

**AMENDMENT TO AIA B132™ -2009
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT,
CONSTRUCTION MANAGER AS ADVISER EDITION**

DATE: August 9, 2018

CONTRACT DATE: August 9, 2018

OWNER: Clarendon Independent School District c/o Mike Norrell,
Superintendent
PO Box 598
Clarendon, TX 79039
(806) 346-1984
Email: norrell.mike@clarendonisd.net

ARCHITECT: _____

Phone: _____
Email: _____

PROJECT: Construction of security vestibules and related security features at the following campuses: Clarendon HS, Clarendon JH and Clarendon Elementary

WHEREAS Clarendon Independent School District (hereinafter referred to as "District" or "Owner") and _____ (hereinafter referred to as "Architect") desire to enter into a contract under which Architect will perform construction services relating the above-referenced Project on behalf of Owner; and

WHEREAS, the District has determined that Construction Manager-Agent is the construction delivery method that provides the best value for the District; and

WHEREAS Owner and Architect have agreed to enter into AIA Document B132™ -2009 Agreement ("Agreement") as the basic form for that contract; and

WHEREAS certain terms and conditions of the contract must be modified to comply with applicable laws and policies affecting Owner and Architect on this Project, Owner and Architect hereby agree that the following provisions replace, modify, amend and/or delete the identically numbered paragraphs, or are in addition to the paragraphs, contained in the attached Agreement (AIA Document B132™ -2009) and become a part of said Agreement for all intents and purposes; any references to a particular section within said Agreement shall mean a reference to such section, as amended herein, if

applicable; and,

WHEREAS, those paragraphs that have NOT been replaced, modified, amended and/or deleted as so stated by the identically numbered paragraphs herein, shall remain in effect as written in the AIA Document B132™ -2009 Agreement, and to the extent that this Amendment conflicts with any terms set out in the B132™ -2009 Agreement (pre-printed or inserted), this Amendment controls.

1. §§ 2.1, 2.2 and 2.3 are amended to read as follows:

2.1 The services performed by the Architect, Architect's employees and Architect's consultants for and on behalf of the Owner shall be as enumerated in this Agreement. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Texas. Pursuant to the Texas Occupations Code, any civil, geotechnical, structural, mechanical, or electrical plans, specifications, or opinions of probable cost for construction must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Texas. Architect agrees to notify Owner should Architect's registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations.

2.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a Schedule for the performance of the Architect's services, which shall only be adjusted if necessary and mutually agreeable to Architect and Owner, as the Project proceeds. This Schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by the Schedule and approved of by the Owner shall not be exceeded by the Architect or Owner, except for reasonable delay caused by circumstances beyond the control of either Architect or Owner.

2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2009. Standard Form of Agreement Between Owner and Construction Manager, as amended by Owner. The Architect shall not be responsible for actions taken by the Construction Manager, unless such actions are taken under the direction of the Architect.

2. §§ 2.6, 2.6.1, 2.6.1.1, 2.6.2 and 2.6.3 are amended to read as follows:

2.6 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits

the Architect normally maintains, the Architect shall be responsible for any additional cost incurred.

- 2.6.1** The Architect shall carry professional liability and errors and omissions insurance, covering the services provided under this agreement, as set out in Attachment One. A Certificate of Insurance indicating the expiration date, and existence, of the Architect's professional liability insurance is required prior to commencement or continuation of performance of the services under this Agreement. Architect shall deliver to Owner replacement certificates, not less than thirty (30) calendar days prior to the expiration of any such insurance. If, however, Architect fails to pay any of the renewal premiums for the expiring policies, Owner shall have the right (but not the obligation), after written notice to Architect, to make such payments and set off the amount thereof against the next payment coming due to Architect under this Agreement.

The Certificate of Insurance requirements are attached hereto as Attachment One. These Certificates shall indicate the expiration date of the Architect's professional liability and errors and omissions insurance. The Certificate is to identify the specific name of the Project according to the terms of this Agreement, and identify the Clarendon Independent School District as the Project's Owner. The Owner and Architect acknowledge that upgrading the architect's current professional liability policy will be at the Owner's expense.

- 2.6.1.1** The Architect must insure that all its professional subconsultants have insurance coverage equal to those contained in Attachment One. Each of the Architect's subconsultants must have Errors & Omissions coverage of at least \$1,000,000 per claim and \$2,000,000 aggregate with deductibles no larger than \$50,000.
- 2.6.2** In the event that any of the "claims made" insurance policies provided by the Architect pursuant to this Agreement are cancelled or not renewed, at any time, the Architect shall substitute insurance policy(ies), with terms and conditions and in amounts which comply with Attachment One of this Agreement and which provide for retroactive coverage to the date of such cancellation or nonrenewal to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policy(ies) shall be maintained in full force and effect for four (4) years from the date the Project is fully and finally completed.
- 2.6.3** Architect's Workers Compensation coverage shall meet or exceed the statutory requirements and be provided as required under Clarendon ISD Policy CV (LEGAL) and as specified in Attachment Two attached hereto and incorporated herein for all intents and purposes as if fully set forth herein.

