

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** September 6<sup>th</sup>, 2022

**SUBJECT:** Selection of Courthouse and Detention Center Architect

**PRESENTER:** Christopher Todd, Business and Community Development Director

**ATTACHMENTS:** Yes

1. Draft Contract

#### **SUMMARY OF REQUEST:**

On January 26<sup>th</sup>, 2022, a Request for Qualifications for architectural services for the Courthouse Expansion and Detention Center Annex was posted. The overall project scope includes designs that address all necessary repairs and replacements of all building systems components including but not limited to HVAC, plumbing, electrical, structural, interior, and exterior finishes, and parking, associated with a yet to be finalized design criteria and scope. Also included in the scope of the project is the necessary programming with Henderson County to provide a proposed design with cost estimates and schedules for approval, as well as the necessary Construction Administration once the project is bid and awarded, to ensure project success. Proposals were due on February 10<sup>th</sup>, 2022, subsequently received, and reviewed by Staff. At the March 7<sup>th</sup>, meeting of the Board of Commissioners, the Board approved the selection of Fentress Architects as the most qualified firm and directed to Staff to negotiate an agreement. Fentress Architects are proposing a fee of \$10,636,458 for their services in this project.

#### **BOARD ACTION REQUESTED:**

The Board is requested to discuss the proposal from Fentress Architects and if acceptable direct Staff to execute the necessary contracts.

#### **Suggested Motion:**

*I move that the Board accept the proposal from Fentress Architects, and direct Staff to execute the necessary contracts.*

# DRAFT AIA® Document B133™ – 2019

## Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the «June 17 » day of «June » in the year «2022 »

BETWEEN the Architect's client identified as the Owner:

«County of Henderson »« »  
«Capital Projects »  
«100 North Kind Street, Suite 206 »  
«Hendersonville, North Carolina 28792 »

and the Architect:

«Fentress Architects, »«Ltd. »  
«421 Broadway »  
«Denver, Colorado, 80203 »  
« »

for the following Project:

« Henderson County Judicial Complex Addition and Renovation (JCAR) »  
« »  
«.»

The Construction Manager (if known):

« »« »  
« »  
« »  
« »

The Owner and Architect agree as follows.

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

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

This document is intended to be used in conjunction with AIA Documents A201-2017™, General Conditions of the Contract for Construction; A133-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™-2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

«the "program" as identified in the "Henderson County Detention Center Space Needs Assessment" dated January 19, 2022 and the "Henderson County Courthouse Space Needs Assessment" dated January 2021.»

§ 1.1.2 The Project's physical characteristics:

«The Henderson County Courthouse is located at 200 N Grove Street in Hendersonville, North Carolina. It is a 99,100 GSF three-story structure completed in 1995. The project consists of a new 6-story, approx. 94,315 GSF annex facility to be designed and constructed immediately to the north of the existing courthouse. The Option includes approximately 40,564 sf of renovation work within the existing 99,100 GSF courthouse facility. The remaining interior area of the existing facility is assumed to be demolished, resulting in a warm, dark shell space for tenant upfit at a later date.

The Henderson County Detention Center is located at 375 1st Ave E in Hendersonville, North Carolina, immediately to the east of the Courthouse. First opened in 2001, the facility contains 222 beds in 5 separate housing units. The project consists of a new jail annex, approximately 61,112 GSF in size, to be designed and constructed immediately to the east of the existing detention center. The Option includes approximately 8,768 sf of substantial renovation work within the existing detention facility. The scope of work also includes approximately 51,752 sf of existing interior space requiring minor renovation work such as patch & paint, potential lighting replacement and electronic security upgrades.

See Exhibit A – Architect's Proposal dated June 14, 2022 for further information.»

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

« »

§ 1.1.4 The Owner's anticipated design and construction milestone dates: See Architect's proposal dated June 14, 2022 and its corresponding Exhibit B, for milestone dates.

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:  
*(Indicate agreement type.)*

[  ] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[  ] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:

§ 1.1.6.1 Phased Construction: Due to the existing buildings being currently occupied, the project will consist of multiple phases. The Architect will provide three (3) bid packages which includes: 1. Annex Drawings and Specifications for permanent (final) condition 2. Temporary Swing Space (within the Annex) Drawings and Specifications, and 3. Renovation Drawings and Specifications.

