

# DRAFT AIA® Document B121™ - 2018

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

AGREEMENT made as of the « » day of « » in the year « »  
(In words, indicate day, month, and year.)

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

Hays Consolidated Independent School District »« »  
« 21003 Interstate 35 »  
« Kyle, Texas 78640«-»«-»  
«-»  
«-»  
«-»

and the Architect (meaning the Architect or Engineer identified below, who shall be hereafter referred to as "Architect" for purposes of this Agreement):  
(Name, legal status, address, and other information)

« »« »  
« »  
« »  
« »

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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

§ 1.1 This Master Agreement shall be effective for one year after the date first written above ("Date of this Master Agreement").

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

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Service Orders under this Master Agreement are completed or terminated.

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

Architect  
Director of Planning and Construction  
Hays Consolidated Independent School District  
512-268-2141 ext. 45063

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

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

« »  
« »  
« »  
« »  
« »  
« »

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

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

## ARTICLE 2 SERVICE ORDERS

§ 2.1 The Owner is not required to issue any Service Orders under this Master Agreement.

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

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

## ARTICLE 3 ARCHITECT'S RESPONSIBILITIES

§ 3.1 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the services provided pursuant to a Service Agreement.

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

§ 3.3 The Architect shall maintain the following insurance until termination of this Master Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 9.4.

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

.1 General Liability

« Not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage »

.2 Automobile Liability

« Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. »

.3 Workers' Compensation

« \$1,000,000 »

.4 Professional Liability

« Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000.00) in the aggregate»

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

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

§ 3.6 With the exception of additional work required by the fire marshal or in connection with life safety inspections, the Architect shall bear any remedial costs to correct or replace Work not designed in compliance with current federal, state or local laws at the time the Project is designed and permitted.

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#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 The Architect may provide Additional Services after execution of a Service Order without invalidating the Service Agreement.

No charges for Additional Services will be incurred by the Architect without the prior written approval of the Owner.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner
- ~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing, including Board of Trustees meetings, Owner committee meetings, and meetings with AHJ as needed;~~
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise permitted under this Master Agreement, the Owner shall provide information as requested, if available, in a timely manner regarding its requirements, objectives, scheduling and limitations for the Service Order.

§ 5.2 The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

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

§ 5.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the services or work related to a Service Agreement, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

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

§ 5.7 The Owner is not required to issue any Service Orders under this Master Agreement.

## ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use in relation to a Service Agreement.

§ 6.2 The record drawings (in whatever format agreed upon between Owner and Architect), observation reports and other construction documents of any kind shall be the property of Owner, upon their completion. The Owner releases the Architect and the Architect's consultants from all liability if any such documents are repeated or modified without the Architect's knowledge. The Owner may not use the documents for construction on any other Service Order or Service Agreement without the written consent of the Architect, which shall not be unreasonably withheld. The Architect shall furnish the Owner a complete set of reproducible documents at the Architect's reproduction and delivery cost.

§ 6.3 The Architect grants to the Owner a nonexclusive license to ~~use-reproduce~~ the Architect's Instruments of Service ~~solely and exclusively~~which can be used by the Owner for purposes of constructing, using, maintaining, occupying, completing, altering and/or adding to the Project, provided that the Owner substantially performs its obligations under the Service Agreement, including prompt payment of all sums when due pursuant to Articles 8 and 9. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Master Agreement. The Owner releases the Architect and the Architect's consultants from all liability if any such documents are repeated or modified without the Architect's knowledge. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject

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User Notes:

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~~to any protocols established pursuant to Section 10.9, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates a Service Agreement for cause as provided in Section 8.4, the license granted in this Section 6.3, and related to the terminated Service Agreement, shall terminate.~~

~~§ 6.3.1 Except for the licenses granted in Section 6.3, no other license or right shall be deemed granted or implied under this Master Agreement. 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 Section 6.3. 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.~~

~~§ 6.4 Except for the licenses granted in this Article 6, no other license or right shall be deemed granted or implied under this Master Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use or misuse of the Instruments of Service by the Owner shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~