3. §§ 2.6.4 and 2.6.5 are deleted in their entirety, and replaced with the following:
- 2.6.4** If Architect discovers that any reduction in insurance coverage, as called for under this Agreement, will occur or has occurred, he shall immediately notify the Owner in writing.
- 2.6.5** In addition to any other remedy which may be available to Owner under this Agreement or under the laws of the State of Texas, Owner may require Architect to pay any damages allowable by law to the extent caused by any actionable conduct relating to professional services of the Architect including, but not limited to, costs for the removal or replacement of materials or both. To the extent that Architect is liable, Architect shall not receive any fee for any of his work performed in correcting said error or omission. Notwithstanding the foregoing, Owner shall pay for the cost of any actual materials which were omitted for any reason, but only to the extent the Contract Price obtained from the Contractor was lower by reason of said omission.
4. §§ 2.7, 2.8 and 2.9 are added as follows:
- 2.7** The Architect's services shall be performed under the same or similar circumstances with the professional skill and care ordinarily provided by architect consistent with the professional standards of an architectural firm practicing in and around Clarendon, Texas, and as specified in this Agreement. Architect's services shall be provided as expeditiously as is prudent considering the skill and care of a competent architect. The Architect shall be responsible to the Owner for all costs and damages resulting from: (i) any material defects in Architect's design; (ii) unworkable design details; (iii) Architect's failure to comply with the terms of this Agreement; and, (iv) any material errors and omissions by the Architect.
- 2.8** It is expressly agreed that by virtue of this Agreement, no architect, engineer, mechanic, contractor, materialman, artisan, laborer or subcontractor, whether skilled or unskilled, shall ever, in any manner have, claim or acquire any lien upon the Project of whatever nature or kind by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.
- 2.9** This Agreement is subject to all applicable federal and state laws, rules, and regulations including, but not limited to, the Americans with Disabilities Act and Prevailing Wage Rates under Texas Government Code Chapter 2258, and Architect shall assist Owner in complying with all federal, state and local laws, rules and regulations. Invalidity 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.

5. §§ 3.1 and 3.1.1 are amended to read as follows:

3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services to produce a reasonably complete and accurate set of Construction Documents. Services not set forth in this Article 3 are Additional Services.

3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings as directed by Owner, communicate with members of the Project team and report progress to the Owner in writing.

6. §§ 3.1.7.1, 3.1.7.2 and 3.1.7.3 are added as follows:

3.1.7.1 The Architect shall advise the Owner of any need for the Owner to secure tests, analysis, studies, reports, surveys or consultant's services not to be otherwise provided by the Architect, in conjunction with the development of the Design and Construction Documents for the Project.

3.1.7.2 The Architect shall verify the observable existing conditions of the Project, and compare to existing As-Built drawings provided by the Owner.

3.1.7.3 The Architect shall become familiar with the Project site and review any written instructions from the Owner that address the Project's scope, including but not limited to, the individual space requirements for program areas, special utilities, finishes, fixed equipment, physical assessments of the facilities, Owner's determination of needs and any other guidelines or requirements which may impact the design and/or construction of the Project (the "Design Criteria"), and shall arrive at a mutual understanding of such requirements with the Owner. Architect shall consult, to the extent required by Owner, with authorized employees, agents, consultants and/or representatives of the Owner relative to the design and construction of the Project.

7. § 3.1.8.1 is added as follows:

3.1.8.1 The Architect shall prepare the Design Documents in compliance with current edition of International Building Code, current Texas Accessibility Standards, current edition of National Fire Protection Association 101 Life Safety code, applicable city ordinances, Texas Education Agency, and facility related issues of The Americans with Disabilities Act, including, but not limited to, 19 T.A.C. §61.1036.

8. § 3.1.9 is added as follows:

3.1.9 Architect shall review the documents provided by the Owner and the visible existing conditions at the Project site to identify existing systems and construction which must be modified to accommodate Architect's design for the Project and the construction of the Project. Architect shall identify to Owner any material incongruities between the documents and visible conditions, and shall consult with Owner on any special measures required of the Owner or additional services required to accommodate the investigation, including, without limitation, any further investigation which is necessary for Architect to perform its services in accordance with the requirements of this Agreement and so that Architect's design will be properly coordinated with existing systems and construction. This investigation shall be accomplished by a properly licensed, professional Architects and engineers, as appropriate. Additional compensation will not be authorized for Project site observations and measurements of existing improvements or visible conditions by the Architect, unless previously approved by the Owner in writing.

9. § 3.2.2 is amended to read as follows:

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

10. § 3.2.7 is amended to read as follows:

3.2.7 Upon receipt of the Construction Manger's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Document are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase and such revisions will be at no cost to Owner.

11. §§ 3.3.1 and 3.3.2 are amended to read as follows:

3.3.1 Based on the approved Schematic Design Documents and any adjustments authorized in writing by the Owner in the program, schedule or construction budget, the Architect shall prepare, for the Construction Manager's review and the review and approval of Owner, Design Development Documents consisting of

drawings and other documents needed to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their level of quality.

3.3.2 At intervals mutually agreeable to the Owner, Construction Manager and Architect, the Architect shall provide drawings and other documents which depict the current status of design development for the Owner's review and the Construction Manager's information, and Architect shall meet with the Construction Manager to review the Design Development Documents.

12. § 3.3.3 is deleted in its entirety.