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

« none required »

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:  
*(List name, address, and other contact information.)*

«Christopher Todd »  
«Business & Community Development Director »  
«100 N. King Street»  
«Hendersonville, NC 28792 »  
«Telephone: 828.697.4819 »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:  
*(List name, address, and other contact information.)*

«N/A »

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
*(List name, legal status, address, and other contact information.)*

.1 Construction Manager:

*(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)*

«TBD »

**.2 Land Surveyor:**

« TBD »« »

**.3 Geotechnical Engineer:**

«TBD »« »

**.4 Other consultants and contractors:**

*(List any other consultants and contractors retained by the Owner.)*

«See Architect's proposal dated June 14, 2022 for list of additional consultants provided by Owner at their discretion »

**§ 1.1.11** The Architect identifies the following representative in accordance with Section 2.4:  
*(List name, address, and other contact information.)*

« Steven R. White, FAIA, LEED AP BD+C  
Fentress Architects, Ltd.  
1140 Connecticut Ave, NW, Suite 750  
Washington, DC 20036  
Telephone Number: 202-337-5100

**§ 1.1.12** The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

**§ 1.1.12.1** Consultants retained under Basic Services:

**.1 Structural Engineer:**

Michael M. Simpson & Associates, Inc. (MMS&A)  
30 Patewood Drive, Suite 100  
Greenville, SC 29615

**.2 Mechanical, Electrical, Plumbing, AV/IT/Court Technology, Telecommunications, Acoustics and Electronic Security, Specialty Lighting Design:**

Newcomb & Boyd  
303 Peachtree Center Avenue NE, Suite 525  
Atlanta, GA 30303  
404-730-8400

**.3 Civil Engineer:**

WGLA Engineering, PLLC  
724 5th Avenue West  
Hendersonville, NC 28739

**.4 Associate Architect:**

McMillan Pazdan Smith Architecture (MPS)  
47 Rankin Avenue, Suite 141  
Asheville, NC 28801

**.5 Court Planning and Programming:**

Fentress Incorporated  
945 Sunset Valley Drive  
Sykesville, MD 21784

**.6 Detention Architect, Hardware/Detention Equipment, Detention Commissioning and Testing, Detention Signage:**

Burns Architecture, LLC (Burns3 Architecture)  
PO Box 340577  
Lakeway, TX 78734

**.7 Traffic Engineering:**

Mattern & Craig Engineers - Surveyors  
12 Broad Street  
Asheville, NC 28801  
828.254.2201

**.8 Landscape Architect:**

Surface 678  
215 Morris Street  
Durham, NC 27701

**.9 Vertical Transportation:**

Michael Blades & Associates, Ltd.  
5409 Rapidian Court  
Lothian, MD 20711

**.10 Cost Estimating:**

OCMI, Inc.  
2015 Ayrley Town Blvd., Suite 202  
Charlotte, NC 28273

**.11 Fire Protection/Code/Life Safety:**

GHD  
22 South Church Street, Suite 400  
Charlotte, NC 28202

**.12 Building Envelope and Waterproofing:**

Simpson Gumpertz Heger (SGH)  
1625 Eye Street NW, Suite 900  
Washington, DC 20006

**.13 Lighting Design:**

HLB Lighting  
38 East 32nd Street, 11th Floor  
New York, NY 10016



.14 Structured Parking Feasibility Study:

Walker Parking  
13860 Ballantyne Corporate Pl, Suite 140  
Charlotte, NC 28277

§ 1.1.12.2 Consultants retained under Supplemental Services:

« »

§ 1.1.13 Other Initial Information on which the Agreement is based:

«See Architect's proposal dated June 14, 2022 »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.4 The Owner represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to perform its obligations under this Agreement and under the Contract Documents. The Architect may demand assurance in writing of the Owner's ability to satisfy the foregoing. The Owner's failure to provide such reasonable assurances shall be grounds for termination of this Agreement by the Architect.