~~§ 6.5 Except as otherwise stated in Section 6.3, the provisions of this Article 6 shall survive the termination of this Master Agreement.~~

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

##### **§ 7.1 General**

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

~~§ 7.1.1.1 All claims, disputes, or matters in controversy between Owner and Architect shall be discussed by the parties in good faith, in an attempt to resolve the claim, dispute, or controversy. In the event such claim, dispute, or matter in controversy is not resolved in good faith, then it shall be subject to the Owner's grievance policy Hays CISD Board Policy DGBA or other policy as designated by Owner and the timelines established in the policy. Level I of the grievance process will be conducted by the Superintendent's designee or the Superintendent, as appropriate. Level II shall be heard by the Superintendent, unless heard at Level I. If the Superintendent hears Level I, then the grievance will proceed to the Owner's Board at Level III. If Architect is dissatisfied with the outcome of the Owner's grievance process, then any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.~~

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

contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

~~§ 7.1.2 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.~~

**§ 7.2 Mediation**

~~§ 7.2.1 Any claim, dispute or other matter in question arising out of or related to a Service Agreement may, only upon mutual agreement by both parties, be submitted to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.~~

~~§ 7.2.2 The Owner and Architect may endeavor to resolve claims, disputes and other matters in question between them by informal negotiation or mediation, if agreed to by the parties.~~

**§ 7.2.3**

~~Mediation costs shall be shared equally by both parties. Nothing in this Master Agreement shall be construed as Mediation costs shall be shared equally by both parties. Nothing in this Master Agreement shall be construed as requiring mandatory mediation of claims, disputes, or other matters between the parties.~~

~~§ 7.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)~~

~~Arbitration pursuant to Section 7.3 of this Master Agreement~~

~~Litigation in a court of competent jurisdiction~~

~~Other: (Specify)~~

~~« »~~

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

**§ 7.3 Arbitration**

~~§ 7.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Master Agreement, any claim, dispute or other matter in question arising out of or related to a Service Agreement subject to, but not~~

~~relates to the arbitration of a claim, dispute or other matter in question.~~

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

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

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

~~§ 7.3.4 Consolidation or Joinder~~

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

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

~~§ 7.4 The provisions of this Article 7 shall survive the termination of a Service Agreement.~~

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

§ 8.1 If the Owner fails to make payments to the Architect in accordance with a Service Agreement, such failure shall be considered substantial nonperformance and cause for termination of the Service Agreement or, at the Architect's option, cause for suspension of performance of services under the Service Agreement for which the Owner failed to make payment. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

§ 8.3 If the Owner suspends the services under a Service Agreement for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate the Service Agreement by giving not less than seven days' written notice.

§ 8.4 Either party may terminate a Service Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of the Service Agreement, through no fault of the



party initiating the termination. Termination of a Service Agreement under this Section 8.4 shall not be deemed a termination of other Service Agreements under this Master Agreement.

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

§ 8.6 In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services performed and reimbursable expenses incurred prior to the notice of termination

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

.1 Termination Fee:

« \$0 »

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

« \$0 »

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

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

#### ARTICLE 9 COMPENSATION

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

§ 9.2 Except as otherwise set forth in a Service Order, the hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Employee or Category

Rate (\$0.00)

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

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

« Unless otherwise agreed to in writing by the Parties, compensation for additional services shall be in accordance with the hourly rates set forth in 9.2. »

**§ 9.4 Compensation for Reimbursable Expenses**

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

- .1 [Out-of-town transportation](#) and subsistence, [when approved in advance by the Owner in writing](#);
- .2 [Intentionally Deleted](#);  
[Intentionally Deleted](#);
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Reproductions, plots, and standard form documents, [and courier expenses](#);
- .5 [Intentionally Deleted](#);
- .6 Expense of overtime [Work](#) requiring higher than regular rates, if authorized in advance by the Owner [in writing](#);
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 [Intentionally Deleted](#);  
[Intentionally Deleted](#);  
[Intentionally Deleted](#);  
[Intentionally Deleted](#);
- .9 [Intentionally Deleted](#);
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures, [if approved in advance by the Owner in writing](#).

