DRAFT

# AIA® Document A101™ – 2017

## *Standard Form of Agreement Between Owner and Contractor*

*where the basis of payment is a Stipulated Sum*

**AGREEMENT** made as of the « *TBD* » day of « *TBD* » in the year « 2024 »
*(In words, indicate day, month and year.)*

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

«Beaumont Independent School District»
«3395 Harrison Avenue
Beaumont, Texas 77706 »« »

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

« *TBD* »« »
« »
« »
« »

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

« *TBD* »
« »
« »

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

« *TBD* »« »
« »
« »
« »

The Owner and Contractor 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.

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 THE CONTRACT DOCUMENTS

**§ 1.1** The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), all sections of the Project Manual, including Drawings, Specifications, and Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and written Modifications signed by both parties that are issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. As used in the Contract Documents, the terms "AIA Document A201 – 2017", "General Conditions", "General Conditions of the Contract for Construction" or "A201-2017" shall refer to the General Conditions document that pertains to the Project, as modified or amended by the Owner for the Project. This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents and their order of precedence, other than a Modification, appear in Article 9.

**§ 1.2** The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into or amend a contract, to approve and execute a Change Order valued at or above $50,000 or Construction Change Directive that would increase the Contract Sum more than $50,000, or to agree to an extension to the date of Substantial or Final Completion.

**§ 1.3** The Board designates the authorized representatives identified in Paragraph 8.3 to act on its behalf in other respects.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:
*(Check one of the following boxes.)*

[ « » ] The date of this Agreement.

[ « » ] A date set forth in a notice to proceed issued by the Owner.

[ «X» ] Established as follows:
*(Insert a date or a means to determine the date of commencement of the Work.)*

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«The date of commencement shall be the day that the Contractor receives a Notice to Proceed from the Owner, which may precede the date of execution of this Agreement. If a Building Permit is not available or other approvals are not available for the entire Project, the Contractor must commence work on those portions of the Project that do not require a Building Permit or other approvals on receipt of a Notice to Proceed. Work at the Project site shall not begin until Owner has received all required payment and performance bonds and insurance. »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

**§ 3.3 Substantial and Final Completion**

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
*(Check one of the following boxes and complete the necessary information.)*

[ « » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « *TBD* »

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

| Portion of Work | Substantial Completion Date |
|---|---|
| « *TBD* » | |

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion or Final Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**§ 3.3.4** Subject to adjustments of the Contract Time as provided in the Contract Documents, Final Completion shall be thirty (30) calendar days after the date of Substantial Completion.

## ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « *TBD* » ($ « *TBD* » ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum:

| Item | Price |
|---|---|
| « *TBD* » | |

**§ 4.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

| Item | Price | Conditions for Acceptance |
|---|---|---|
| « » | | |

**§ 4.3** Allowances, if any, included in the Contract Sum:
*(Identify each allowance.)*

| Item | Price |
|---|---|
| «Owner Betterment Allowance/Owner's Contingency » | $*TBD* |

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**§ 4.3.1** The Contract Sum contains an Owner's Contingency / Owner Betterment Allowance. This contingency is for the sole use of the Owner to be used for changes in the scope of the Work and for the betterment of the Project. Owner's authorized representative may approve any expenditure from Owner's Contingency without further Board approval. If the Owner's Contingency is not expended or not fully expended, then any unused portion shall belong to the Owner and shall be credited to the Owner in calculating final payment.