§ 1.5 The Owner recognizes and accepts that once design recommendations have been made by the Architect and approved by the Owner, the Contract Documents prepared and construction commenced on the basis of the Owner's approval, any changes may be difficult, costly, or cause extensive delays. While the Architect will endeavor to reasonably anticipate and advise the Owner of such risks, the Owner recognizes and accepts that the costs resulting from such risks, as stated above, are solely the responsibility of the Owner.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with and limited to the level of skill and diligence performed by as those engaged in the same profession and would ordinarily exercise under similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 The Architect acknowledges that the Owner is relying on the Architect's knowledge and expertise in projects of the type herein. Therefore, the Architect's services shall be performed as expeditiously as is consistent with the standard of care as defined in 2.2 above and with diligence and the orderly progress of the Project. Architect acknowledges that it will furnish skilled personnel for the Project. Architect further represents that it is skilled and experienced in projects of the type herein; has experience with the designs, details, materials, procedures and methods intended for this Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Subparagraph 1.1.4, and which shall be adjusted, as necessary and as approved in writing by Owner, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not be exceeded by the Architect. Upon approval of any such schedule submitted by Architect, such approved schedule shall be deemed a part of this Agreement. The Architect and the Architect's consultants shall not be liable for delays that are beyond the Architect's or their consultants' reasonable control.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

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

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

§ 2.6 **Insurance.** The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than «One Million Dollars » (\$ «1,000,000 » ) for each occurrence and «One Million Dollars » (\$ «1,000,000 » ) in the aggregate for bodily injury and property damage.

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

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than «One Million Dollars » (\$ «1,000,000 » ) each accident, «One Million Dollars » (\$ «1,000,000 » ) each employee, and «One Million Dollars » (\$ «1,000,000 » ) policy limit.

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

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

§ 2.6.9 Such insurance shall be maintained with insurance carriers approved by Owner. Copies of all such policies (with proprietary or sensitive information redacted) or, at Owner's discretion, certificates evidencing such insurance, shall be delivered to the Owner prior to the commencement date of this Agreement, and such other times during the Term as Owner requests. Insurance carrier shall be rated B+ or better per Best's Key Rating Guide.



### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.5.1 The Architect represents that it is familiar with, and experienced in the interpretation and implementation of, laws, codes and regulations applicable to the Architect's services and the Project in general. Accordingly, the Architect shall be subject to the standard of care as defined in 2.2 in its execution of the work of this Project and applicable laws, codes and regulations. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project and shall comply with all directives of such authorities. Where necessary for the successful completion of the Project, the Architect shall meet with all appropriate governmental officials in the various design stages hereunder to apprise such officials of the specifics of the Project in order to avoid any deviations from applicable laws, codes and regulations and in order to expedite all permitting procedures. The Architect acknowledges that Owner is relying on the Architect's expertise in laws, codes and regulations concerning projects of this type. The Architect represents that all work performed in accordance with the standard of care as defined in 2.2, by the Architect, and any consultants of the Architect, for this Project, shall fully comply with applicable laws, codes and regulations.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

### **§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. Substitution protocols shall be in accordance with requirements of the Division 01 portion of the Specifications. The Architect and the Construction Manager shall include the Owner on all communications related to substitution requests, clarifications and interpretations. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

**§ 3.2.2** Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

### **§ 3.3 Schematic Design Phase Services**

**§ 3.3.1** The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

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

**§ 3.3.3** The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.3.4** Based on the Project requirements, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.3.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.3.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

**§ 3.3.5.2** The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

**§ 3.3.6** The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

#### § 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

#### § 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall set forth in detail the materials, systems and other requirements for construction of the Work.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.2.1 The Americans with Disabilities Act (ADA) requires the removal of architectural barriers in existing facilities where such removal is readily achievable. The Owner acknowledges that the definition of "readily achievable" contained in the ADA is flexible and subject to interpretation on a case-by-case basis. The requirements of the ADA are subject to various and possibly contradictory interpretations. Architect will use reasonable professional efforts and judgment to interpret applicable ADA requirements and to advise the Owner as to the modifications to the Owner's facility that may be required to comply with the ADA. Such interpretation and judgment will be based on what is known about ADA interpretations at the time this service is rendered. Architect, however, cannot and does not warrant or guaranty that the Owner's facility will fully comply with interpretations of ADA requirements by regulatory bodies or court decisions.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

