

TRUMAN STATE UNIVERSITY  
Kirksville 63501

OFFICIAL MINUTES  
OF THE  
BOARD OF GOVERNORS

Page 1

OPEN SESSION  
OF MEETING ON  
AUGUST 3, 2024

The Board of Governors for Truman State University met on Saturday, August 3, 2024, at the University campus in Kirksville, Missouri. The working session, called to order at 8:30 a.m. by the Chair of the Board of Governors, Nancy Gingrich, was held in the Alumni Room of the Student Union Building. The open session of the business meeting was called to order shortly after 1:00 p.m. and was conducted in the Conference Room (3000) in the Student Union Building.

Five voting members participated in the meeting. Sarah Burkemper, Nancy Gingrich, and Bill Lovegreen were in attendance, and Taylor W. Burks and Philip J. Christofferson participated by phone. Jennifer Kopp Dameron, the sixth voting member, was absent. The seventh voting member position is vacant.

One non-voting member, Mike McClaskey, an out-of-state member, participated in the meeting. The second out-of-state member position and the student representative position are vacant.

Call to Order and Chair Report

Governor Gingrich called the meeting to order, welcomed all in attendance, and recorded Governor Dameron's absence as excused.

Minutes for Open Session of Previous Meetings

Governor Burkemper moved for the adoption of the following resolution:

BE IT RESOLVED that the minutes for the open session of the previous meeting on June 15, 2024, be approved.

Governor Lovegreen seconded the motion, which was carried by a unanimous vote of 5 to 0. Governor Gingrich declared the motion duly adopted.

President's Report

Susan L. Thomas, University President, shared a selected engagement report and provided a report on items of current interest. Dr. Thomas shared details about the work of the House Interim Committee on Higher Education Workgroup and gave a shout-out to those who assisted with the efforts to bring the Missouri Special Olympics 2025 summer games to Kirksville.

Academic Affairs and Student Services Committee Report

Governor Christofferson, Chair of the Academic Affairs and Student Services Committee, reported on the meeting held earlier in the day.

Finance and Auditing Committee Report

Governor Burkemper, Chair of the Finance and Auditing Committee, reported on the meeting held earlier in the day.

Financial Report

Governor Burkemper presented the Financial Report, which included a review of education and general revenues and expenditures, auxiliary system revenues and expenditures, and Truman State University Foundation revenues and expenditures as of June 30, 2024, compared to June 30, 2023.

Budget and Capital Projects Committee Report

Governor Lovegreen, Chair of the Budget and Capital Projects Committee, provided a report on the committee meeting held earlier in the day.

Construction Projects Report

Governor Lovegreen and Dave Rector, Vice President for Administration, Finance and Planning, provided an update on construction projects approved by the Board at previous meetings.

Contracts for Construction Projects and Equipment Purchases

Governor Lovegreen and Mr. Rector noted that one equipment purchase totaling \$25,000 to \$100,000 had been approved since the last board meeting.

<u>Description</u>	<u>Cost</u>
Baseball Scoreboard	\$34,258.68

Consent Agenda

Governor Lovegreen moved for the adoption of the following resolution:

BE IT RESOLVED that the following consent agenda items be approved and attached to the minutes as exhibits:

- ITEM H.1 Local Capital Budgets for Fiscal Year 2025
- ITEM H.2 State Appropriation Request for Fiscal Year 2026
- ITEM H.3 Architectural Services – Student Union Chick-fil-A Renovation Project

Governor Burkemper seconded the motion, which was carried by a unanimous vote of 5 to 0. Governor Gingrich declared the motion duly adopted, and the Secretary designated copies of the items as Exhibits A, B, and C.

Request for Naming Opportunities

Governor Burkemper moved for the adoption of the following resolution:

BE IT RESOLVED that the waiting room (101C) within the Greenwood Interprofessional Autism Center be named Herman’s Hangout – Waiting Room in recognition of the generous financial contribution of Keith and Lu Ann Beeman, a gift which meets the guidelines for naming opportunities per Foundation Board policy; and

BE IT FURTHER RESOLVED that the conference room (101D) within the Greenwood Interprofessional Autism Center be named the James and Amanda Greenwood Conference Room in recognition of the same generous financial contribution, a gift which meets the guidelines for naming opportunities per Foundation Board policy; and

TRUMAN STATE UNIVERSITY  
Kirksville 63501

OFFICIAL MINUTES  
OF THE  
BOARD OF GOVERNORS

Page 3

OPEN SESSION  
OF MEETING ON  
AUGUST 3, 2024

BE IT FURTHER RESOLVED that the Board of Governors reserves the right to change or remove the name of these facilities if it is determined that the naming is no longer in the best interest of the University.

Governor Lovegreen seconded the motion, which was carried by a unanimous vote of 5 to 0. Governor Gingrich declared the motion duly adopted.

Agenda Items for Future Meetings

Governor Gingrich reviewed a list of projected agenda items for the regular meetings during the following year.