13. §§ 3.4.1, 3.4.2 and 3.4.3 are amended to read as follows:

3.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project, including, but not limited to the work required for the architectural, structural, mechanical, electrical, plumbing, service-connected equipment, and site work, and the necessary general conditions of the Agreement. The Architect shall provide, as needed, the services for professional structural, mechanical, electrical and other engineers, licensed and qualified by training and experience in their respective field, to address the requirements of the Project; shall submit a list of the names of the engineers to be employed by the Architect to the Owner, in advance, for the Owner's review and approval, which approval shall not be unreasonably withheld, and shall require such professional engineers to place their seal, name and signature on the drawings and specifications prepared by them. Said Construction Documents shall assist the Owner in complying with all applicable laws, statutes, ordinances, codes, rules and regulations.

3.4.2 The Architect shall be responsible, with assistance of the Owner and the Construction Manager, for filing documents required for the approval of governmental bodies having jurisdiction over the Project. The Architect shall review all applicable codes, laws, ordinances, rules and regulations of any governmental body with jurisdiction over the Project which are applicable to the Architect's services including, but not limited to, the Texas Commissioner of Education's rules set out in 19 T.A.C. §61.1040 and the Americans with Disabilities Act (the "ADA"). The Architect shall respond to the design of the Project to the requirements imposed by governmental bodies having jurisdiction over the Project at no cost to Owner.

3.4.3 During the development of the Construction Documents the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms and prevailing wage rate surveys and wage schedules as required under Texas Government Code §2258; (2) the form of agreement between the Owner and Contractor, including prevailing wage requirements; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms.

14. § 3.4.6 is added as follows:

3.4.6 After Owner approves the Construction Documents, Architect shall not substantially alter or approve any change in the Work involving an adjustment in the Contract Sum or an extension of the contract time, without the prior consent of the Owner.

15. § 3.5.1 is amended to read as follows:

3.5.1 General

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

In the event the lowest acceptable bid (or bids) exceeds either the Project Budget or the final estimate provided by the Construction Manager, the Architect, in consultation with and at the direction of the Owner and Construction Manager, shall modify the Construction Documents, as necessary, to bring the Project Budget within the limit established by the Owner or the Construction Manager's final estimates, whichever is determined by the Owner, at no additional cost to the Owner.

16. § 3.5.2.1 is amended to read as follows:

3.5.2.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings. The Architect shall cooperate with the Owner's legal counsel in the preparation of all contract documents and the General Conditions of the Contract for Construction, as amended or supplemented for the Project, to be used in the bidding or proposal documents.

17. § 3.5.3.1 is amended to read as follows:

3.5.3.1 Negotiated Proposals

Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings. The Architect shall cooperate with the Owner's legal counsel in the preparation of all contract documents and the General Conditions of the Contract for Construction, as amended or supplemented for the Project, to be used in the bidding or proposal documents.

18. §§ 3.5.4 and 3.5.5 are added as follows:

3.5.4 Architect shall insert in the Project Specifications the requirement that all bonds comply with the requirements of Texas Insurance Code Section 3503.001, *et seq.*, and Texas Government Code Chapter 2253 or their successors, that all insurance companies be licensed to do business in the State of Texas, and that all Contractors and subcontractors comply with Texas Government Code §2258, by paying workers prevailing wage rates.

3.5.5 As required by law, any bid or proposal document shall contain prevailing wage rates, which Architect may request from Owner, and prevailing rate enforcement provisions as set out in Texas Government Code §2258.001, *et seq.* and District Policy CV (LEGAL). If the Owner does not provide a prevailing wage rate, the Architect shall assist the Owner with conducting a prevailing wage survey and adopting a prevailing wage schedule or, upon Owner's approval, shall use the prevailing wage rate as set out Davis-Bacon Act, 40 USC Section 3141, (accessed on the internet at www.wdol.gov), as directed by Owner.

19. § 3.6.1.1 is amended to read as follows:

3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as amended by Owner.

20. § 3.6.1.3 is amended to read as follows:

3.6.1.3 Subject to the time limitation set forth herein, the Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the later of the issuance to the Owner of the final Certificate for Payment to all Contractors, issuance of a Certificate of Occupancy or submission of Record Drawings.

21. § 3.6.2.1 is amended to read as follows:

3.6.2.1 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. Unless otherwise agreed to by Owner, the Architect shall visit the site not less than twice per month while Work is in progress, or as often as necessary and appropriate to the stage of construction, with particular emphasis on structural work, to inspect the site and work; to become generally familiar with the progress and quality of the Work; and, to determine, for the Owner's benefit and protection, if the Work is substantially proceeding in accordance with the intent of the Contract Documents and construction schedule. The Architect shall attend construction progress meetings in conjunction with or in addition to visiting the site in satisfaction of other responsibilities. The Architect shall use reasonable care to guard the Owner against defects and deficiencies in the Work, and the Contractor's failure to carry out the work in accordance with the Contract Documents and the construction schedule. The Architect shall be able to rely on information provided by the Construction Manager as to the quality of the Work installed by Contractors. The Architect shall keep the Owner informed of the progress and quality of the Work, and give prompt notice to the Owner in writing of any major or material deviations from the Contract Documents in the Work after such site visit. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

22. § 3.6.2.3 is deleted in its entirety.

23. §§ 3.6.2.4 and 3.6.2.5 are amended to read as follows:

3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. While making such interpretations and initial decisions, the Architect shall not be liable for results of interpretations or decisions so rendered in good faith.