#### § 3.6.2 Observations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, 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, 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 Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect shall recommend to the Owner the rejection of 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 Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, 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.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager'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 Construction Manager'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.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. 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.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of ten (10) months from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are clarified as in Basic Services or Supplemental Services that are required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's Responsibility (AR), and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Basic Service/AR Enhanced Service/AR, Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	BASIC SERVICE /AR
§ 4.1.1.2 Programming / Court Planning	BASIC SERVICE /AR
§ 4.1.1.3 Multiple Preliminary Designs	BASIC SERVICE /AR
§ 4.1.1.4 Measured drawings	BASIC SERVICE /AR
§ 4.1.1.5 Existing facilities surveys	BASIC SERVICE /AR
§ 4.1.1.6 Site evaluation and planning	BASIC SERVICE /AR
§ 4.1.1.7 Building Information Model management responsibilities	BASIC SERVICE /AR
§ 4.1.1.8 Development of Building Information Models for post construction use	BASIC SERVICE /AR
§ 4.1.1.9 Civil engineering	BASIC SERVICE /AR
§ 4.1.1.10 Landscape design	ENHANCED/SUPPLEMENTAL SERVICE/AR
§ 4.1.1.11 Architectural interior design	BASIC SERVICE /AR
§ 4.1.1.12 Value analysis	BASIC SERVICE /AR
§ 4.1.1.13 Cost estimating	BASIC SERVICE /AR
§ 4.1.1.14 On-site project representation	ENHANCED/SUPPLEMENTAL SERVICE/AR
§ 4.1.1.15 Conformed documents for construction	BASIC SERVICE /AR
§ 4.1.1.16 As-designed record drawings	BASIC SERVICE /AR
§ 4.1.1.17 As-constructed record drawings	BASIC SERVICE /AR
§ 4.1.1.18 Post-occupancy evaluation	NOT INCLUDED
§ 4.1.1.19 Facility support services	NOT INCLUDED
§ 4.1.1.20 Tenant-related services	NOT INCLUDED
§ 4.1.1.21 Architect's coordination of the Owner's consultants	NOT INCLUDED
§ 4.1.1.22 Telecommunications/data design/AV/IT	ENHANCED/SUPPLEMENTAL SERVICE/AR
§ 4.1.1.23 Security evaluation and planning	ENHANCED/SUPPLEMENTAL SERVICE/AR
§ 4.1.1.24 Commissioning	BY OWNER
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	NOT INCLUDED
§ 4.1.1.26 Historic preservation	NOT INCLUDED
§ 4.1.1.27 Furniture, furnishings, and equipment design	BY OWNER
§ 4.1.1.28 Other services provided by specialty Consultants	N/A
§ 4.1.1.29 Other Supplemental Services – TRAFFIC ENGINEERING	ENHANCED/SUPPLEMENTAL SERVICE/AR
§ 4.1.1.30 Other Supplemental Services – PARKING GARAGE DESIGN	ENHANCED/SUPPLEMENTAL SERVICE/AR
§ 4.1.1.31 Other Supplemental Services – ACOUSTICS	ENHANCED/SUPPLEMENTAL SERVICE/AR
§ 4.1.1.32 Other Supplemental Services – SPECIALTY LIGHTING	ENHANCED/SUPPLEMENTAL SERVICE/AR

## § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

« See Exhibit A – Architects Proposal dated June 14, 2022 Exhibit C – Fee Breakdown »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

#### § 4.2 Architect's Additional Services

The 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 with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give



prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 «Two » ( «2 » ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 «126 » visits to the site by the Architect during construction
- .3 «Two » ( «2 » ) observations for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «One » ( «1 » ) observations for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within the time allotted in Exhibit A - Architects Proposal dated June 14, 2022 – Exhibit B Schedule, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

**§ 5.4** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.5** The Owner 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. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.6** The Owner 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.