Dates for Future Meetings

Governor Burkemper moved for the adoption of the following resolution:

BE IT RESOLVED that the next regular meeting of the Board of Governors be scheduled for Friday, October 25, 2024, on the University campus in Kirksville, Missouri, beginning at 1:00 p.m., with the understanding that the Chair may alter the starting time and/or place for the meeting by giving due notice of such change; and

BE IT FURTHER RESOLVED that other regular meetings of the Board during the next year be tentatively scheduled for the following dates:

Saturday, December 7, 2024;  
Saturday, February 8, 2025;  
Saturday, April 5, 2025;  
Saturday, June 14, 2025; and  
Saturday, August 2, 2025.

Governor Lovegreen seconded the motion, which was carried by a unanimous vote of 5 to 0. Governor Gingrich declared the motion duly adopted.

Agenda Items for Closed Session

Governor Burkemper moved for the adoption of the following resolution:

BE IT RESOLVED that this meeting be continued in closed session, with closed records and closed votes as permitted by law, for consideration of the following items as authorized by Section 610.021, Revised Statutes of Missouri:

1. Approval of minutes for the closed session of the last meeting under Subsection 14 of the statute for "Records which are protected from disclosure by law;"
2. Confidential communications with the General Counsel, as defined in Subsection 1 of the statute; and
3. Individual personnel actions under Subsection 3 of the statute for "Hiring, firing, disciplining or promoting of particular employees by a public

TRUMAN STATE UNIVERSITY  
Kirksville 63501

OFFICIAL MINUTES  
OF THE  
BOARD OF GOVERNORS

Page 4

OPEN SESSION  
OF MEETING ON  
AUGUST 3, 2024

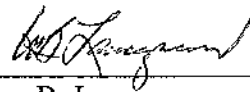
governmental body when personal information about the employee is discussed or recorded.”

Governor Lovegreen seconded the motion, which was carried by a unanimous vote of 5 to 0, with Governors Burkemper, Burks, Christofferson, Gingrich, and Lovegreen voting Aye. Governor Gingrich declared the motion duly adopted.

The closed session of the meeting began shortly after 1:40 p.m.

The open session of the meeting resumed shortly after 3:00 p.m.

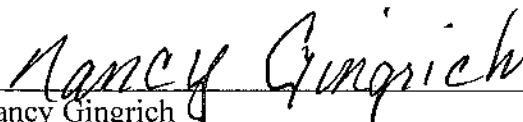
With no further business, Governor Christofferson moved that the meeting be adjourned. Governor Lovegreen seconded the motion, which was carried by a unanimous vote of 5 to 0. Governor Gingrich declared the motion duly adopted, and the meeting was adjourned shortly after 3:05 p.m.



---

William B. Lovegreen  
Secretary of the Board of Governors

I hereby certify that the foregoing minutes were approved by the Board of Governors on the 25<sup>th</sup> day of October 2024.



---

Nancy Gingrich  
Chair of the Board of Governors

**ITEM H.1**

**Local Capital Budgets for Fiscal Year 2025**

*W. Blang*

**DESCRIPTION AND BACKGROUND**

The local capital improvement budgets are reviewed and approved annually to fund major building and renovation projects. These budgets are divided into two categories based on the primary function of campus facilities. The local state funds capital budget is utilized for projects related to facilities that are eligible for capital appropriations from the State of Missouri. This includes the academic buildings and the infrastructure which supports these facilities.

The auxiliary funds capital budget is utilized to address needs related to facilities not funded by state appropriations. This includes auxiliary enterprises such as the residence halls, Student Union, Recreation Center, and related site work surrounding these buildings.

The following budgets support institutional priorities identified in Truman's Strategic Plan and the Campus Master Plan, which provide general budget parameters. As capital projects are designed and bid, approval by the Board of Governors will be obtained for each project following established procedures.

The total recommended for fiscal year 2025 for the Local State Funds Capital Budget is \$2,700,000, and for the Auxiliary Funds Capital Budget, it is \$1,138,000.

**RECOMMENDED ACTION**

BE IT RESOLVED that the Local State Funds Capital Budget for Fiscal Year 2025 of \$2,700,000 and the Auxiliary Funds Capital Budget for Fiscal Year 2025 of \$1,138,000 be approved and that copies of the budgets be attached to the minutes as exhibits.

Moved by \_\_\_\_\_  
Seconded by \_\_\_\_\_

	Aye	Nay
Vote: Burkemper	_____	_____
Burks	_____	_____
Christofferson	_____	_____
Dameron	_____	_____
Gingrich	_____	_____
Lovegreen	_____	_____

**ATTACHMENT**

Local Capital Budgets for Fiscal Year 2025

## **Local Capital Budgets for Fiscal Year 2025**

### Local State Funds Capital Budget for Fiscal Year 2025

The estimated fiscal year 2024 carry-over funds from Education and General totaled \$2,700,000. These funds will be used for University needs and priorities that cannot be funded by normally budgeted maintenance and repair funds. These costs include utility and infrastructure improvements such as masonry and roofing repairs, storm drainage improvements, utility and infrastructure improvements, and HVAC system replacements.