The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Owner's decisions, after considering the Architect's advice, on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

3.6.2.5 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except those relating to aesthetic effect as provided in

Subparagraph 2.6.17 shall be subject to mediation, but not arbitration, as provided in this Agreement and the Contract Documents.

24. §§ 3.6.3.2 and 3.6.3.3 are amended to read as follows:

3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.3, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, absent fraud by the Contractor and/or Construction Manager, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents, and that all subcontractors and suppliers have been properly paid. The foregoing representations are subject further to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall be a representation that the Architect has (1) complied with the terms of 3.6.1.2, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, and (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

25. § 3.6.4.2 is amended to read as follows:

3.6.4.2 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking conformance with (1) the Contract Documents; and, (2) all applicable laws, codes, statutes, rules and regulations of any governmental body having jurisdiction over the Project. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The

Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

26. § 3.6.5.1 is amended to read as follows:

3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's written approval and execution in accordance with the Contract Documents.

27. §§ 3.6.6.1, 3.6.6.1, 3.6.6.3 and 3.6.6.4 are amended to read as follows:

3.6.6.1 The Architect shall conduct overhead observations above finished ceilings prior to ceilings installation and substantial completion inspections to determine the dates of substantial completion, and at the time of substantial completion of construction, prepare a list of items which Architect has observed as requiring remedial work or replacement, and prior to issuing a Certificate of Substantial Completion, the Architect shall, with the assistance of the Owner, prepare a punch list or check list of incomplete work and work which does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion and submitted to the Contractor to complete the work, with copies forwarded to the Owner. At this time, Architect shall contact the appropriate governmental body or agency to schedule the accessibility inspection. The Architect, with the assistance of the Owner, shall thereafter review the corrected and/or replaced work. The Architect shall, upon the Contractor's completion of the check list items and in consultation with the Owner, determine when the Project is finally completed. The Architect, with the assistance of the Owner, shall issue the Certificate of Final Completion with the Certificate of Payment and shall provide the Owner a written recommendation regarding final payment.

3.6.6.2 The Architect shall receive from the Contractor and deliver to the Owner specified "closeout documents," such as written guaranties, warranties, consent of surety to Final Payment (partial payment, if applicable), Certificate of Occupancy, operating and maintenance manuals, final HVAC pneumatic control drawings, final corrected HVAC test and balance report, parts books, diagrams, charts, and other documents for the Owner's use or that are required to be provided to the Owner by Contractor under the Contract Documents. The Owner shall require in the Contract Documents that the Contractor furnish such information or documentation for the Project to the Architect for transmittal to the Owner.

3.6.6.3 The Architect shall review, for completion of submittal requirements only, Contractor's submission of record drawings, operating and maintenance instructions and all manuals, brochures and drawings furnished by the Contractor relating to the operation and maintenance of the Project.

3.6.6.4 The Architect shall review and approve, or take other appropriate action on, the Contractor's list of items to be completed or corrected, and shall certify Final Completion when it believes that all requirements of the Contract Documents are complete. The Architect shall, as needed, provide assistance to Owner for the purpose of advising and counseling Owner's personnel in the usage, operation and maintenance of the building, mechanical, electrical, and plumbing systems.

28. § 3.6.6.5 is added as follows:

3.6.6.5 Architect shall participate in a one (1) year warranty review of the Project. The Architect shall be available after Final Payment to Contractor to advise the Owner regarding warranty items and to inspect warranty work no later than thirty (30) calendar days prior to termination of the warranty period and to prepare a check list of items that it or the Owner observes to be defective and are to be completed by the Contractor. The Architect shall forward the check list to the Contractor to complete the work, with a copy to the Owner. In addition, the Architect shall be available for the accessibility inspection during the warranty period. The Architect shall forward the check list of required correction items and, if necessary, supplemental drawings to the Contractor to complete the work, with a copy to the Owner.

29. § 4.1 is amended to read as follows:

4.1 The services described in this Article 4 are not included in Basic Services unless so identified in this Agreement as being included in Basic Services, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 4.1 and 4.3, and their subparts, shall only be provided if authorized in advance and in writing by the Owner. If, in the opinion of the Architect, services described as Additional Services are required due to circumstances beyond the Architect's control, the Architect shall advise the Owner of the need for those services in writing prior to commencing such services. If the Owner deems that such services are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services. If, however, the Additional Services are required due to circumstances within the control of the Architect, such services shall be provided as part of the Basic Services. Notwithstanding any provision to the contrary, no compensation shall be paid to the Architect for additional services that became necessary as a result of the fault or negligence of the Architect or his agents or employees.