**§ 4.4** Unit prices, if any:
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|
| « *TBD* » | | |

**§ 4.5** Liquidated damages.
**§ 4.5.1** The Work to be performed under this Agreement shall be substantially completed by the date set forth in the Agreement, or by such dates thereafter as may be established in any written extensions granted under Article 8 of the General Conditions. The parties hereto agree that time is of the essence of this Contract and in all phases of the Work, and that actual and direct damages would be suffered by the Owner if the Contractor does not substantially or finally complete all Work called for in the Contract Document by the specified dates. Such actual and direct damages are, and will continue to be, impracticable and extremely difficult to determine. Execution of this Agreement under these specifications shall constitute the agreement by Owner and Contractor that the amounts stated herein are the minimum value of the costs and actual and direct damages caused by failure of Contractor to complete the Work within the allotted or agreed extended times of Substantial or Final Completion, that such sums are liquidated direct damages and as all not be constructed to be as a penalty, and that such sums may be deducted from payments due Contractor if such delay occurs. It is therefore expressly agreed, as a part of the consideration inducing the Owner to execute this Contract, that the Owner may deduct from any payment(s) due to the Contractor a sum equal to One Thousand Dollars ($1,000.00) for each and every Calendar Day beyond the date set forth in the Agreement for Substantial Completion or Final Completion of the Work included in the Contract Documents. It is expressly understood that said sum per day is agreed upon as a real, justified, and fair estimate of the pecuniary damages which will be sustained by the Owner in the event that the Work is not substantially or finally completed within the agreed time, or with the legally extended time, if any, otherwise provided for herein. Said sum shall be considered as liquidated damages only, and in no sense shall be considered a penalty or forfeiture, said damage being caused by, but not limited to, additional compensation for personnel, attorneys fees, architectural fees, engineering fees, program management fees, inspection fees, storage costs, food service costs, transportation costs, utilities costs, costs of temporary facilities, loss of interest on money, and other miscellaneous increased costs, all of which are difficult of exact ascertainment. Failure to complete the Work within the designated or agreed extended dates of Substantial or Final Completion, shall be construed as a breach of this Agreement.

**§ 4.5.2** Such damages shall be in addition to, and not in lieu of, any other rights or remedies Owner may have against Contractor for failure to timely achieve Final Completion, and damages for failure to achieve Substantial Completion and failure to achieve Final Completion shall run concurrently. If the Work is not finally completed by the time stated in the Agreement, or as extended, no payments for Work completed beyond that time shall be made until the Project reaches Final Completion.»

**§ 4.6** Other:
*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

«None. »

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

**§ 5.1.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

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**§ 5.1.3** Refer to AIA A201, as modified by the Owner for the project, for Payments.

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum, less any unused Owner's contingency, among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require, but shall contain as a minimum, individual line items for each section of the table of contents of the Project Manual separated by material costs and labor costs. Additionally, General Conditions costs shall be separated into individual line items. Each Application for Payment shall also include a list, with backup data, of how each payment shall be spent, including a list detailing which subcontractors and suppliers will be paid out of funds paid by the Owner and the amount of such payments to subcontractors and suppliers. Additionally, beginning with the second application for payment, proof of each payment to Contractor's subcontractors and suppliers for payment within 61-days after payment. The Application for Payment shall be submitted on a schedule of values basis. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, as modified by the Owner for the Project, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be provided using the AIA G702 and G703 format and computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

**.1** That portion of the Contract Sum properly allocable to completed Work;

**.2** That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and

**.3** That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

**.1** The aggregate of any amounts previously paid by the Owner;

**.2** The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017, as modified by the Owner for the Project;

**.3** Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

**.4** For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 as modified by the Owner for the Project; and

**.5** Retainage withheld pursuant to Section 5.1.7.

**§ 5.1.6.3** If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

**§ 5.1.6.4** If Contractor fails or refuses to complete the Work, or has unsettled claims with Owner, any payment to Contractor shall be subject to deduction for such amounts as the Architect and Program Manager, if applicable, shall determine as the cost for completing incomplete Work and the value of unsettled claims.

**§ 5.1.6.5** Payments shall be made on account of materials and equipment (a) incorporated in the Work, (b) suitably stored at the Project site, or (c) suitably stored at some off-site location provided the following conditions are met for off-site storage:

**.1** The location must be agreed to, in writing, by the Owner and Surety;

**.2** The location must be a bonded warehouse;

**.3** The surety must agree, in writing, to each request for payment; and

**.4** The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the

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off-site storage area.

Payment for materials and/or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance (naming the Owner as additional insured) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment

**§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

«Percentage based on the amount of the contract: 10% if contract valued at < $5M; 5% if contract is valued at $5M+ »

**§ 5.1.7.1.1** The following items are not subject to retainage:
*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

«None. »

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:
*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

«No reduction allowed »

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Final Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Final Completion shall not include retainage as follows:
*(Insert any other conditions for release of retainage upon Final Completion.)*

«n/a »

**§ 5.1.8** If Final Completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts payable in accordance with Article 9 of AIA Document A201–2017, as modified by the Owner for the Project.