### Auxiliary Funds Capital Budget for Fiscal Year 2025

For fiscal year 2025, the primary funding source for the Auxiliary Funds Capital Budget is the fiscal year 2024 operating carry-over from auxiliary enterprises. The operating carry-over was \$1,138,000. Funds from the Housing System (\$1,030,000), Student Union Building (\$100,000), and Student Recreation Center (\$8,000) will be set aside for use in these facilities. Funds received from Sodexo for reinvestment (\$361,198) will be set aside for future capital projects.

All proposed project expenditures will come before the Board of Governors per usual procedures, and proposals will be subject to individual Board approval.

**ITEM H.2**

**State Appropriation Request for Fiscal Year 2026**

**DESCRIPTION AND BACKGROUND**

The University's Fiscal Year 2026 State Appropriation request is submitted to the Missouri Department of Higher Education and Workforce Development (MDHEWD) and the State Office of Administration. This request is for funding to support the Education and General Budget.

*WJK 8/3/24*

For FY2026, the request is based upon the higher education appropriation for FY2025 that was approved by the legislature and signed by the Governor. Truman's FY2026 request includes a funding increase linked to the rate of inflation, maintenance and repair funds, and what are known as New Decision Items, which would target new academic initiatives.

Table 1 summarizes the request, and Table 2 provides more detailed information. This request will be prepared in a more specific format as required by state budget submission guidelines.

This is the first step in the FY2026 budget process. Truman's request will be reviewed by the MDHEWD staff in August and September, and the Coordinating Board for Higher Education (CBHE) will make official budget recommendations for each institution in October. The next major step in the process occurs in January when the Governor presents budget recommendations to the General Assembly. Committee hearings will follow with appropriations finalized by the legislature in May 2025.

**RECOMMENDED ACTION**

BE IT RESOLVED that the State Appropriation Request for Fiscal Year 2026 totaling \$57,384,799 be approved and ratified; and

BE IT FURTHER RESOLVED that a copy of the State Appropriation Request for Fiscal Year 2026 be attached to the minutes as an exhibit and that the President of the University is authorized to modify this request based upon input from the staff of the Coordinating Board for Higher Education, Office of Administration, and the Legislature as appropriate.

Moved by \_\_\_\_\_  
Seconded by \_\_\_\_\_

Vote:	Aye	Nay
Burkemper	_____	_____
Burks	_____	_____
Christofferson	_____	_____
Dameron	_____	_____
Gingrich	_____	_____
Lovegreen	_____	_____

**ATTACHMENT**

State Appropriation Request for Fiscal Year 2026

**TABLE 1**

Fiscal Year 2026 State Appropriation Request for Operating Funds

Appropriation Base for FY2025	\$50,183,736
New Requests for FY2026	
A. Core Inflation (+3.3%)	\$ 1,656,063
B. Additional Maintenance and Repair Funds	\$ 4,280,000
C. Greenwood Interprofessional Autism Center	\$ 540,000
D. Student Success/SKILLS Center	\$ 525,000
E. Rural Telehealth Counseling Center	\$ 200,000
Total New Requests	\$ 7,201,063
<b>TOTAL FY2026 FUNDING REQUEST (FY2025 appropriation + new)</b>	<b>\$57,384,799</b>



**TABLE 2**

The state appropriations request for FY2026 includes two components: the Core Operating request based on FY2025 actual appropriations and the new requests for FY2026. Requests beyond the core are typically referred to as New Decision Items or New Investments.

1. Funding for Core Operations: State Request \$50,183,736  
The funding priority is to maintain the existing base. These funds provide 55.8% of the Education and General budget for FY2025 and are crucial to meeting the institution's mission.
2. New Requests for FY2026 \$ 7,201,063
  - A. Core Inflation \$ 1,656,063  
Based on the July budget instructions from the Missouri Department of Higher Education and Workforce Development (MDHEWD) and updated state revenue forecasts, the Coordinating Board for Higher Education (CBHE) plans to consider an additional increase for institutions to cover inflation. For this request, the inflationary rate is estimated at 3.3% based on the most recent rate for 2024.
  - B. Additional Maintenance and Repair Funds \$ 4,280,000  
Truman has over 1 million square feet of state-funded buildings, and additional funds are needed to maintain campus facilities. The second priority is additional ongoing funding to support the highest maintenance and repair needs. This request is an estimate based on projected projects, including roof replacements, masonry repairs, and infrastructure needs.
  - C. Greenwood Interprofessional Autism Center \$ 540,000  
This would provide operational funds for the new center, including staff, supplies, and consumables.
  - D. Student Success/SKILLS Center \$ 525,000  
This would provide operational funds for the new center in Kirk Building, which is being renovated utilizing the recently appropriated capital funds. Kirk Building will house a new Student Success Center to be utilized by Truman students and a Sustained Knowledge of Integrated Lifelong Learning Skills (SKILLS) Center for area K-12 students, non-student community members, and other adult learners. The Student Success Center will comprise the Career Center, Center for Academic Excellence, Communication Lab, Counseling Services, Student Access and Disability Services, Student Health Center, Tutoring Services, and Writing Center. These funds will be utilized for start-up costs not covered by the capital appropriation and first-year operating costs.
  - E. Rural Telehealth Counseling Center \$ 200,000  
This project would provide much-needed counseling services in northeast Missouri and other rural areas of the state. Funds would be utilized for staff, equipment, and related overhead for the center.