Additional Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Programming	Owner	To the extent required by 19 TAC Section 61.1040
§ 4.1.2 Multiple preliminary designs	Architect	Included in Basic Services
§ 4.1.3 Measured drawings	Architect	Included in Basic Services
§ 4.1.4 Existing facilities surveys	Owner	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Architect	Included in Basic Services
§ 4.1.6 Building information modeling	Architect	Included in Basic Services
§ 4.1.7 Civil engineering (and surveying)	Architect	Additional Services
§ 4.1.8 Landscape design	Architect	Additional Services
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	Included in Basic Services
§ 4.1.10 Value Analysis (B204™-2007)	Architect	Included in Basic Services
§ 4.1.11 Detailed cost estimating	Owner	
§ 4.1.12 On-site project representation	Owner	
§ 4.1.13 Conformed construction documents	Architect	Included in Basic Services
§ 4.1.14 As-designed record drawings	Architect	Included in Basic Services
§ 4.1.15 As-constructed record drawings	Architect	Included in Basic Services
§ 4.1.16 Post occupancy evaluation	Not Provided	Not Provided
§ 4.1.17 Facility Support Services (B210™-2007)	Not Provided	Not Provided
§ 4.1.18 Tenant-related services	Not provided	Not provided
§ 4.1.19 Coordination of Owner's consultants	Owner	
§ 4.1.20 Telecommunications/data design	Architect	Included in Basic Services

§ 4.1.21	Security Evaluation and Planning (B206™-2007)	Architect	Included in Basic Services
§ 4.1.22	Commissioning (B211™-2007)	Not Provided	Not Provided
§ 4.1.23	Extensive environmentally responsible design	Not Provided	Not Provided
§ 4.1.24	LEED® Certification (B214™-2007)	Not Provided	Not Provided
§ 4.1.25	Historic Preservation (B205™-2007)	Not Provided	Not Provided
§ 4.1.26	Furniture, Finishings, and Equipment Design (B253™-2007)	Architect	Included in Basic Services
§ 4.1.27	Geotechnical engineering	Architect	Additional Services

30. § 4.3, and 4.3.1 and all its subparts, are amended to read as follows:

4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 and agreed to by Owner shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1** Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as agreed by the Owner and Architect. Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction. However, where said services result in a significant increase in the Construction Cost and, therefore, the Architect's fee for Basic Services, which fee is commensurate with the services required of the Architect, this Paragraph shall not apply;
- .2** Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives when the adjustment in the Basic Compensation resulting from the Adjusted Construction Cost is not commensurate with the services required of the Architect;
- .3** Providing services made necessary by the default of the Contractor, or major defects or deficiencies in the Work of the Contractor, or by failure

of performance of either the Owner or Contractor under the Contract for Construction that are not due to negligence or omissions by the Architect.

- .4 Preparing digital data for transmissions to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .8 Evaluations of the qualifications of bidders or persons providing proposals; or
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction.

31. §§ 4.3.1.10, 4.3.1.11 and 4.3.1.12 are deleted in their entirety.

32. § 4.3.2 and all its subparts are amended to read as follows:

4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation; or,
- .3 Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives when the adjustment in the Basic Compensation resulting from the Adjusted Construction Cost is not commensurate with the services required of the Architect.
- .4 This provision of the Agreement is deleted in its entirety.
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial

Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

33. § 4.3.3 and all of its subparts are deleted in their entirety.
34. § 4.3.4 is deleted in its entirety.
35. §§ 5.1 and 5.2 are amended to read as follows:
 - 5.1 The Owner shall, with the Architect's assistance, identify requirements and limitations on the Project, including a written program, which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements and/or other relevant Design Criteria.
 - 5.2 The Owner shall retain a Construction Manager to administer the Project. The Construction Manager's services, duties and responsibilities will be as described in the edition of the AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser, current as of the date of this Agreement and as amended by Owner. The Terms and Conditions of the Agreement between Owner and Construction Manager shall be furnished to the Architect. The Architect shall not be responsible for actions taken by the Construction Manager.
36. §§ 5.4 and 5.4.1 are deleted in their entirety.
37. § 5.8 is deleted in its entirety.
38. §§ 5.9, 5.10 and 5.1 are amended to read as follows:
 - 5.9 The Owner shall furnish, if deemed necessary by Owner after consultation with Architect and Construction Manager, such tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
 - 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be deemed reasonable and necessary by Owner at any time for the Project to meet the Owner's needs and interests.
 - 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service, or nonconformance with the Contract Documents, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation.

39. § 5.13 is deleted in its entirety.
40. § 6.2, 6.3, 6.3.1 and 6.4 are deleted in their entirety.
41. §§ 6.6 and 6.7 are amended to read as follows:
- 6.6** If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design development Phase Services, or the budget as adjusted under Section 6.5.1.
- 6.7** After incorporation of modifications under Section 6.6, the Architect shall, at no cost to Owner, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.
42. § 7.1 is deleted in its entirety.
43. § 7.3 is amended to read as follows:
- 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service which permits the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service for the purpose of completing, using or maintaining the Project, so long as the Owner requires such similarly credential design professionals to remove this Architect's professional seals from future documents. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to the completion of the Project that is adjudged to have resulted through the Owner's default of this Agreement shall terminate this nonexclusive license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven (7) days of termination of the license all originals and reproductions in the Owner's possession.
44. § 7.3.1 is deleted in its entirety.

45. § 7.4 is amended to read as follows:

7.4 Except for the licenses granted in Paragraph 7.3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Paragraph 7.3. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

46. § 8.1.1 is amended to read as follows:

8.1.1 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 within the period specified by applicable law.

47. § 8.1.2 is deleted in its entirety.