§ 9.4.2 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.

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

**§ 9.5 Payments to the Architect**

**§ 9.5.1 Progress Payments**

§ 9.5.1.1 Unless otherwise agreed, payments for [undisputed amounts due and payable thirty \(30\) days from the date of the Architect’s invoice](#). [Disputed amounts shall be discussed in good faith. Any disputed amounts not agreed upon within sixty \(60\) days shall be paid in full.](#) [Owner shall comply with the requirements of Texas Government Code Chapter 2251 for disputing invoices.](#) [Payments for services shall be made monthly in proportion to services performed.](#) [Undisputed amounts unpaid thirty-one \(31\) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.](#)

[As specified by applicable law.](#)

[As specified by applicable law.](#)

[As specified by applicable law.](#)

[\(Insert rate of monthly or annual interest agreed upon.\)](#)

[« »](#) % [« »](#) [As specified by applicable law.](#)

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

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

**ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 [This Master Agreement shall be governed by the laws of the State of Texas. Venue for any legal proceedings related to this Agreement lies solely in the county in which the Project is located. Each Service Agreement shall be](#)

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[generally, the level of detail of the Service Agreement shall be determined by the level of detail of the Project and the nature of the work to be performed.](#)

§ 10.2 Notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to each Service Agreement. Neither the Owner nor the Architect shall assign a Service Agreement without the written consent of the other

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of the Service Agreement, [unless previously agreed to by both parties or where required by law.](#)

§ 10.5 Unless otherwise required in a Service Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.6 The Architect shall have the right to include photographic or artistic representations of the design of the Projects for which services are performed among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Projects to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Projects. This Section 10.6 shall survive the termination of a Service Agreement unless the Owner terminates a Service Agreement for cause pursuant to Section 8.4.

§ 10.7 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.7.

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

§ 10.9 The parties [may](#) agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. [If agreed upon,](#) the parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 10.9.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 10.10 To the extent applicable, the Architect shall comply, and ensure its employees comply, with the Owner's LEE Fast Pass Procedure for obtaining criminal history record information from DPS. The form of certification by the Architect shall be supplied by the Owner, and must be supplemented by the Architect as requested by the Owner.

§ 10.11 The prevailing party in any dispute adjudicated under this Agreement shall be entitled to receive its reasonable and necessary attorney's fees and expenses from the non-prevailing party.

§ 10.12 Architect hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State under federal law. (Tex. Gov't Code §§ 2252.151-.154) Architect hereby certifies and verifies that neither Architect, nor any affiliate, subsidiary, or parent company of Architect, if any (the "Architect Companies"), boycotts Israel, and Architect agrees that Architect and Architect Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory. (Tex. Gov't Code §§ 2270.001-.002, 808.001-.006, .051-.057, .101-.102)

§ 10.13 By entering into this Agreement, Architect represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract.

§ 10.12 By entering into this Agreement, Architect verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract

§ 10.14 TPIA. The requirements of the Texas Public Information Act, Chapter 552 of the Texas Government Code, Subchapter J, may apply to this contract if it is valued at more than \$1 million. The Architect agrees the contract can be terminated if the Architect knowingly or intentionally fails to comply with a requirement of that subchapter, including the preservation of all "contracting information" (as defined in 552.003) and the provision, upon request of the Architect, of all contracting information. Contracting information includes, but is not limited to, records, communications and other documents related to any selection process, contract payments, receipts, scope of work/services, and performance.

#### ARTICLE 11 SPECIAL TERMS AND CONDITIONS

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

« § 11.1 If a component of the Project is omitted from the Contract Documents due to the negligence of the Architect, Architect will not be liable to the Owner to the extent of any betterment or value added to the Project. Specifically, the Owner will be responsible for the amount it would have paid for the component if it had been included in the Contract Documents. Further, if it is necessary to replace a component of the Project due to the negligence of the Architect, it will not be liable to the Owner for any enhancement or upgrade of the component beyond what was originally included in the Contract Documents. In addition, if the component has an identifiable useful life that is less than the building itself, the damages of the Owner shall be reduced to the extent that the useful life of the component will be extended by the replacement thereof.