**ITEM H.3****Architectural Services – Student Union Chick-fil-A Renovation Project****DESCRIPTION AND BACKGROUND**

The Chick-fil-A franchise agreement calls for facility upgrades on a periodic basis. Currently, the Student Union has a Chick-fil-A Express, with a limited menu. The renovation will expand the size of the operation to a full-service model and include more menu options. Staff from Chick-fil-A corporate have visited campus multiple times and developed the schematic design as well as detailed equipment and finishes specifications. To have competitive bids, architectural services are needed to create detailed construction documents. The architect will work with Truman staff to ensure the design coordinates with the building's existing electrical and plumbing services.

The procedure for state agencies seeking architectural engineering or land surveying services is outlined in statute. It involves a review of the qualifications of firms on file or those that have submitted qualifications for a proposed project. In evaluating the qualifications, the following criteria are used:

1. The specialized experience and technical competence of the firm with respect to the type of services required; and
2. The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project; and
3. The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules; and
4. The firm's proximity to and familiarity with the area in which the project is located.

Chick-fil-A recommended a design firm for the project. Truman requested qualifications from three additional firms, focusing on previous relevant experience. Two firms declined due to workload, and one declined due to a lack of expertise in this area. Based upon this review and their qualifications, it is recommended that Bryce E. Nichols Architect with Mayse & Associates, of Dallas, Texas, be selected for this project. This firm was recommended by Chick-fil-A and has a history with food service clients, including numerous Chick-fil-A locations.

Funding for this project will come from the Auxiliary Plant Fund. Approval for design services is needed to meet projected bidding and construction schedules. After the Board approves construction bids, work will begin in late May 2025.

**RECOMMENDED ACTION**

BE IT RESOLVED that the proposal from Bryce E. Nichols Architect with Mayse & Associates, of Dallas, Texas, to provide architectural services for the Student Union Chick-fil-A Renovation Project, with the fees and work for such services to be within the guidelines of the proposal, be approved; and

BE IT FURTHER RESOLVED that the President of the University, or her designee, be authorized to execute a contract with the firm for the project; and

BE IT FURTHER RESOLVED that a copy of the proposal be attached to and made a part of the minutes for this meeting.

Moved by \_\_\_\_\_  
Seconded by \_\_\_\_\_

		Aye	Nay
Vote:	Burkemper	_____	_____
	Burks	_____	_____
	Christofferson	_____	_____
	Dameron	_____	_____
	Gingrich	_____	_____
	Lovegreen	_____	_____

**ATTACHMENT**

Bryce E. Nichols Architect with Mayse & Associates Proposal

June 27, 2024  
**WORK PROPOSAL  
SUMMARY OF TERMS**

**PROJECT:** Chick-fil-A #80617  
Truman State University (Kirksville, MO)

**Client:** Sodexo -- Truman State University

**ATTENTION:** John Stewart  
Sodexo -- Truman State University  
[john.stewart2@sodexo.com](mailto:john.stewart2@sodexo.com)  
660-785-4194

**DESCRIPTION:** Provide Architectural/Engineering Construction Documents for a "3a -- Full Conversion/ Expansion Remodel" of the existing Chick-fil-A at Truman State University in Kirksville, MO (based on approved SUP 2.1 Kitchen Equipment drawing dated 06.11.2024).

**A/E Scope of Work:****A -- Construction Documents drawings to include:**

1. Cover Sheet & General Notes
2. National Accounts & Responsibility Schedule
3. 3D Perspective
4. Repair & Maintenance Floor Plan
5. Dimensional Floor Plan
6. Finish Plan
7. Reflected Ceiling Plan
8. Finish Schedule
9. Interior Architectural Elevations
10. Construction Details
11. Millwork Curb Plan & Countertop Plan
12. Millwork Elevations
13. Millwork Details
14. Chick-fil-A Branding Floor Plan & Schedule
15. Kitchen Equipment Plan
16. Kitchen Equipment Schedule
17. Kitchen Equipment Electrical & Plumbing rough-in elevations
18. Mechanical Plans & Schedules
19. Electrical Plans & Schedules
20. Plumbing Plans & Schedules

**B -- Deliverables:**

1. Construction Documents drawings in PDF and AutoCAD formats
2. Kitchen equipment manual

14881 Quorum Drive Suite 800 Dallas, Texas 75254-6781

**C – Construction Documents & Construction Administration:**

1. In-house Contract Document Administration to include review of shop drawings, submittals & RFIs (up to 20 RFIs).
2. Two (2) on-site visits included as requested. Mayse & Associates, Inc. will collaborate with Chick-fil-A's Construction Manager on their on-site construction inspections (i.e. Rough-in inspection, Readiness (Punchlist) Inspection, & Grand Opening Inspection).
3. Bi-weekly construction conference calls to discuss construction status / progress and items of concerns. Estimated construction timeframe 3 months (12 weeks).