**§ 5.1.9** Except with the Owner's prior written approval or as otherwise provided in in Section 9.3.2 of the AIA Document A201-2017, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. If the Contractor wishes to bill for materials or equipment which cannot be stored on site, the Contractor shall, along with the request for approval, provide evidence of purchase, evidence of delivery in good order without damage, and a certificate of insurance specifically covering the material identified by way of serial numbers, bill of lading, and copy of signature of receipt of materials and photography showing material. The Contractor shall also require, at the Owner's request, proof that the facility at which the materials or equipment is stored is bonded. Security and protection from theft and damage remains on the Contractor as the first line of accountability and financial responsibility. Delays due to issues arising from stored materials shall not be considered as reasonable justification to release the Contractor from meeting the schedule unless the Owner agrees to such delay in writing in advance of any delay.

**§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, minus disputed sums, authorized deductions, and liquidated damages, shall be made by the Owner to the Contractor after

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.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct nonconforming Work as provided in Article 12 of AIA Document A201–2017, as modified by the Owner for the project, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has provided all documents required by Section 3.5 et seq. and 9.10.2 of AIA Document A201-2017; and

.3 a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after Owner's Board's vote or other required approval pursuant to applicable Owner policy. Undisputed amounts unpaid after the date on which payment is due shall bear interest pursuant to Texas Government Code Section 2251.025.

**§ 5.3 Interest**

Undisputed payments due and unpaid under the Contract shall bear interest at the rate established by Texas Government Code Chapter 2251.

## ARTICLE 6 DISPUTE RESOLUTION

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, as modified by the Owner for the Project, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**§ 6.2 Binding Dispute Resolution**

For any Claim or dispute between the parties, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box.)*

[ « » ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ «X» ] Litigation in a court of competent jurisdiction

[ « » ] Other *(Specify)*

If the Owner and Contractor 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, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017, as amended by the Owner for the Project.

**§ 7.1.1** If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, as amended by the Owner for the Project, then the Owner shall pay the Contractor a termination fee as follows:
*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

«As described in AIA Document A201-2017, as amended by the Owner for the Project. »

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended by the Owner for the Project.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner's Designated representative:

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*(Name, address, email address, and other information)*
The Owner's Board of Trustees, by majority vote at a duly noticed and lawfully called public meeting, is the only representative of Owner, a Texas independent school district organized under the laws of the State of Texas, having the power to enter into a contract, to execute a change order requiring an increase in an amount of $50,000 or more, to the Contract Sum, or to agree to an extension to the contractual completion date, unless this authority is lawfully delegated. The Board may designate in writing an authorized representative (or representatives), as appropriate, to act on its behalf during the course of construction. Such authorized representative shall have authority to act on behalf of the Owner concerning decisions that do not require a majority vote of the Board of Trustees and shall have the authority to bind the Owner only to the extent expressly authorized or delegated by the Board of Trustees. The authorized representative shall have no implied authority. Such authorized representative shall also bring recommendations to the Board of Trustees on any matter requiring Board approval. In the event that changes in the scope of the Work are required before the Board's next regularly scheduled meeting or in order to facilitate and expedite the timely completion of the Work, the Board's authorized representative shall have authority to approve construction changes that do not exceed $50,000.00 in increased costs. Any such change shall be confirmed in writing between the Contractor and the Board's authorized representative and notice of such approved changes shall be given to the Board at its next regularly scheduled meeting. The Board shall act as soon as reasonably possible to avoid unnecessary delays in the construction completion date. Except as expressly authorized by the Owner or the Contract Documents, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 8.3** The Owner's authorized representative:

«Superintendent of Schools »

**§ 8.3** The Contractor's representative:
*(Name, address, email address, and other information)*

« *TBD* »
« »
« »
« »
« »
« »

**§ 8.4** The Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Insurance and Bonds**
**§ 8.5.1** The Contractor shall purchase and maintain insurance as set forth in Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

**§ 8.6** All notices required to be given under the Contract must be in writing. Any notice required or permitted to be given under the Contract shall be deemed delivered, whether or not actually received, three days after it is deposited in the U.S. Mail, when sent by certified mail, return receipt requested, postage prepaid, and correctly addressed to the party at the address provided in this Agreement. Notice given in any other manner shall be deemed delivered when actually received. Either party may change its address for notice by giving notice of the change of address in accordance with this provision. The Architect must be copied on notices sent to the Owner.