§ 11.2 Architect shall be responsible for employing all agreed upon consultants to execute the Project. Such consultants shall be professional engineers, or architects, registered or licensed by the State of Texas to practice the building discipline for which they are employed on the Project. Architects shall require such consultants to make site visits at intervals appropriate to the state of construction and as required to ascertain that the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents.

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§ 11.3 Under no circumstances shall any entity be allowed to use employees, agents, or subcontractors on site who have been convicted of a crime involving sexual misconduct. Architect, employees, agents, and consultants and subcontractors shall abide by all Owner policies and procedures regarding campus access.

§ 11.4 Architect shall comply with all policies, regulations, and rules of the Owner, including, but not limited to, those related to employee conduct (such as prohibitions against alcohol, weapons, drugs, fraternization, harassment, and tobacco on school property), and fraud and financial impropriety. Architect shall certify that he has reviewed the standards contained in 19 Texas Administrative Code section 61.1036 and used the best professional judgement and reasonable care consistent with the practice of architecture and/or engineering in the State of Texas in executing the construction documents. Architect shall also certify that the construction documents conform to the provisions of 19 Texas Administrative Code section 61.1036 except as indicated on the certification. Architect's signature and seal on the construction documents shall certify compliance. Architect shall perform a building code search under applicable regulations that may influence the Project, and shall certify that the design has been researched before it is final, as required by 19 Texas Administrative Code 61.1036. Architect shall also certify that the facilities have been designated according to the provisions of 19 Texas Administrative Code section 61.1036 based on the educational program, long-range school facility plan, educational specifications, building code specifications, and all documented changes to the Construction Documents provided by the District, as required by 19 Texas Administrative Code, section 61.1036. Architect shall complete the Texas Education Agency's Certification of Project Compliance. In executing the certifications required under the provisions of this Section, Architect shall exercise his/her reasonable professional judgment and are consistent with the practice of architecture in the State of Texas and applicable law. Architect shall design the Project in such a manner that the Project or each part of the Project is readily accessible to and usable by individuals with disabilities, in compliance with the ADA and Section 504 of the Rehabilitation Act, federal regulations interpreting the ADA and Section 504, Texas Government Code Chapter 469, the Texas Accessibility Standards, all applicable requirements or standards of the TDLR, and all applicable requirements or standards of the American National Standards Institute. If Owner is using instruction facilities allotment funds for the Project which are allotted to Owner under Subchapter A or Chapter 46 of the Texas Education Code, then Architect shall consider, in the design of the Project, the security criteria developed by the Texas School Safety Center under Texas Education Code Section 37.2051. It shall be the responsibility of Architect to address revisions or amendments to applicable codes or standards which become effective prior to the date of Substantial Completion. Revisions or amendments to applicable codes or standards which become effective after the date of Substantial Completion shall be addressed by the Architect, and shall be compensated as a Change Service.

11.5 The Architect shall require in the Construction documents and the Owner shall require in its contract with the Construction Manager or Contractor, that the Construction Manager, or Contractor, or his subcontractors maintain a set of as-built drawings to be furnished to the Owner in a reproducible form upon Project completion as a part of the Project Cost and shall actively assist in obtaining all warranty documents and owner operator manuals at the time of delivery to the site. »

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#### ARTICLE 12 SCOPE OF THIS MASTER AGREEMENT

§ 12.1 This Master Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both the Owner and Architect.

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

- .1 AIA Document B121™-2018, Standard Form of Master Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if agreed upon, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Master Agreement.)

« »

- .3 Exhibits:  
(Clearly identify any other exhibits incorporated into this Master Agreement.)

« »

- .4 Other documents:

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User Notes:

(2054379642)

(List other documents, if any, forming part of the Master Agreement.)

« »

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

OWNER (Signature)

« »« »

(Printed name and title)

ARCHITECT (Signature)

« »« »

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

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