**SCHEDULE:**

Start Date: Upon written notice to proceed

Drawing completion: 5 weeks after notice to proceed and signed proposal

**EXCLUSIONS:**

- Any Drawings Not Listed Above
- Kitchen Design (provided by CFA / TriMark)
- Project Meetings
- On Site Design Meetings
- Engineering Site Survey
- Additional Site Visits (\$3,500 per site visit)
- Travel And Reimbursable Expenses
- Sample Board
- Plan Review/Permit Fees
- On Site Construction Administration
- Unforeseen or unknown conditions discovered during the construction process

**HOURLY RATES:**

Additional Services listed in, but not limited to, the "Exclusions" described above will be billed at the prevailing Hourly Rates. Rates are subject to change.

Rates at the time of this proposal:

Studio Director	-	\$205/hr
Project Architect	-	\$175/hr
Sr. Project Coordinator	-	\$155/hr
Project Coordinator II	-	\$135/hr
Project Coordinator I	-	\$115/hr
Studio Coordinator	-	\$100/hr

**REIMBURSABLE EXPENSES:**

Reimbursable Expenses listed in the following, but not limited to, will be billed at 1.15 times the invoice amount:

- Plotting, printing, shipping, etc.
- Mileage, airfare, room, board, meals, rental cars, etc.

**PROFESSIONAL FEE:**

Architectural Design	\$19,220.00
<u>MEP Design</u>	<u>\$13,300.00</u>
Total fee for Construction Documents	\$32,520.00

Architecture Contract Document Admin (54 Hours)	\$8,500.00 Hourly NTE
MEP Engineer Contract Document Admin (Shop Drawings / RFIs Only)	\$1,200.00 Lump Sum

**TERMS:**

- Client to provide a copy of current existing building drawings including existing utilities information.
- This proposal shall remain valid for thirty (30) calendar days from the proposal date unless extended in writing by Bryce Nichols.
- The fee total will be billed monthly based on percentage of completion.
- Services beyond the Scope of Work will be billed hourly or at the actual expense.
- Invoices are due and payable upon receipt and shall bear interest at the legal rate after thirty (30) days from invoice date.
- Project restart fee of \$1,500.00 will be required if project is put on hold for ninety (90) days or more.
- A new proposal will be required if the project is put on hold for more than six (6) months.
- This fee is valid for one year after receipt of signed proposal.
- See additional Terms & Conditions on pages 4 through 11.

**SUBMITTED:**



\_\_\_\_\_  
Bryce E. Nichols

\_\_\_\_\_  
Bryce E. Nichols - Architect

07.01.2024

\_\_\_\_\_  
Date

**ACCEPTED:**

\_\_\_\_\_  
John Stewart

\_\_\_\_\_  
Sodexo - Truman State University

\_\_\_\_\_  
Date

## Terms and Conditions

### **Section 1: The Agreement**

The Agreement between the parties, which shall describe and govern CLIENT's engagement of Bryce E. Nichols - Architect ("ARCHITECT") to provide only the services ("Services") in connection with the project ("Project") which are specifically identified and agreed to in the proposal ("Proposal"), consists of the Proposal, these Terms and Conditions ("Terms"), ARCHITECT's fee schedule, and any exhibits or attachments referenced in any of these documents. Together, these elements constitute the entire agreement between the parties, superseding any and all prior negotiations, correspondence, or agreements, either written or oral, with respect to the subject matter of this engagement. This Agreement may only be modified by a mutual signed, written agreement. In the event of a conflict between these Terms and the Proposal or exhibits, the following order of precedence shall prevail: (i) These Terms, (ii) the Proposal, and (iii) any exhibits or attachments referenced in the foregoing.

### **Section 2: Standard of Care**

The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of ARCHITECT's profession currently practicing under similar conditions and in the same locality as the Project. Interpretations and recommendations by ARCHITECT will be based solely on information discovered by, or made available to, ARCHITECT during the course of the engagement.

**ARCHITECT MAKES NO REPRESENTATION OR ANY WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SERVICES, AND EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES; INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF GOOD AND WORKMANLIKE PERFORMANCE AND OF FITNESS FOR A PARTICULAR PURPOSE.**

### **Section 3: Site Access and Conditions**

CLIENT shall grant to, or obtain for, ARCHITECT unimpeded access to the Project site for all equipment and personnel necessary for the performance of the Services, and access necessary for ARCHITECT's personnel to photograph the Project site. As required to effectuate such access, CLIENT shall notify all owners, lessees, contractors, subcontractors, and other possessors of the Project site that ARCHITECT must be allowed free access to the site.

### **Section 4: CLIENT's Responsibility and Project Understanding**

CLIENT shall provide or otherwise make available to ARCHITECT all information in its possession or subject to its control regarding existing and proposed conditions at the site. CLIENT shall have the absolute right to rely on the accuracy and completeness of all information provided by or on behalf of CLIENT.

