERIA</u>	<u>POINTS</u>
1. Reputation of the A/E or firm	20
2. Experience over the last five years assisting Districts with projects of similar size and scope	20
3. References	15
4. Resumes of key personnel	15
5. Location of the firm and ability to provide services in District	15
6. Claims or suits filed against the A/E or firm in past 5 years for professional negligence, if any, and the disposition of such claims, if any	15

QUESTIONNAIRE
ARCHITECT/ENGINEERING SERVICES

TIME IS OF THE ESSENCE. The District intends to rank and select A/E firms at a Board meeting currently scheduled for September 20, 2021 and to approve the contract with the selected A/E at the next Board meeting thereafter, but no later than October 29, 2021. The A/E who contracts with the District to be its Independent Representative must be capable of beginning work with the District immediately on the Project.

All interested and qualified architects/engineers (“A/E”) are invited to submit a statement of their competence and qualifications, consisting of the following:

GENERAL QUALIFICATIONS

The A/E should have experience and expertise with programming, cost estimating, planning and designing, and administering construction projects for Texas school districts or other public facilities with similar regulatory and legal requirements. A/E will be involved with the initial assessment, cost estimating, determination of the scope of work by the Design-Builder, design review and construction administration of the Project. Generally, the A/E shall review and determine scope compliance for all design elements related to the Project before or concurrently with construction as required by Texas Government Code 2269.309, provide construction contract administration of the Design-Builder and serve as the District’s independent representative for the duration of the Project. The A/E need not have a local office, but experience in the Texas Panhandle area and knowledge of local construction practices, codes, procedures, regulations, and environmental conditions is required.

At a minimum the Response to the Request for Qualifications (“RFQ”) must contain the following:

1. Name of A/E and firm
2. Business address
3. Contact individual, telephone and e-mail address
4. Type of organization, i.e., sole proprietorship, partnership or corporation
5. General statement of qualifications
6. History of firm and principals including
 - Years in business – if less than 5 years, previous experience of principals is critical
 - Years in business under present name
 - Experience of business principals
 - Past relationship with District and scope of engagement
7. Key personnel proposed to be assigned to project and their resumes
8. Registrations, licenses, and certifications
9. General experience and experience related to school district gymnasium facilities assessment and design (including ADA Accessibility Guidelines and other applicable Federal, State and Local building codes and rules), project planning and construction; include a list and brief description of all gymnasium construction projects performed in the last five years and experience with the design/build delivery method. If the A/E proposed to perform the services is not a firm with a local office, indicate the means in which it acquired experience in the Texas Panhandle area and knowledge of local construction practices, codes, procedures, regulations, and environmental conditions. Also indicate the means by which a

non-local A/E firm will communicate and collaborate with the School District in the assessment, design and administration of the Project given the distance from the A/E's office to the District.

10. List and explain all claims and litigation involving the firm in the last 5 years, including mediation or arbitration proceedings, if any.
11. Statement regarding the ability of the firm to provide the following, if so requested by the District:
 - Bank references
 - Insurance certificates
 - Audited financial statements
12. Statement of any potential conflicts of interest
13. Business references, particularly other school projects

Interested firms are encouraged to submit their qualifications as soon as possible but in no case later than the due date stated herein. It is recommended that responding A/Es use an AIA B305, and supplement with the additional information requested.

TERMS AND CONDITIONS

A/E shall be responsible for any cost incurred in the preparation of qualifications and participation in the evaluation process, including all legal expenses incurred by A/E in reviewing this RFQ and sample contract documents contained herein. There is no expressed or implied obligation by the District to reimburse any individual or firm for any costs incurred in preparing or submitting qualifications, for providing additional information when requested by the District, or for participating in any selection demonstration/interviews, including contract negotiations.

This RFQ and any resulting award(s) shall be interpreted within the laws of the State of Texas. Venue for any legal action filed relative to this RFQ or any resulting contract shall be in the appropriate state district court in Dallam County, Texas.

In the event that any one or more of the provisions contained in this RFQ (or resulting contract) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provisions shall not affect any other provision hereof, and this RFQ (or any resulting contract) shall be construed as if the invalid, illegal or unenforceable provision(s) had never been contained herein.

The District reserves the right to cancel any contract resulting from this RFQ at any time, for any reason (or for no reason) with prior written notice to A/E. Any notice required or permitted to be delivered to the A/E shall be deemed to be delivered when sent via email, personal delivery, express carrier or US Postal service by registered or certified mail, return receipt requested, postage prepaid, and addressed to the A/E's email or U.S. mail address appearing on the face of its response to this RFQ (or as subsequently revised or changed). Any compensation due the A/E will be limited to services performed and accepted by the District prior to the date of such termination.