**§ 8.7** Other provisions:

**§ 8.7.1** The subject of this Contract is a public school facility which is governed by School Facilities Standards promulgated by the State Board of Education and said project must be constructed in compliance with these Standards. Upon request, Owner, its authorized agent, its Architect, and/or its Engineer shall make available information related to the School Facilities Standards necessary for compliance with said Standards.

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**§ 8.7.2** The Owner is an organization exempt from Texas taxes. Owner shall not be responsible for sales, consumer, use, and similar taxes on labor, materials, equipment, systems, and other items purchased for the project which Owner would ordinarily be exempt.

**§ 8.7.3** All provisions in the Contract Documents that mandate arbitration are expressly deleted and rendered null and void.

**§ 8.7.4** Subcontracts, purchase orders and rental agreements entered into by the Contractor shall contain provisions permitting assignment to the Owner upon default by Contractor under the Contract Documents. If the Owner accepts such assignment, the Owner shall be responsible for the payment of amounts which would have been reimbursable to Contractor under this Agreement and for which payment has not already been made to the Contractor. Contractor shall be responsible for the payment of any other amounts payable under the Contract. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement.

**§ 8.7.5** Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the term "including" is not limiting and the terms "hereof," "herein," "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision thereof, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any part hereto regardless of who is responsible for its preparation.

**§ 8.7.6** In the event of any suit or action arising out of or in connection with any of the Contract Documents, the prevailing party in such proceedings shall be entitled to recover reasonable attorney fees and court costs.

**§ 8.7.7** Any provision in the Contract Documents to the contrary notwithstanding, if any of the facilities to be constructed or modified under this Agreement or the Contract require the issuance of a Certificate of Occupancy or other regulatory approval, then Substantial Completion of any such facilities shall not be deemed to have been attained for those facilities prior to the date on which an unconditional Certificate of Occupancy or other regulatory approval is obtained.

**§ 8.7.8** If the building will be used or occupied by the Owner or members of the public, the Contractor shall be responsible for maintaining safe routes of travel from sidewalks and parking areas to the building, and shall reroute access as necessary to maintain safe access during construction at no additional cost beyond the agreed contract amount.

**§ 8.7.9** By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is certifying to the Owner 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. Contractor is also representing that it will require all subcontractors to provide workers' compensation coverage on all employees who will provide services on the Project for the duration of the Project and to provide written certifications of such coverage to the Contractor. The Contractor will provide the certifications to Owner. 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 which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

**§ 8.7.10** The Contractor shall, as a condition precedent to allowing any subcontractor to proceed with any work on the Project, either require that the subcontractor provide proof of the existence of workers' compensation coverage for its employees, or, at the Contractor's sole discretion, provide for coverage of the subcontractor's employees under the Contractor's workers' compensation insurance coverage. The Contractor shall maintain records of all required certificates of insurance provided by the subcontractors, and shall forward copies to the Owner and the Architect.

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**§ 8.7.11** Warranty. The Contractor shall be responsible for the coordination of warranty work, if any during the first year after Substantial Completion of the Entire Work.

**§ 8.7.12** No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a waiver of any immunity or a consent to suit.

**§ 8.7.13** The Owner's competitive procurement solicitation documents/packet and the response of the Contractor to same are incorporated herein by reference as if copied verbatim. The Contractor agrees to comply with all requirements incorporated or included in the competitive procurement solicitation documents/packet by the Owner

**§ 8.7.14** The Contractor shall record the progress of the Project. On a monthly basis, or as otherwise agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress and accomplished, Subcontractors working on the site, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The log shall be available to the Owner and Architect at any time during work hours and shall be presented for discussion at the project progress meetings.

**§ 8.7.15** If (a) Contractor is not a sole proprietorship; (b) Contractor has ten (10) or more full-time employees; and (c) this Agreement has a value of $100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, the Contractor hereby certifies and verifies that neither the Contractor, nor any affiliate, subsidiary, or parent company of the Contractor, if any (the "Contractor Companies"), boycotts Israel, and the Architect agrees that the Contractor and Contractor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with 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.