The CLIENT shall establish the CLIENT's budget for the Project, including (1) the budget for the Cost of the Work; (2) the CLIENT's other costs; and, (3) reasonable contingencies related to all of these costs. The CLIENT shall update the CLIENT's budget for the Project as necessary throughout the duration of the Project until final completion. If the CLIENT significantly increases or decreases the CLIENT's budget for the Cost of the Work, the CLIENT shall notify the ARCHITECT in writing. The CLIENT and the ARCHITECT shall thereafter agree to a corresponding change in the Project's scope and quality.

The CLIENT shall identify a representative authorized to act on the CLIENT's behalf with respect to the Project. The CLIENT 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.

The CLIENT shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site as well as any as-built drawings of any existing structure related to the Project. If requested by the ARCHITECT, the CLIENT shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests,

evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

The CLIENT shall coordinate the services of its own consultants with those services provided by the ARCHITECT. The CLIENT shall also furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

The CLIENT shall include the ARCHITECT in all communications with the Contractor that relate to or affect the ARCHITECT's services or professional responsibilities. The CLIENT shall promptly notify the ARCHITECT of the substance of any direct communications between the CLIENT and the Contractor otherwise relating to the Project. Communications by and with the ARCHITECT's consultants shall be through the Architect

#### **Section 5: Project Change and Additional Services**

ARCHITECT may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the ARCHITECT, any Additional Services provided in accordance this Agreement shall entitle ARCHITECT to additional compensation and an appropriate adjustment in the ARCHITECT's schedule. In the event Additional Services are necessary, ARCHITECT shall submit a proposal to CLIENT identifying the scope and nature of the Additional Services along with the additional fee and schedule adjustment necessary to perform the Additional Services.

#### **Section 6: Confidentiality**

All data, forms, software, or any other materials developed by ARCHITECT pursuant to the performance of Services under this Agreement, or supplied to or obtained by ARCHITECT from CLIENT, or generated by ARCHITECT or its subcontractors is confidential (the "Confidential Material") and will be afforded Confidential Treatment by ARCHITECT, its employees, agents, affiliates, and subcontractors. Proprietary concepts and systems of ARCHITECT, and ideas developed by ARCHITECT during the performance of the Services shall remain the sole property of ARCHITECT ("ARCHITECT Intellectual Property"). Confidential Treatment includes the following: (i) The Confidential Material will be available only to employees of ARCHITECT; and (ii) Confidential Material will not be disclosed to any third party without the prior authorization of CLIENT. Upon completion of the Services or other termination of this Agreement, any Confidential Material retained by ARCHITECT not previously provided to third parties pursuant to Client authorization shall be retained by ARCHITECT for a period of at least 60 days, during which time period, such Confidential Material will be returned to CLIENT upon request by CLIENT. After this time period, ARCHITECT shall have the right, but not the obligation, to destroy such Confidential Material, thus terminating its confidentiality obligations. If Confidential Material is retained by ARCHITECT past such time period, the obligations stated in this Section 5 shall survive until the earliest of the following occur: (i) Confidential Material has become available to the general public through no fault of ARCHITECT; or (ii) Confidential Material is received by ARCHITECT from others who are in lawful possession of such and who by such disclosure are not breaching any obligation to CLIENT.

#### **Section 7: Construction Phase Services**

The ARCHITECT shall visit the site at intervals only as designated in its proposal to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the ARCHITECT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the ARCHITECT shall keep the CLIENT reasonably informed about the progress and quality of the portion of the Work completed, and



promptly report to the CLIENT (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

The ARCHITECT has the authority to reject Work that does not conform to the Contract Documents. Whenever the ARCHITECT considers it necessary or advisable, the ARCHITECT shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the ARCHITECT nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the ARCHITECT to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

Interpretations and decisions of the ARCHITECT shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the ARCHITECT shall endeavor to secure faithful performance by both CLIENT and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The ARCHITECT's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

The ARCHITECT shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The ARCHITECT's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The ARCHITECT's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

The ARCHITECT shall review and respond to requests for information about the Contract Documents to the extent designated in its proposal. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The ARCHITECT's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the ARCHITECT shall prepare and issue supplemental Drawings and Specifications in response to the requests for information which may be done as an Additional Service.

Unless otherwise designated in the Proposal, the ARCHITECT shall not be responsible for certification of pay applications or for determining the dates of substantial and final completion of the Work.

#### **Section 8: Ownership of Documents**

The ARCHITECT and the ARCHITECT's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. 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.

The ARCHITECT grants to the CLIENT a nonexclusive license to use the ARCHITECT's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that

the CLIENT substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The ARCHITECT shall obtain similar nonexclusive licenses from the ARCHITECT's consultants consistent with this Agreement. The license granted under this section permits the CLIENT to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the CLIENT's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the ARCHITECT rightfully terminates this Agreement for cause, the license granted in this Section shall terminate.