48. § 8.1.3 is amended to read as follows:

8.1.3 INDEMNITY. Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subcontractors, for Construction Documents which are sufficient for Owner to complete the construction of the Project and are free from material defects or omissions, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any defect in the Construction Documents prepared by Architect, its agents, employees, subcontractors, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. In this connection, ARCHITECT SHALL, DURING THE CONSTRUCTION OF SAID PROJECT AND FOR A PERIOD OF TEN YEARS AFTER SUBSTANTIAL COMPLETION (PLUS AN ADDITIONAL TWO YEARS IF THE CLAIM IS PRESENTED IN ACCORDANCE WITH 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, CONSTRUCTION MANAGER, ARCHITECT, CONTRACTOR OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED 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's services shall be performed under the same or similar circumstances with the professional skill and care ordinarily provided by an architect or engineer consistent with the professional standards of an architect or engineer practicing in and around Clarendon, Texas, and as specified in this Agreement. Architect's services shall be provided as expeditiously as is prudent considering the skill and care of a competent architect or engineer.

49. § 8.1.4 is deleted in its entirety.

50. § 8.2.1 is deleted in its entirety.

51. § 8.2.2 is amended to read as follows:

8.2.2 Owner and Architect shall attempt to settle any claim, controversy or dispute between them arising out of this Agreement through consultation and negotiation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator to be chosen by Owner and Architect within fifteen (15) days after written notice by either party demanding mediation of a dispute from the other. Owner and Architect will share the cost of the mediation equally. The parties may agree in writing to some other form of alternative dispute resolution to replace or add to mediation.

52. § 8.2.3 is deleted in its entirety.

53. § 8.2.4 is amended to read as follows:

8.2.4 Any dispute which cannot be resolved through negotiation, mediation or other mutually agreed form of ADR within six (6) months of the date of the initial demand for it by either party, may then be submitted to the appropriate court for

resolution. The use of any ADR procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either party. Nothing in this section will prevent either party from resorting to judicial proceedings if, (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful; or, (b) interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

54. Article 8.3, Arbitration, and all of its subparts, are deleted in their entirety.

55. §§ 9.1 and 9.2 are amended to read as follows:

9.1 If the Owner breaches this Agreement by failing to make payments to the Architect in accordance with this Agreement, and after Architect provides Owner with written notice of and thirty (30) days to cure such breach, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give Owner an additional seven (7) days' written notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The time schedules for remaining services shall be equitably adjusted.

9.2 If the Project is suspended by the Owner for more than 90 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. This provision shall not apply to any suspensions caused by circumstances outside the Owner's control, including but not limited to: acts of God, work stoppages or strikes by Contractor's or subcontractor's employees, unavailability of materials, or by order of any governmental entity having jurisdiction over the Project.

56. §§ 9.3, 9.4 and 9.5 are deleted in their entirety.

57. § 9.6 is amended to read as follows:

9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

58. § 9.7 is deleted in its entirety.
59. § 9.8 is amended to read as follows:
- 9.8** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.
60. § 9.9 is added as follows:
- 9.9** Upon termination of this Agreement, the Architect shall perform no further services, except as requested by the Owner or as may be necessary to preserve the Work.
61. §§ 10.1, 10.2, 10.3 and 10.4 are amended to read as follows:
- 10.1** This Agreement shall be governed by the law of the place where the Project is located.
- 10.2** The terms in this Agreement shall have the same meaning as those in the edition of AIA Document A232-2009, General Conditions of the Contract for Construction, as modified by Owner and incorporated into the Contract Documents.
- 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project.
- 10.4** The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.
62. § 10.6 is amended to read as follows:
- 10.6** Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal or exposure of persons to hazardous materials or toxic substances in any form at the Project site. If the Architect or its consultant becomes aware of such materials, it shall immediately advise the Owner in writing.
63. §§ 10.7 and 10.8 are deleted in their entirety.
64. §§ 11.1, 11.2, 11.3, 11.4 and 11.5 are amended to read as follows:

11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

_____ percent (___%) of the cost of the project or estimated cost of the project, whichever is applicable at the time of billing, at intervals described in paragraph 11.5. If Project is conditioned on passage of a bond measure, Architect waives compensation until passage of such bond measure and bond proceeds are received by the Owner. If Owner does not receive bond proceeds, no fees shall be owed to Architect.

The actual cost incurred by Architect for providing civil engineering and geotechnical engineering services as part of Architect's Basic Services under Article 3 shall be paid by Owner as a Reimbursable Expense, as set out in Section 11.8.2.

11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: _____

11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: _____ percent (___%) of the increased cost of the Project, or estimated cost of the Project, whichever is applicable at the time of billing, or an hourly rate as set forth in Section 11.7, whichever is mutually agreeable in writing between the parties.

11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the actual amount invoiced to the Architect, without mark-up.

11.5 Where compensation is based on a stipulated sum or a percentage of Construction Cost, Progress Payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

Pre-Bond or Preliminary Design Phase	0%
Schematic Design Phase:	20%
Design Development Phase:	10%
Construction Documents Phase:	40%
Bidding or Negotiation Phase:	10%
Construction Phase:	18%
Post Construction Phase:	
Final Completion:	1%
End of Contractor 1 year	
Warranty Period:	1%

65. § 11.7 is amended to read as follows:

11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be in effect for the duration of the Project.

Principal:	\$_____ per hour
Architect:	\$_____ per hour
Architect Intern:	\$_____ per hour
Draftsman:	\$_____ per hour

66. § 11.8.1 and all of its subparts are amended to read as follows:

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

- .1 Transportation and authorized out-of-town travel and subsistence, as approved by Owner and subject to the provisions of Clarendon ISD Board Policy;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents, including costs of reproductions for the office use of Architect, Architect's consultants and owner;
- .5 Postage, handling and delivery;
- .6 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .7 Site office expenses; and,
- .8 Other similar Project-related expenditures.