**§ 5.7** The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

**§ 5.8** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

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

**§ 5.9.1** The Owner shall coordinate and provide in a timely manner, requirements and/or input of its own consultants or entities that have conditions that must be included in the design. These conditions may include but are not limited to: artwork, equipment, and appurtenances provided by the Owner or its agents. The Owner acknowledges that failure to provide such requirements and/or input in a timely manner during the early phases of the design process, may result in the need for modifications to the design and disruptions to the orderly process of the construction and may additionally result in delays and possibly additional costs (including additional design fees) related to such redesign and/or disruptions. Architect shall not be responsible for any delays or costs resulting from Owner's failure to comply with its obligation to provide all requirements and/or input in a timely manner.

**§ 5.10** The Owner shall 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 Architect shall receive schedules of and the reports directly from the materials testing agencies in a timely fashion. The Architect shall not be liable or responsible for the report, number and frequencies of the inspections and tests, the information contained therein, reliance upon said report and information by others, or the services, acts or omissions of the materials testing agencies. The Owner shall indemnify and hold the Architect harmless from and against all suits, claims, damages and expenses, including but not limited to, reasonable attorneys' fees arising out of or resulting from the performance or failure of performance of the materials testing agencies.

**§ 5.11** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

**§ 5.12** The Owner shall provide prompt written notice to the Architect and Construction Manager 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.

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

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the

conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

§ 7.1 The Architect and the Owner represent that in transmitting Instruments of Service, or any other information, including but not limited to Drawings, Specifications or other Documents, CAD files and/or Building Information Models (collectively "Data"), the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.1.1 The transfer of the Data is not and shall not be deemed a sale. The Data are instruments of service and the Architect disclaims all warranties with regard to the Data including all implied warranties of merchantability or fitness for a particular purpose.

§ 7.1.2 The Owner acknowledges that the Data is furnished "as is," and Architect makes no representation with respect to the Data's quality, adequacy, completeness, or sufficiency, or as to any results to be achieved by the Data's use or the Data's conformance with as-built conditions. The Owner or the individual or entity who receives the Data on the Owner's behalf is responsible for verification of the Data upon receipt. The Architect has no way of controlling the handling and storage of the Data once it is released to the Owner and cannot be responsible for anomalies or errors that may occur during transfer or malfunctions or incompatibility with the recipient's computer equipment.

§ 7.1.3 If the Data transferred include building information models ("Models"), the Owner and Architect agree to the following additional terms: (i) the Models are intended for the purpose of communicating design intent. While they may be helpful to illustrate conflicts or inconsistencies in the design, the Models may not detect all conflicts or inconsistencies; (ii) Any use of the Models for the purpose of generating quantity take-offs or cost estimates, or for fabrication, will be at the recipient's sole risk; (iii) As with Architect's other services and deliverables, the Models will be prepared using that degree of skill and care exercised by licensed professionals practicing in the same community, under the same or similar circumstances. The Models may contain or be based upon data or information provided by others. Architect has relied upon such data or information as is consistent with industry practice and the professional standard of care; (iv) Information contained in the Models will not be construed to dictate construction means or methods, which will remain the Construction Manager's responsibility; (v) To the extent of any conflict between information contained in, or generated by, the Models and Architect's drawings and specifications, the latter documents will prevail.

§ 7.1.4 Architect may retain an archival copy of the Data, which shall be conclusive proof and govern in any dispute over the Data's form or content.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, regardless of format, 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.

§ 7.3 The Architect grants to the Owner 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 Owner 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 Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project provided the Owner requires these recipients to be bound by the provisions of Article 7 of this Agreement. A separate Data Transfer Agreement is available from the Architect specifically for this purpose. If this Agreement is terminated for any reason