In the event the CLIENT uses the Instruments of Service without retaining the authors of the Instruments of Service, the CLIENT releases the ARCHITECT and ARCHITECT's consultant(s) from all claims and causes of action arising from such uses. The CLIENT, to the extent permitted by law, further agrees to indemnify and hold harmless the ARCHITECT and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the CLIENT's use of the Instruments of Service.

#### **Section 9: Termination**

If the CLIENT fails to make payments to the ARCHITECT in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the ARCHITECT's option, cause for suspension of performance of services under this Agreement. If the ARCHITECT elects to suspend services, the ARCHITECT shall give seven days' written notice to the CLIENT before suspending services. In the event of a suspension of services, the ARCHITECT shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension of services. Before resuming services, the CLIENT 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

This Agreement may be terminated by either party without cause upon ten (10) days' written notice. This Agreement may also be terminated for cause by the non-defaulting party if, after seven (7) days after written notice of a default in the performance of any material provision of this Agreement, the defaulting party fails to cure or correct such default. In the event of termination, ARCHITECT will be paid for services performed through the effective date of termination plus reasonable termination expenses.

If the CLIENT suspends the Project for more than 90 cumulative days for reasons other than the fault of the ARCHITECT, the ARCHITECT may terminate this Agreement by giving not less than seven days' written notice

#### **Section 10: RISK ALLOCATION AND LIMITATION OF LIABILITY**

**CLIENT AGREES THAT THE TOTAL AGGREGATE LIABILITY OF ARCHITECT SHALL NOT EXCEED THE TOTAL FEE FOR THE SERVICES RENDERED ON THE PROJECT, OR \$25,000.00, FOR ANY LIABILITIES, INCLUDING BUT NOT LIMITED TO NEGLIGENT PROFESSIONAL ACTS OR ERRORS OR OMISSIONS.** Client agrees that in no instance shall ARCHITECT be responsible, in total or in part, for the errors or omissions of CLIENT or any other professional, contractor, subcontractor or any other third party. Client also agrees that ARCHITECT shall not be responsible for the means, methods, procedures, performance, quality or safety of the construction contractors or subcontractors, or for their errors or omissions.

#### **Section 11: Waivers**

To the extent damages are covered by property insurance, the CLIENT 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. The CLIENT 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.

The ARCHITECT and CLIENT waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in these Terms and Conditions.

**Section 12: Insurance**

No insurance carried by ARCHITECT shall be deemed to limit in any way the responsibility of any contractor or subcontractor for damages resulting from their services in connection with the Project. CLIENT shall include, or cause to be included, in the Project's construction contract such requirements for insurance coverage and performance bonds to be secured and maintained by the Project contractor as CLIENT deems adequate to insure and indemnify CLIENT and ARCHITECT against claims for damages, and to insure compliance of work performance and materials with Project requirements.

**Section 13: Indemnity**

SUBJECT TO THE LIMITATIONS CONTAINED IN SECTION 11 AND THIS AGREEMENT, ARCHITECT AND THE CLIENT SHALL EACH INDEMNIFY AND HOLD THE OTHER HARMLESS FROM AND AGAINST ANY CLAIMS FOR BODILY INJURY OR DAMAGE TO TANGIBLE PROPERTY RESULTING FROM: (A) NEGLIGENT ERROR, OMISSION OR ACT OF THE INDEMNITOR OR THE INDEMNITOR'S OFFICERS, SERVANTS, EMPLOYEES OR SUBCONSULTANTS IN THE PERFORMANCE OF THE WORK HEREUNDER; OR (B) NEGLIGENT FAILURE OF THE INDEMNITOR OR THE INDEMNITOR'S OFFICERS, SERVANTS, EMPLOYEES OR SUBCONSULTANTS TO COMPLY WITH LAWS OR REGULATIONS; OR (C) NEGLIGENT FAILURE OF THE INDEMNITOR TO PERFORM UNDER ANY CONTRACT WITH ANY OTHER PARTY, ITS OFFICERS, SERVANTS, EMPLOYEES, SUBCONSULTANTS OR CLIENTS. THIS INDEMNITY OBLIGATION SHALL SURVIVE PERFORMANCE OF THE SERVICES HEREUNDER AND SHALL BE LIMITED BY THE TERMS AND CONDITIONS REFERENCED IN SECTION 11, ABOVE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ARCHITECT WILL NOT INDEMNIFY CLIENT FOR CLIENT'S OWN NEGLIGENCE.