67. §§ 11.8.1.9, 11.8.1.10 and 11.8.1.11 are deleted in their entirety.

68. § 11.8.2 is amended to read as follows:

11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0%) of the expenses incurred.

69. §11.9 is deleted in its entirety.

70. §§ 11.10.1, 11.10.2 and 11.10.3 are amended to read as follows:

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

11.10.2 Payment, when due, shall be made to Architect in accordance with Owner's ordinary business practices. Any invoice for Progress Payments remaining unpaid after thirty (30) days, shall be subject to simple interest as set out in Texas Government Code Chapter 2251, Subchapter B. Nothing contained herein shall prevent or otherwise limit Owner from withholding any payment or portion of a payment for which Owner has provided Architect notice of a bona fide dispute.

11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

71. §§ 12.1, 12.2, 12.3, 12.3.1, 12.3.2, 12.3.3, 12.3.4, 12.3.5, 12.3.6, 12.3.7, 12.4, 12.5, 12.6, 12.7, 12.8, 12.9, 12.10, 12.11, 12.12, 12.13, 12.14, 12.15, 12.16 and 12.17 are added as follows:

12.1 This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, and the parties agree that venue for any legal proceeding shall be in a Texas district court for Donely County, Texas.

12.2 The Texas Board of Architectural Examiners has jurisdiction over complaints regarding professional practices of persons registered as architects in Texas under the Architects Registration Law. All work under this contract, which involves professional engineering, must be in compliance with the Texas Engineering Practices Act. 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>.

12.3 The following Architectural services are within the scope of the Architect's Basic Services and included within the Architect's Basic Compensation:

12.3.1 The Architect shall provide prompt, written notice to the Owner if the Architect becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

12.3.2 Provide a one year inspection of the Project prior to the expiration of the Contractor's one year warranty.

12.3.3 The Architect shall provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting there from.

12.3.4 The Architect shall provide services in evaluating claims submitted by the Contractor or others in connection with the Work.

- 12.3.5** The Architect shall provide up to 40 hours of services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding, except where the Architect is party thereto. For any services in excess of 40 hours provided by Architect in connection with a public hearing, a dispute resolution proceeding or a legal proceeding, shall be compensated as additional services as provided by Paragraph 11.3.2.
- 12.3.6** The Architect shall provide normal and customary services to investigate existing conditions of the facilities or to make measured drawings thereof.
- 12.3.7** The Architect shall not be responsible in providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 12.4** In addition to the Architect's Basic Services, and at no extra cost to Owner, the Architect shall exercise due care to protect the Owner from progress payments to the Contractor for materials not furnished or work not satisfactorily completed.
- 12.5** Architect shall perform all services hereunder as expeditiously as is consistent with professional skill and care and the orderly progress of the work so that the Project can be completed by _____ unless the completion date for the Projects are extended by mutual agreement of Owner and Architect.
- 12.6** Any time during which Architect is delayed in Architect's work by acts of the Owner or its employees or those in a direct contractual relationship with the Owner or by any governmental body having jurisdiction over the Project or by acts of God or other occurrences which were not or could not have been reasonably foreseen and provided for, and which are not due to any fault or negligence on the part of said Architect, shall be added to the time for completion of any obligations of Architect. The Owner shall not be liable for the damages to Architect on account of such delays.

12.7 INDEPENDENT CONTRACTOR

Architect recognizes that Architect is engaged as an independent Contractor and acknowledges that Owner shall have no responsibility to provide Architect or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Architect, in accordance with Architect's status as an independent Contractor, covenants and agrees that Architect shall conduct architectural services consistent with such status, that Architect will neither hold Architect out as nor claim to be an officer, partner, employee or agent of Owner by reason hereof, and that Architect shall not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Architect hereby agrees to make Architect's own arrangements for any of such benefits as

Architect may desire and agrees that Architect is responsible for all income taxes required by applicable law.

12.8 RECORDS

Records of Architect's costs as reimbursable expenses pertaining to the Project and payments shall be available to Owner or its authorized representative during business hours and shall be retained for four years after final payment or abandonment of the Project, unless Owner otherwise consents to their prior destruction in writing.

12.9 RIGHT TO AUDIT.

At any time during the term of this Agreement and for a period of four (4) years thereafter the Owner or a duly authorized audit representative of the Owner, or the State of Texas, at its expense and at reasonable times, reserves the right to audit the Architect's records and books relevant to all services provided under this Agreement. In the event such an audit by the Owner reveals any errors/overpayments by the Owner, the Architect shall refund the Owner the full amount of such overpayments within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owing the Owner from any payments due the Architect.

12.10 In the event a federal grant or other federal financing participates in the funding of this Project, the Architect shall permit access to and grant any federal representatives the right to examine his books covering its work under this Agreement. The Architect shall comply with employment and subcontract federal requirements as they relate to this Project.

12.11 Sexual harassment of employees of the Architect or employees or students of Owner by employees of the Architect is strictly forbidden. Any employee of the Architect who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Architect, including dismissal.