INQUIRIES AND INTERPRETATIONS

Responses to inquires which directly affect an interpretation or change to this RFQ will be issued in writing by the District as an addendum and faxed or e-mailed to all parties recorded by the District as having expressed their interest in the RFQ and have contacted Terrell Jones, Superintendent. All such

addenda issued by the District prior to the time that qualifications are received shall be considered part of the RFQ.

Only those inquiries to which the District replies by written addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect.

PROPOSED SELECTION SCHEDULE

First Published Notice for RFQs:	July 30, 2021
Second Published Notice for RFQs:	August 6, 2021
Deadline to receive RFQ's:	August 17, 2021
Notify Shortlisted Parties (if needed):	August 20, 2021
Rank Firms/Board Interview (if needed):	September 20, 2021
Selected Party Notified and Begin Negotiations (Gov't Code 2254.004):	Immediately following selection
Board Action on A/E Contract:	Before October 29, 2021

The Board of Trustees may interview firms evaluated and recommended by the Texline ISD Superintendent from those responding to this solicitation. Alternatively, the Board may select and rank firms on the Superintendent's recommendation and the Responses submitted to the RFQ without conducting interviews.

Parties invited for an interview, if any, may be required to provide comprehensive evidence of engineering/architectural services for projects of similar type and size that was performed within the past five (5) years.

All responses shall be evaluated and ranked on the criteria identified above, and final selection will be based upon the A/E's demonstrated competence in comparison to the needs of the District, the quality of the documents provided, the criteria stated herein, and factors that any entity would consider in selecting an A/E in compliance with Texas Government Code Chapter 2254. Fees will NOT be considered in the evaluation of demonstrated competence of responding A/E firms and must NOT be included in the Response to this RFQ.

TIME IS OF THE ESSENCE. The District intends to approve the contract with the selected A/E within 45 days of being selected. The District intends to use an AIA B105- 2017, as amended by the District in substantially the form attached to this RFQ and fees may be discussed after the A/E has been selected, but not before. **This is the form agreement the District shall use. Any objection or deviation to the contract or contract amendments must be submitted with A/E's Response and the final Contract will require subsequent Board approval. Material deviations to the form of the Contract attached hereto will not be considered.**

The Firm selected for final consideration will be notified when the Board selects and ranks A/Es.

INSURANCE

The A/E selected shall maintain professional liability or errors and omissions insurance in the amount of at least \$1 million for each occurrence, and must provide workers' compensation insurance, as required by the Texas Labor Code. The District reserves the right to require additional coverage, as needed, depending on the size and scope of a particular project.

CONFLICT OF INTEREST

Effective January 1, 2006, any person or entity, as well as agents of such persons, who contracts or seeks to contract with the District for the sale or purchase of property, goods, or services are required to file a Conflict of Interest Questionnaire with the District. A Conflict of Interest questionnaire and affidavit are included in this RFQ. The completed forms must be returned as part of your Response.

NO ISRAEL BOYCOTT CERTIFICATION

Pursuant to Texas Government Code, Chapter 2271, as amended, if A/E is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the A/E represents and warrants to the Owner that the A/E does not boycott Israel and will not boycott Israel during the term of any resulting contract. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

NO BOYCOTT OF ENERGY COMPANIES CERTIFICATION

Pursuant to Texas Government Code, Chapter 2274, as enacted in SB13 by the 87th Legislature, if A/E is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit, which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the A/E represents and warrants to the District that the A/E does not boycott energy companies and will not boycott energy companies during the term of any contract resulting from the solicitation. "Boycott energy companies" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on or limit commercial relations with a company because the company engages in the exploration, production utilization, transportation, sale or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law.

NO DISCRIMINATION OF FIREARM ENTITY OR TRADE ASSOCIATION CERTIFICATION

Pursuant to Texas Government Code, Chapter 2274, as enacted in SB19 by the 87th Legislature, if A/E is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit, which has ten (10) or more full-time employees and the value of the contract with District is \$100,000 or more, the A/E represents and warrants to the District that the A/E does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a

firearm entity or firearm trade association during the term of any contract resulting from the solicitation. A “firearm entity” means a firearm, firearm accessory, or ammunition manufacture, distribute, wholesaler, supplier or retailer, or a sport shooting range. A “firearm trade association” means any person, corporation, unincorporated association, federation, business league or business organization that is not organized or operated for profit for which none of its net earning inures to the benefit of any private shareholder or an individual that has two or more firearm entities as members, or is exempt for federal income taxation under Section 501(c) of the Internal Revenue Code.

COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR A FOREIGN TERRORIST ORGANIZATION

In accordance with Texas Government Code, Chapter 2252, Subchapter F, the District is prohibited from entering into a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller or the State Pension Review Board under Texas Government Code Sections 806.051, 807.051, or 2252.153. By submitting a Response to this RFQ, A/E certifies to the District that it is not a listed company under any of those Texas Government Code provisions, and thereby voluntarily and knowingly acknowledges and agrees that any contract resulting from its Response shall be null and void should facts arise leading the District to believe that the A/E was a listed company at the time of this procurement.

CERTIFICATE OF INTERESTED PARTIES

Effective January 1, 2016, Texas governmental entities must comply with the “Disclosure of Interested Parties” mandated by Texas HB 1295, as implemented by the Texas Ethics Commission. Briefly stated, all contracts requiring an action or vote by the governing body of the entity or agency before the contract may be signed (regardless of the dollar amount) or has a value of at least \$1 million will require the on-line completion of Form 1295 “Certificate of Interested Parties,” per Texas Government Code § 2252.908. Form 1295 is also required for any and all contract amendments, extensions or renewals. Therefore, A/E will be required to create, electronically file, and present such Form 1295 to the District using the Texas Ethics Commission’s online filing application at final execution of any contract with the District.

PRESERVATION AND DISCLOSURE OF CONTRACT DOCUMENTS

Pursuant to Texas Government Code 552, Subchapter J, the selected A/E will be bound by the following terms if the resulting contract has a stated expenditure of at least \$1,000,000 for the purchase of goods or services by the District or if the resulting contract results in the expenditure of at least \$1,000,000 in public funds for the purchase of goods or services by the District in a fiscal year of the District. If the District receives a written request for public information related to the resulting contract that is in the possession or custody of the A/E and not in the possession or custody of the District, the District shall send, not later than the third business day after the date the District receives the written request, a written request to the A/E that A/E provide that information to the District.

The selected A/E must:

1. Preserve all contracting information related to any resulting Contract as provided by the records retention requirements applicable to the District for the duration of any resulting Contract;
2. Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the A/E upon request of the District; and,

3. On completion of any resulting Contract, either:
 - a. Provide to the District at no cost all contracting information related to the Contract that is in the custody or possession of the A/E; or
 - b. Preserve the contracting information related to the Contract as provided by the records retention requirements applicable to the District.
 - c. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the A/E agrees that the contract can be terminated if the A/E knowingly or intentionally fails to comply with the requirements of that subchapter.
 - d. Further, under Texas Government Code Section 552.372(c), the District may not accept a bid for or awarding of a contract to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
 - e. If a A/E fails to provide to the District the requested information, Texas Government Code Section 552.373 requires the District to notify the A/E in writing of the failure and allow 10 business days to cure the violation. District may terminate the Contract if A/E fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

WAIVER OF CLAIMS: BY TENDERING A RESPONSE TO THE DISTRICT'S RFQ, THE A/E ACKNOWLEDGES THAT IT HAS READ AND FULLY UNDERSTANDS THE REQUIREMENTS FOR SUBMITTING A RESPONSE AND THE PROCESS USED BY THE DISTRICT FOR SELECTING THE BEST SUITED A/E FOR THE DISTRICT BASED ON DEMONSTRATED COMPETENCE. FURTHER, BY SUBMITTING A RESPONSE, THE RESPONDER FULLY, VOLUNTARILY AND UNDERSTANDINGLY WAIVES AND RELEASES ANY AND ALL CLAIMS AGAINST THE DISTRICT AND ANY OF ITS TRUSTEES, OFFICERS, AGENTS AND/OR EMPLOYEES THAT COULD ARISE OUT OF THE ADMINISTRATION, EVALUATION, RECOMMENDATION OR SELECTION OF ANY RESPONSE SUBMITTED PURSUANT TO THE DISTRICT'S RFQ.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

 Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 **Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).**

7

 Signature of vendor doing business with the governmental entity

 Date

AIA[®] Document B105™ – 2017

Standard Short Form of Agreement Between Owner and Architect

AGREEMENT made as of the day of in the year two thousand twenty-one
(In words, indicate day, month and year.)