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

**§ 8.7.17** If Contractor is not a governmental body and (a) this Agreement has a stated expenditure of at least $1 million in public funds for the purchase of goods or services by Owner; or (b) this Agreement results in the expenditure of at least $1 million in public funds for the purchase of goods or services by Owner in a fiscal year of Owner, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov't Code § 552.374(b), the following statement is included in the RFP and the Agreement (unless the Agreement is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): "The requirements of Subchapter J, Chapter 552, Government Code, may apply to this RFP and Agreement and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter." Pursuant to Subchapter J, Chapter 552, Texas Government Code, the Contractor hereby certifies and agrees to (1) preserve all contracting information related to this Agreement as provided by the records retention requirements applicable to Owner for the duration of the Agreement; (2) promptly provide to Owner any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of Owner; and (3) on completion of the Agreement, either (a) provide at no cost to Owner all contracting information related to the Agreement that is in the custody or possession of Contractor, or (b) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to Owner.

**§ 8.7.18** If (a) Contractor is not a sole proprietorship; (b) Contractor has ten (10) or more full-time employees; and (c) this Agreement has a value of $100,000 or more that is to be paid wholly or partly from public funds, the following certification shall apply; otherwise, this certification is not required. Pursuant to TEX. GOV'T CODE Ch. 2274 of SB 13 (87th session), Contractor hereby certifies and verifies that Contractor, or any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of these entities or business associations, if any, does not boycott energy companies and will not boycott energy companies during the term of the Contract. For purposes of this Agreement, the term "company" shall mean an organization, association, corporation, partnership,

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joint venture, limited partnership, limited liability partnership, or limited liability company, that exists to make a profit. The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by paragraph (a)." *See* TEX. GOV'T CODE § 809.001(1).

**§ 8.7.19** If (a) Contractor is not a sole proprietorship; (b) Contractor has at least ten (10) full-time employees; (c) this Agreement has a value of at least $100,000 that is paid wholly or partly from public funds; (d) the Contract is not excepted under TEX. GOV'T CODE § 2274.003 of SB 19 (87th leg.); and (e) Owner has determined that Contractor is not a sole-source provider or Owner has not received any bids from a company that is able to provide this written verification, the following certification shall apply; otherwise, this certification is not required. Pursuant to TEX. GOV'T CODE Ch. 2274 of SB 19 (87th session), Contractor hereby certifies and verifies that Contractor, or association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary parent company, or affiliate of these entities or associations, that exists to make a profit, does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this contract against a firearm entity or firearm trade association. For purposes of this Agreement, "discriminate against a firearm entity or firearm trade association" shall mean, with respect to the entity or association, to: "(1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association. *See* TEX. GOV'T CODE § 2274.001(3) of SB 19. "Discrimination against a firearm entity or firearm trade association" does not include: "(1) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (2) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency, or for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association." *See* TEX. GOV'T CODE § 2274.001(3) of SB 19.

**§ 8.7.20** Owner is prohibited from entering into a contract or other agreement relating to critical infrastructure that would grant to Contractor direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by Owner for product warranty and support purposes. Contractor certifies that neither it nor its parent company nor any affiliate of Contractor or its parent company, is (1) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; (2) a company or other entity, including governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or (3) headquartered in China, Iran, North Korea, Russia, or a designated country. For purposes of this Contract, "critical infrastructure" means "a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility." *See* TEX. GOV'T CODE § 2274.0101(2) of SB 1226 (87th leg.). Contractor verifies and certifies that Contractor will not grant direct or remote access to or control of critical infrastructure, except for product warranty and support purposes, to prohibited individuals, companies, or entities, including governmental entities, owned, controlled, or headquartered in China, Iran, North Korea, Russia, or a designated country, as determined by the Governor.