**Section 14: Invoices and Payment Terms**

In consideration for the performance of the Services, ARCHITECT shall be paid in the amount and according to terms set forth in the Proposal ("Project Cost"); however, if payment terms are not listed in the Proposal, payment for Services shall be payable within thirty (30) days of ARCHITECT's invoice date (the "Payment Due Date"). All payments must be paid by the Payment Due Date, and shall not be contingent upon CLIENT's receipt of separate payment, financing or closing on the project property, or other conditions whatsoever. If CLIENT objects to any portion of an invoice, it shall notify ARCHITECT in writing within ten (10) days from the date of actual receipt of the invoice of the amount and nature of the dispute, and shall timely pay undisputed portions of the invoice. Past due invoices and any sums improperly withheld by CLIENT shall accrue interest thereon at the rate of one percent (1%) per month, or the maximum rate allowed by law, whichever is lower. CLIENT agrees to pay all costs and expenses, including reasonable attorney's fees and costs, incurred by ARCHITECT should collection proceedings be necessary to collect on Client's past due invoices. Unless the Proposal specifies the Project Cost as not-to-exceed or lump sum, CLIENT acknowledges that any cost estimates and schedules provided by ARCHITECT may be subject to change based upon the need for additional services, actual site conditions encountered, weather delays and impact and any other requirements of the CLIENT and should be used by CLIENT for planning purposes only. ARCHITECT will endeavor to perform the Services within the estimates but will notify CLIENT if estimates are likely to be exceeded.

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

Unless otherwise specified in the Proposal, CLIENT will be solely responsible for all applicable federal, state or local duty, import, sales, use, business, occupation, gross receipts or similar tax on the Services, and for any applicable duty, import sales, uses, business, occupation, gross receipts or tax and shipping charges relating to equipment and repair parts furnished in connection with the Services. In the event ARCHITECT is required to respond to any subpoena or provide testimony (as a fact or expert witness) related to the Services, CLIENT shall pay ARCHITECT for time and expenses in accordance with ARCHITECT's then current fee schedule.

**Section 15: Non-Solicitation**

During ARCHITECT's performance on the Project and for a period of one (1) year after the Project is completed or otherwise terminated for any reason, CLIENT shall not, directly or indirectly, individually or on behalf of any other person, firm, partnership, corporation, or business entity of any type: (i) solicit, assist or in any way encourage any current employee, contractor or consultant of ARCHITECT to terminate his or her employment relationship or consulting relationship with or for ARCHITECT, nor will CLIENT solicit the services of any former employee or consultant of ARCHITECT whose service has been terminated for less than six (6) months, or (ii) solicit to the detriment of ARCHITECT and/or for the benefit of any competitor of ARCHITECT, take away or attempt to take away, in whole or in part, any customer of ARCHITECT or otherwise interfere with the ARCHITECT's relationship with any of its customers. CLIENT understands and acknowledges that ARCHITECT's employees, contractors and consultants are a valuable resource to ARCHITECT, and often these persons hold confidential and or trade secret information of ARCHITECT's, including proprietary technology and valuable trade secrets of ARCHITECT, which are vital to the business of ARCHITECT and whose value depends upon them not being generally known. CLIENT expressly agrees that, if ARCHITECT's employees, contractors, and consultants are solicited in contravention of this Non-Solicitation provision, that ARCHITECT will be irreparably damaged. In such event, ARCHITECT shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect any breach(es) of this Agreement, including injunctive relief, in addition to any other remedies available at law or in equity.

**Section 16: Resolution of Disputes**

(a) Mediation. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, CLIENT and ARCHITECT shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by CLIENT and ARCHITECT within ten (10) calendar days, a mediator shall be chosen as specified in the Construction Industry Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree.

(b) Litigation. Any claim dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to litigation and the sole and exclusive venue for such disputes shall be in Dallas County, Texas.

The provisions of this Section 18 shall survive the termination of this Agreement.

**Section 17: Governing Law and Survival**

The validity of this Agreement, these terms, their interpretation and performance shall be governed by and construed and enforced in accordance with the laws of the State of Texas without regard to its conflict of laws rules or similar principles which would refer to and apply the substantive laws of another jurisdiction, and applicable international conventions and treaties. The parties hereto hereby consent and agree that venue of any litigation action shall lie exclusively in Dallas County, Texas, and the parties hereby consent to the exclusive jurisdiction of the state courts located in Dallas County, Texas to hear and determine any claims, disputes, or award between the parties arising out of this Agreement, or for any matter found to not arise under this Agreement. The parties hereto expressly submit and consent in advance to such jurisdiction and hereby waive any objection to such jurisdiction. If any of the provisions contained in this agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

**Section 18: Miscellaneous Provision**

This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

The CLIENT and ARCHITECT, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the CLIENT nor the ARCHITECT shall assign this Agreement without the written consent of the other, except that the CLIENT may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the CLIENT's rights and obligations under this Agreement, including any payments due to the ARCHITECT by the CLIENT prior to the assignment.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the CLIENT or ARCHITECT.

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

The ARCHITECT shall have the right to include photographic or artistic representations of the design of the Project among the ARCHITECT's promotional and professional materials. The ARCHITECT shall be given reasonable access to the completed Project to make such representations. However, the ARCHITECT's materials shall not include the CLIENT's confidential or proprietary information if the CLIENT has previously advised the ARCHITECT in writing of the specific information considered by the CLIENT to be confidential or proprietary. The CLIENT shall provide professional credit for the ARCHITECT in the CLIENT's promotional materials for the Project.

If the ARCHITECT or CLIENT receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in these Terms and Conditions. The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information 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 these Terms and Conditions.

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.