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

Texline Independent School District ("District" or "Owner")
302 E. Pine
Texline, TX 79087
Telephone: (806) 362-4667

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

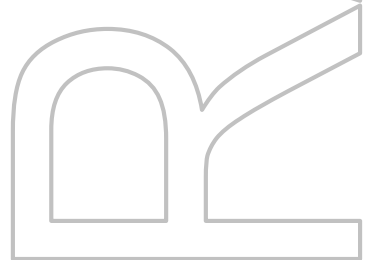
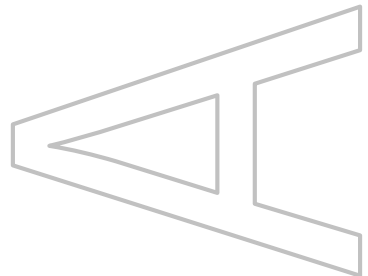
for the following Project:
(Name, location and detailed description)

New Gymnasium

The Owner and Architect agree as follows.



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



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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement. The Architect shall perform its services consistent with the professional skill and care act as the Owner's representative and provide those services as described in this Agreement, related to the construction of an agriculture program facility with adjoining bus barn, through the design/build delivery method, but which are independent of the architect services provided by the selected Design/Builder. Architect's services shall be provided according to the standard of care and consistent with the professional skill ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The

§1.1 Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's license or registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to Work under federal, state and local immigration laws and regulations.

§1.2 The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

§1.5 DESIGN/BUILDER PROCUREMENT PHASE

§1.5.1 Design Criteria Package. During the Preparation and Procurement Phase, the Architect shall review the Owner's scope of Work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall assist with the development of a Design Criteria Package. The Design Criteria Package must include a set of documents that provide sufficient information to permit a Design/Builder to prepare a response to the Owner's Request for Qualifications, and may include, as applicable: the legal description of the Project; site survey information concerning the Project site; interior space requirements; cost and/or budget estimates; time schedules; conceptional criteria for the Project; special equipment requirements; special material requirements and quality standards; Project site development requirements; quality assurance and quality control requirements; code and ordinance requirements; and, any other requirements and/or obligations material to the design and construction of the Project.

§1.5.2 Design/Builder Request for Qualifications. Upon the Owner's approval of the Design Criteria Package, the Architect shall assist as needed in the preparation of a Request for Qualifications that includes: general information on the Project site; Project scope; budget; special systems; selection criteria and the weighted value for each criterion; the Design Criteria package; and, a draft of the design/build contract and other Construction Documents. Architect shall assist the Owner as needed with evaluation and negotiation of the final agreement with the selected Design/Builder, subject to final approval by the Owner's Board of Trustees.

§1.6 DESIGN AND PRE-CONSTRUCTION PHASE

§1.6.1 Design Team Coordination and Management. Architect will assist the Owner with managing the Design/Builder directly and will provide administration, and technical support services during the design, procurement and construction phases of Work. Architect will:

- .1 Review the Design Criteria for the Work.
- .2 Review all design elements of the Design/Builder and determine scope compliance.
- .3 Monitor performance of Design/Builder.
- .4 Review and manage approved re-design activities.
- .5 Assist the Owner in determining design submittal requirements at schematic design, design development and construction document phase of design.

§1.6.2 Project-Specific Progress Meetings. Architect will attend progress meetings for the purpose of reviewing design progress. Major issues affecting design progress will be identified, monitored, and reported on by Architect.

§1.6.3 Cost Estimating. Architect will provide a limited review the Design/Builder's cost estimates at each phase. Architect will recommend bid alternates as a means of cost control. Neither Architect nor Owner has control over the cost of labor, materials or equipment, or over Design/Builder's methods of determining Guaranteed Maximum Price. Accordingly, Architect cannot and does not warrant or represent that prices will not vary from the Project Budget proposal established and approved by Owner, or from any cost evaluation or report prepared by Architect.

§1.6.4 Agency Approvals. Architect will assist the Owner and Design/Builder in scheduling necessary plan reviews and approvals.

§1.7 CONSTRUCTION PHASE

§1.7.1 General Duties. During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Design/Builder. The extent of the Architect's authority and responsibility during construction is described in this Agreement. Generally, the Architect's services during the Construction Phase include interpreting Contract Documents, reviewing the Design/Builder's submittals, visiting the site, reviewing and certifying payments, and rejecting non-conforming Work.