**§ 8.7.21** Program Manager shall have, and is hereby granted by Owner, full and complete power, authority, and discretion to act for, and in the name, place, and stead of, Owner in carrying out and discharging the responsibilities and obligations of Program Manager under the Agreement between the Owner and Program Manager; provided, however, that Program Manager shall have no right or authority, express or implied, to commit or otherwise obligate Owner in any manner whatsoever except to the extent specifically provided in the Agreement between the Owner and the Program Manager or specifically authorized in writing by Owner. In no event shall Program Manager be authorized to execute any documents, agreements, or other instruments on behalf of Owner without written approval by Owner. In no event shall Program Manager have the authority to modify completion dates of the Project Schedule without written approval by Owner. Program Manager shall have the authority to modify interim milestones dates not affecting the completion dates specified in the Agreements between the parties. In no event

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shall Program Manager have the authority to modify contract value of the Project without written approval by Owner. Program Manager shall have the authority to modify budgets, contingencies, allowances and similar accounting tasks not affecting the contract value specified in the Agreements between the parties. In no event shall Program Manager have the authority to relax or to bind the Owner to codes and standards imposed by the Authorities Having Jurisdiction, unless authorized in writing by the Owner.

**§ 8.7.22** The Contractor shall utilize online project management software as required by Owner.

**§ 8.8 Governing Law and Venue**

**§ 8.8.1** Section 13.1 of the General Conditions document pertaining to the Project, as modified by the Owner, shall apply to the Agreement, the Contract, and the Contract documents in all respects. No provision of this Agreement is a waiver of any immunity, defense, or a consent to suit.

**§ 8.8.2 Venue**

To the maximum extent permitted by applicable law, the parties expressly agree that the exclusive venue and place of trial for any action brought under or in connection with or in any way related to the Work, the Project, the Agreement, the Contract, or any of the Contract Documents shall be in the state district courts of Jefferson County, Texas, and the parties hereby waive any and all objections to the agreed-upon venue as stated herein. The Contract, including but not limited to the Agreement and all other Contract Documents, is performable entirely in Jefferson County, Texas.

**§ 8.9 Severability**

If any provision or part of the Contract Documents is held to be illegal, invalid, or unenforceable under any present or future law or regulation, such provision shall be fully severable and the Contract Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents. The remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance.

**§ 8.10 Information and Services Required of the Owner**

**§ 8.10.1** Pursuant to the requirements of the Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the work.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

**§ 9.1** This Agreement is comprised of the following documents; in the event of any inconsistency or conflict between or among the documents that comprise this Agreement, the order of precedence shall be:

**.1** AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as modified by Owner for the Project

**.2** Exhibit A, Insurance and Bonds

**.3** AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Owner for the project

**.4** AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

« »

**.5** Drawings

| Number | Title | Date |
|---|---|---|
| « *TBD* » | | |

**.6** Specifications

| Section | Title | Date | Pages |
|---|---|---|---|
| « *TBD* » | | | |

**.7** Addenda, if any:

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| Number | Date | Pages |
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| « *TBD* » | | |

Portions of Addenda relating to bidding or competitive purchasing requirements are not part of the Contract Documents unless the bidding or competitive purchasing requirements are also enumerated in this Article 9.

**.8** Other Exhibits:
*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ « » ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[ « » ] The Sustainability Plan:

| Title | Date | Pages |
|---|---|---|
| « » | | |

[ « » ] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|---|---|---|---|
| « » | | | |

**.9** Other documents, if any, listed below:
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

**.1** Owner's competitive procurement solicitation documents, including Owner's required certifications/Vendor Packet.
**.2** The Project Manual for the Project, including all sections to same, whether issued or created prior to or after the execution of this Agreement.
**.3** Statutory Payment and Performance Bonds.
**.4** Certificates of Insurance required of the Contractor.
**.5** All documents listed or described in Section 1.1.1 of AIA Document A201-2017, as amended by the Owner.
**.6** Scale/Schedule of Prevailing Wages (attached as Exhibit A to the AIA Document A201–2017, General Conditions of the Contract for Construction, as modified by the Owner for the Project) and incorporated herein as if fully set forth.
**.7** Any modifications to this Agreement or to the Contract or any Contract Documents approved by the Parties.
**.8** Any documents stated in this Agreement as being a part of or incorporated into this Agreement or the Contract
**.9** Portion(s) of Contractor's responses and proposals to Owner's competitive procurement solicitation documents that were accepted by Owner.

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

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| | |
|---|---|
| « » | « » |
| **OWNER** *(Signature)* | **CONTRACTOR** *(Signature)* |
| «Shannon Allen, Superintendent of Schools Beaumont Independent School District »« » | « *TBD* »« » |
| *(Printed name and title)* | *(Printed name and title)* |
| *(Date)* | *(Date)* |

DRAFT

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