12.12 Any firm having common ownership with the Architect shall, unless otherwise agreed by the Owner, be prohibited from providing architectural, engineering or other design related services on, or the construction of, the Project. In addition, no employee of Owner shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. This subsection is subject to provisions of the Texas Local Government Code, Chapters 171 and 176.

12.13 Architect acknowledges that it must complete a "Certificate of Interested Parties" on a Texas Ethics Commission "Form 1295," file such form electronically with the Texas Ethics Commission through its website, and return a copy of the filed form

containing its Certificate Number to the Owner in order for this Agreement to be acknowledged on the Ethics Commission website by the Owner in compliance with Texas Government Code § 2252.908 and Texas Ethics Commission rule.

12.14 By execution of this Agreement, Architect verifies that it does not boycott Israel and will not boycott Israel during the term of this Agreement. “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.

12.15 In accordance with Texas Government Code, Chapter 2252, Subchapter F, the Owner 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 execution of this Agreement, Architect certifies to the Owner that it is not a listed company under any of those Texas Government Code provisions. Architect hereby voluntarily and knowingly acknowledges and agrees that this Agreement shall be null and void should facts arise leading the Owner to believe that the Architect was a listed company at the time of this procurement.

12.16 Architect must give advance notice to the Owner if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony. The Owner may terminate this Agreement pursuant to Article 8 if the Owner determines that the person or business entity failed to give notice as required by this paragraph or misrepresented the conduct resulting in the conviction. This paragraph requiring advance notice does not apply to a publicly held corporation.

Architect will obtain criminal history record information that relates to an employee, applicant for employment, or agent of the Architect if the employee, applicant, or agent has or will have continuing duties related to the contracted services; and the duties are or will be performed on school property or at another location where students are regularly present. The Owner shall be the final decider of what constitutes a “location where students are regularly present.” Architect’s violation of this paragraph 12.14 shall constitute substantial non-performance under Article 8.

12.17 Whenever this Agreement requires that notice be given, such notice shall be in writing and may be served either personally or sent by United States mail, postage prepaid, addressed at the addresses set forth below each party’s name. Notice will be deemed delivered when actually received, excluding weekends and school holidays.

Owner
**CLARENDON INDEPENDENT SCHOOL
DISTRICT**

Architect

By: _____
Mike Norrell, Superintendent

By: _____

SAMPLE

Attachment One

CERTIFICATE OF INSURANCE REQUIREMENTS

Contract and insurance requirement:

Hold Harmless Agreement
Contractual Coverage (General Liability only)
Products and Completed Operations Coverage
Waiver of Subrogation against the Owner

Workers' Compensation ¹ Employer's Liability	Statutory Limits \$1,000,000 per accident/ \$1,000,000 per person
General Liability Bodily Injury & Property Damage	\$1,000,000 combined single limits/ \$2,000,000 aggregate
Automobile Liability ² \$500,000 per accident	\$250,000 per person/ \$250,000 property damage
Professional Error's and Omissions Current E/O Policy Limits	\$1,000,000 per claim/ \$2,000,000 aggregate
Umbrella Policy E&O	\$1,000,000 per occurrence/ \$1,000,000 aggregate
All Builders Risk	Not required by Architect

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specification, and shall be maintained in compliance with these general specifications throughout the duration of the Agreement, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A minus.
- Liability policies shall be endorsed to provide the following:
 1. Name as additional insured the Owner, its Officials, Agents, and Employees (except with respect to the Professional Error's and Omissions, and Workers' Compensation Policies).
 2. That such insurance is primary to any other insurance available to the additional insured.

¹ As more fully described in 28 TAC 110.110(C)(7), which is incorporated by reference and attached to this Agreement as Attachment Two.

² Hired and non-owned automobiles only.

3. All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation or non-renewal.
4. Should any of the required insurance be provided under a claims-made form, Architect shall maintain such coverage continuously throughout the term of this Agreement and without lapse for a period of four years beyond the Agreement expiration, such that occurrences arising during the Agreement term which give rise to claims made after expiration of the Agreement shall be covered.

SAMPLE

Attachment Two

REQUIRED WORKERS' COMPENSATION COVERAGES
28 TAC 110.110(C)(7), ADOPTED TO IMPLEMENT TEXAS LABOR CODE 406.096

The District shall use the following language for bid specifications and contracts for building or construction, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation.

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

Duration of the Project includes the time from the beginning of the work on the Project until the Contractor's/person's work on the Project has been completed and accepted by the governmental entity.

Persons providing services on the Project ("subcontractor" in Texas Labor Code 406.096) include all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor 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.

Services include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. Services do not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The Contractor 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 Contractor providing services on the Project for the duration of the Project.

The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

The Contractor shall obtain from each person providing services on a Project, and provide to the governmental entity:

1. A certificate of coverage, prior to that person beginning work on the Project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
2. No later than seven days after receipt by the Contractor, 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.

The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

The Contractor shall post on each Project site a notice, in the text, form, and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

The Contractor 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 Contractor, 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 Contractor, 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 Contractor:
 - a. A certificate of coverage, prior to the other person beginning work on the Project; and
 - b. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
5. Retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;

6. Identify the governmental entity 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 of any person providing services on the Project; and
7. Contractually require each person with whom it contracts to perform as required by items 1-6, with the certificates of coverage to be provided to the person for whom they are providing services.

By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

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 October 1, 1996.

28 TAC 110.110(i)