§1.7.2 Certificates for Payment. With regard to certificates for payment, based upon observations at the site and upon the Design/Builder's applications for payment, the Architect shall from time to time determine the amount owing to Design/Builder pursuant to the terms of the Design-Build Agreement, and shall issue certificates for payment to the Design/Builder in such amounts. The Architect shall consult with the Design/Builder in the determination of the amount due the Design/Builder. The Architect shall sign the certificates for payment prior to the time the Architect transmits them to the Owner. Signing a certificate for payment by the Architect shall constitute a representation by the Architect to the Owner that based on the Architect's review of the design or observations at the site pursuant to this Agreement, the data comprising the application for payment, and information supplied by the Design/Builder, the Work has progressed to the point indicated, and that to the best of the Architect's knowledge, information and belief, the quality of the Work appears to be in accordance with the Design-Build Agreement (subject to an evaluation of the Work for conformance with the Construction Contract Documents upon Substantial Completion, the results of any subsequent tests required or performed under the Construction Contract Documents, minor deviations from the Construction Contract Documents correctable prior to completion, and any specific qualifications stated in the certificate for payment), and that the Design/Builder is entitled to payment in the amount certified. However, by signing a certificate for payment, the Architect shall NOT thereby be deemed to represent that the Architect has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that the Architect has reviewed the construction means, methods, techniques, sequences or procedures, or that the Architect has made any examination to ascertain how and for what purpose the Design/Builder has used the monies paid on account of the construction contract sum.

§1.7.3 Construction Phase Meetings. Throughout the duration of construction, Architect will attend regular progress meetings with Owner and Design/Builder relative to the review and documentation of Project status and coordination of efforts of all Project participants.

§1.7.4 On-Site Observation. The Architect will observe all phases of construction activities at milestone dates and as needed periodically to assist in achieving completion of the Project in accordance with the Owner's objectives for cost, time and quality. Observations will not cause Architect to be responsible for those duties and responsibilities which belong to the Design/Builder.

§1.7.5 Expedite Permits and Approvals. Architect will assist in obtaining permits and approvals for the Project from authorities having jurisdiction over the Project.

§1.7.6 Schedule Updates. Architect will review the Design/Builder's construction schedule and provide suggestions, as needed, for timely completion of the Work.

§1.8 INSURANCE

§1.8.1 Prior to performing Architect's services under this Agreement, Architect shall procure, maintain and provide insurance certificates, policies and endorsements, in at least the following amounts, to protect Architect and Owner from claims arising out of the performance of the Architect's services under this Agreement and caused by any error, omission, negligent act or omission, or design defect by Architect, such insurance to be in a form approved by the Owner, with an effective date prior to the beginning date of this Agreement. Such insurance shall be written on an occurrence basis, if available, and on a claims-made basis, if occurrence basis insurance is not available. Architect

shall maintain its insurance in full force and effect and uninterrupted during the term of this Agreement and after the completion of services under this Agreement until the completion of any applicable statute of limitations, such period to be not less than one year from Final Completion of all construction of this Project as to Workers compensation, two years from the Final Completion of all construction of this Project as to commercial general liability, and comprehensive automobile liability, and not less than ten years from the Final Completion of all construction of this Project (as allowed by Texas Civil Practice and Remedies Code §16.008), as to errors and omissions insurance. Architect shall furnish to Owner insurance certificates, policies and endorsements upon request at any time. Architect shall name Owner as an additional insured under its policies for commercial general liability and comprehensive automotive liability. Insurance shall be obtained from companies licensed to do business in the State of Texas by the Texas Department of Insurance. The policies shall include a waiver of subrogation in favor of the Owner. Any deviation from these requirements can only be approved by Owner's Board of Trustees or the Board's designated representative. Any nonconformity may be grounds for termination or modification of this Agreement. To the extent that Architect is unable to procure the insurance designated herein because the insurance is not reasonably available or is cost-prohibitive, then Architect shall provide written notice to Owner's Board of Trustees. Said lack of insurance may then be grounds for termination or modification of this Agreement. Such policies shall be primary and non-contributory.

<u>.1 Workers' Compensation</u>	<u>Statutory Benefits</u>
<u>.2 Employer's Liability</u>	<u>\$500,000 per accident/ \$500,000 per person</u>
<u>.3 Commercial General Liability</u>	
<u>.1 Bodily Injury and Property Damage</u>	<u>\$500,000 combined single limits/ \$500,000 aggregate</u>
<u>.2 Fire Damage</u>	<u>\$500,000 combined single limits/ \$1,000,000 aggregate</u>
<u>.3 Medical Expenses</u>	<u>\$500,000 combined single limits/ \$1,000,000 aggregate (included with the per occurrence limits for Bodily Injury and Property Damage limits)</u>
<u>.4 Products & Completed Operations</u>	<u>In an amount not less than 10% of the total Cost of the Work (to be maintained for a period of two years after Final Payment; Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during this period) and Owner shall be named by endorsement as an Additional Insured for such coverage)</u>
<u>.5 Personal & Advertising Injury</u>	
<u>.6 General Aggregate</u>	
<u>.7 Commercial General Liability Insurance</u>	<u>shall not exclude explosion, collapse, and underground (X, C, and U) coverage.</u>
<u>.8 Completed Operations Coverage</u>	
<u>.9 Contractual Liability Coverage</u>	
<u>.10 Aggregate Per Project Endorsement</u>	
<u>.4 Automobile Liability</u>	<u>\$250,000 per person/ \$500,000 per accident \$250,000 property damage</u>
<u>.5 Errors and Omissions Insurance</u>	<u>\$500,000 per occurrence/ \$1,000,000 aggregate</u>
<u>.6 Umbrella Excess Liability Coverage Policy</u>	<u>\$1,000,000 per occurrence/ \$1,000,000 aggregate</u>

Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

- .7 Architectural and engineering consultants shall carry errors and omissions insurance in an amount not less than \$1,000,000.

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

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

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design, which shall be set forth in drawings and other documents appropriate for the Project. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining bids or proposals, and in awarding contracts for construction.

- .8 The Architect shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- .9 The Architect shall notify the Owner in writing by certified mail or personal delivery, within ten days after the Architect knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- .10 The Architect shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, informing all persons providing services

No later than sev

on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

- .11 The Architect shall contractually require each person with whom it contracts to provide services on a Project, to:
 - .1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code § 401.011(44) for all of its employees providing services on the Project for the duration of the Project;
 - .2 Provide to the Architect, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project for the duration of the Project;
 - .3 Provide the Architect, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .4 Obtain from each other person with whom it contracts, and provide to the Architect:
 - .1 A certificate of coverage, prior to the other person beginning Work on the Project; and
 - .2 A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .5 Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
 - .6 Notify the Owner in writing by certified mail or personal delivery, within ten days after the person knew or should have known, of any change that materially affects the provision of coverage for any person providing services on the Project; and
 - .7 Contractually require each person with whom it contracts to perform as required by items 1-7, with the certificates of coverage to be provided to the person for whom they are providing services.

~~During the Construction Phase, the Architect shall act as the Owner's representative and provide administration of the Contract between the Owner and Contractor. The extent of the Architect's authority and responsibility during construction is described in AIA Document A105™ 2017, Standard Short Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A105 2017, those modifications shall not affect the Architect's services under this Agreement, unless the Owner and Architect amend this Agreement.~~

By signing this A

- .13 The Architect's failure to comply with any of these provisions is a breach of contract by the Architect that entitles the Owner to declare the contract void if the Architect does not remedy the breach within ten days after receipt of notice of breach from the Owner.
- .14 The coverage requirement recited above does not apply to sole proprietors, partners, and corporate officers who are excluded from coverage in an insurance policy or certificate of authority to self-insure that is delivered, issued for delivery, or renewed on or after January 1, 1996. 28 TAC §110.110(i).

§1.8.3 INDEMNITY. ARCHITECT SHALL, FOR THE DURATION OF THE PROJECT AND FOR A PERIOD OF TEN YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL TWO YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH SECTION 16.008(C) OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE), INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEY'S FEES INCURRED BY OWNER ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ANY OR ALL PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE OWNER, DESIGN/BUILDER, ARCHITECT OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE OR INTENTIONAL TORT BY THE ARCHITECT, OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE Architect EXERCISES CONTROL; provided and except, however, that this indemnification provision shall not be construed

as requiring Architect to indemnify or hold Owner harmless for any loss, damage, liability, or expense on account of damaged property or injuries, including death to any person, which may arise out of or may be caused by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Architect.

Architect shall not be responsible for the acts or omissions of the Design/Builder, or any subcontractor or their agents or employees, or any other persons performing any of the Work.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; ~~geotechnical engineering; and and~~, environmental testing services. The Owner shall employ a ~~Contractor, Design/Builder,~~ experienced in the type of Project to be constructed, to perform the design and construction Work and to provide price information.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are the Architect's Instruments of Service, and are for the Owner's use solely with respect to constructing the Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the construction of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Architect grants to the Owner a license to use the Architect's Instruments of Service as a reference for maintaining, altering and adding to the Project. The Owner agrees to indemnify the Architect from all costs and expenses related to claims arising from the Owner's use of the Instruments of Service without retaining the Architect. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

The Owner shall have the right to terminate this Agreement for cause or convenience upon 14 days written notice to Architect. In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of ~~Substantial~~ Final Completion.

ARTICLE 5 MISCELLANEOUS PROVISIONS

~~This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.~~

~~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 the Architect.~~

~~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.~~ Intentionally Omitted.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

The Owner shall pay the Architect an initial payment of (\$) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus percent (%).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid () days after the invoice date shall bear interest from the date payment is due at the rate of percent (%), or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide additional services not included in Article 1 for additional compensation. Such additional services may include, but not be limited to, providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the Project scope, quality or budget, or due to Owner requested changes in the approved design; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; providing services necessitated by the Contractor's failure to perform; and the extension of the Architect's Article 1 services beyond () months of the date of this Agreement through no fault of the Architect. Owner shall pay Architect for all services described in Article 1, the amount of \$ [*or % of the Project Construction Cost, excluding Architect's fees*].

§6.1 The Owner shall compensate the Architect for all undisputed requests for payment for services described in Article 1 as set forth below. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for noncompliance that cannot be cured, in accordance with Texas Government Code Section 2251.051 (c) and (d). Owner shall further have the right to withhold payments for which a bona fide dispute exists, provided Architect has received notice as required by Texas Government Code §2251.042.

Compensation shall be paid based on the percentage of the services actually completed by Architect. Progress payments for services in each phase for services completed shall total the following percentages applicable to each phase of Architect's services:

Design/Builder Procurement Phase:	20%
Design and Pre-Construction Phase:	39%
Construction Phase:	39%
Final Completion	2%
TOTAL	100%

§6.2 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 the Project, without markup.

§6.3 Unless otherwise agreed, payments for undisputed amounts for services shall be made monthly in proportion to services performed. Payments are due and payable forty-five (45) days from the date of the Architect's invoice to Owner's designated representative. Undisputed amounts unpaid more than 45 days after the invoice date shall bear interest at a rate specified by Texas Government Code Section 2251.025 or its successor.

§6.4 If the Owner fails to make timely payments to the Architect for undisputed sums in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination if not cured after 10 days' written notice to Owner of the delinquency. Architect shall be allowed to suspend Architect's performance of services under this Agreement for nonpayment by Owner only after the provision of 10 days' written notice, in accordance with Texas Government Code Section 2251.051 et seq.

§6.5 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be provided to the Owner upon presentation of Architect's progress payment applications.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

§7.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the terms of this Agreement, the requirements of the method of dispute resolution selected in this Agreement, and within the period specified by Texas law. The Architect waives all claims and causes of action not commenced in accordance with this Article 7.

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

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

§7.4 MEDIATION

§7.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement that is not resolved after a good faith discussion shall be subject to mediation as a condition precedent to filing any legal or equitable proceeding by either party, unless the filing deadlines under applicable statutes of limitation and/or repose would otherwise expire. If suit is filed before mediation in order to avoid expiration of limitations and/or repose, then the parties agree to submit the matter to mediation as soon as reasonably possible. Claims for injunctive relief shall not be subject to this Section.

§7.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. In the event the parties are unable to agree on a mediator, then the mediation shall be conducted by either the Center for Public Policy Dispute Resolution at the University of Texas School of Law or by a mediator selected by a local district court judge upon the joint request of the parties. The request shall be made within 30 days after the completion of Owner's grievance process. In no event shall the request for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in controversy would be barred by applicable statutes of limitation.

§7.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Owner's main administrative office is located, unless another location is mutually agreed upon. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Agreements reached in mediation shall be reduced to writing, considered for approval by the Owner's Board of Trustees, signed by the parties if approved by the Board of Trustees, and, if signed, shall thereafter be enforceable as provided by the laws of the State of Texas.

§7.4.4 The parties agree that any claim, dispute, or other matter in controversy between them shall not be subject to mandatory arbitration. The parties may, however, mutually agree in writing to submit such claims, disputes, or matters in controversy to arbitration. Neither party may compel the other to arbitrate any claim, dispute, or matter in controversy between them.

§7.5 **Governing Law.** This Agreement shall be governed by the law of the State of Texas and any litigation shall be conducted in state district court. Mandatory and exclusive venue for any disputes shall be in Dallam County, Texas.

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

§7.7 **Agents and Assigns.** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§7.8 **No Third Party Beneficiary.** 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.

§7.9 **Hazardous Materials.** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site. Architect shall promptly disclose in writing to Owner any hazardous materials or discovered on site, regardless of the date of discovery or the date on which Architect learns of the hazardous nature of the materials.

§7.10 Invalidity. Invalidation of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

§7.11 Conflicts in Documents. To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

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

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

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

§7.15 Felony Conviction. 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.

§7.16 CRIMINAL HISTORY RECORD CHECKS

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

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

§7.16.3 For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Architect or any of Architect's consultants who has or will have continuing duties related to the services to be performed on Owner's Project AND has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner, or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Texas Penal Code Title 5

Offenses Against Persons; an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or an equivalent offense under federal law or the laws of another state.

§7.17 Complaints. The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas under the Architects Registration Law. Texas Occupations Code Chapter 1051. The Texas Board of Architectural Examiners can be reached at P. O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, by phone at (512) 305-9000, by fax at (512) 305-8900, or on the web at <http://www.tbae.state.tx.us>.

§7.18 No Boycott of Israel. By executing this Agreement, Architect verifies that Architect does not boycott Israel or any Israeli-controlled territory, and will not boycott Israel or any Israeli-controlled territory during the term of this Agreement. Pursuant to Texas Government Code, Chapter 2271, as amended, if Architect is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Architect represents and warrants to the Owner that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement.

§7.19 No Boycott of Energy Companies. By executing this Agreement, Architect verifies that it does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement. Pursuant to Texas Government Code Chapter 2274, as enacted in SB13 of the 87th Legislature, if Architect is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Architect represents and warrants to the Owner that the Architect does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

§7.20 No Discrimination of Firearm Entities or Trade Associations. By executing this Agreement, Architect verifies that it does not discriminate against firearm entities or firearm trade associations, and it will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. Pursuant to Texas Government Code Chapter 2274, as enacted in SB19 of the 87th Legislature, if Architect is a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations (specifically excluding sole proprietorships) that exists to make a profit which has ten (10) or more full-time employees and the value of the contract with Owner is \$100,000 or more, the Architect represents and warrants to the Owner that the Architect does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.

§7.21 Companies Engaged in Business with Foreign Terrorist Organization. To the extent required by law, 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 omission or misrepresentation shall void this Agreement.

§7.22 Disclosure of Interested Parties. Architect, prior to signing this Agreement and submitting it to the Owner, shall comply with the provisions of Texas Government Code Section 2252.908, requiring a Disclosure of Interested Parties filed with the Texas Ethics Commission.

§ 7.23 PRESERVATION AND DISCLOSURE OF CONTRACT INFORMATION

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

District receives the written request, a written request to the Architect that Architect provide that information to the District.

§ 7.23.2 The Architect must:

- .1 Preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to the District for the duration of the Agreement;
- .2 Promptly, within four business days, provide to the District any requested contracting information that is in the custody or possession of the Architect upon request of the District; and,
- .3 On completion of the Agreement, either:
 - .1 Provide to the District at no cost all contracting information related to the Agreement that is in the custody or possession of the Architect; or
 - .2 Preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to the District.
 - .3 The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Agreement and the Architect agrees that the Agreement can be terminated if the Architect knowingly or intentionally fails to comply with the requirements of that subchapter.
 - .4 Further, under Texas Government Code Chapter 552.372(c), the District may not accept a bid for or awarding of an agreement to an entity that the District has determined has knowingly or intentionally failed in a previous bid or contract to comply with Subchapter J, unless the District determines and documents that the entity has taken adequate steps to ensure future compliance.
 - .5 If an Architect fails to provide to the District the requested information, Texas Government Code Chapter 552.373 requires the District to notify the Architect in writing of the failure and allow 10 business days to cure the violation. District may terminate the Agreement if Architect fails to remedy the failure, District determines the failure was knowing and intentional, and steps have not been taken to ensure future compliance.

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

TEXLINE INDEPENDENT SCHOOL DISTRICT

OWNER *(Signature)*

Terrell Jones, Superintendent
(Printed name and title)

ARCHITECT *(Signature)*

(Printed name, title, and license number, if required)