other than due to an incurable material breach by the Architect, the license granted in this Section 7.3 shall terminate. It is recognized and agreed that the design services provided for in this Agreement will not and cannot be completed until all such services, including the Contract Administration Phase services, have been performed in full by the Architect. The Owner acknowledges that the inability of the Architect to complete those services will significantly increase the risk of loss resulting, among other causes, from misinterpretation of the intent of the design, unauthorized modifications thereto, and failure to detect errors and omissions in the plans and specifications before they become costly mistakes built into the Project. Therefore, in the event that this Agreement is prematurely terminated or that the Architect is otherwise precluded from completing the services set forth herein, the Owner agrees to hold harmless, indemnify, and defend the Architect from and against all suits, claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the use of the documents without the Architect's involvement in the completion of the Project.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner agrees to indemnify, defend and hold Architect, its officers, directors, shareholders, employees, agents, and consultants harmless from and against any and all claims, liabilities, suits, demands, losses, damages, costs, and expenses, including, but not limited to, reasonable attorney's fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing to or resulting from any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including, but not limited to, injuries, death or economic losses, arising out of Transferee's or Other's use, reuse, transfer, or modification of the Data, except where a court or forum of competent jurisdiction determines that Architect is solely liable for such damages or losses.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 7.5** Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

**§ 8.1.4** The Architect and Owner 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 Section 9.7.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien

arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing and delivered to the other party to this Agreement. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of litigation proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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

§ 8.2.5. The parties expressly consent to the venue and jurisdiction of the state and federal courts located in the City where the Project is located (or closest to the City in which the Project is located for federal courts) for the resolution of any claims arising under this Agreement regardless of law governing the Project. In the event litigation is initiated by either party related to this Agreement, each party in such litigation shall be responsible for their own costs and expenses resulting from litigation independently of the other party.

### § 8.3 Intentionally Omitted

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner 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 Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner 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.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

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

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 It is acknowledged that the Architect's performance of services in connection with this Project is not for the benefit of, or may not be enforced by any third party, the Construction Manager, its subcontractors, or their respective sureties. It is understood that the Architect's obligations are solely to the Owner. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect. The Owner agrees that the provisions of this paragraph shall be included in the Construction Contract.

§ 10.6 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.

§ 10.7 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 Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party or a third party as "confidential" or "business proprietary," to the extent and only to such extent as such information qualifies as

“confidential information” pursuant to N.C. Gen. Stat. §132-1.2, the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.8.1 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 this Section 10.8.

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

§ 10.10 Force Majeure: The Architect will not be liable to the other party for delays in performing the Scope of Services, or for direct or indirect costs resulting from such delays, that may result from labor strikes, riots, acts of war, acts or threats of terrorism, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable commercial control of either party.

§ 10.11 Limitation of Liability: To the fullest extent permitted by law, the total liability in the aggregate, of Architect and Architect's officers, directors, employees, agents, consultants, and independent professional associates, and any of them, to Owner and any one claiming by, through or under Owner, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Architect's services, the project, or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of Architect or Architect's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the limits of the professional liability insurance policy available at the time of settlement.

## ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum

«Ten Million Six Hundred Thirty-Six Thousand Four Hundred Fifty-Eight Dollars (\$10,636,458) which is broken down in Exhibit A (Architect's Proposal dated June 14, 2022 - Exhibit C Fee Breakdown) »

.2 Percentage Basis

« » ( « » ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other

«Expenses incurred for out of town travel are based on proposed trips outlined in Exhibit C, which totals a lump sum of Two Hundred Sixty-Nine Thousand One Hundred Dollars (\$269,100). We understand this figure will be a lump sum to the contract and managed internally by the A/E. These expenses will be billed in accordance with § 11.8 below.

Add alternate pricing has been provided to accommodate programming and A/E design services for 50,000 sf of fit-out to backfill the existing Courthouse facility (to accommodate a yet-to-be-determined tenant). The total cost for this additional scope of work is Nine Hundred Sixty-Six Thousand Two Hundred One Dollars (\$966,201).



Owner and County requested printing; and Owner, Contractor and County related courier and postal services, will be charged as a direct reimbursable expense and is not part of the total lump sum price. For planning purposes, we recommend adding \$50,000 for printing during design (Concepts through CDs).»

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

«Supplemental Services described in Section 4.1.1, or Sustainability Services described in Section 4.1.3, if required, shall be proposed to the Owner in writing for approval prior to performing the Supplemental Service. Architect's compensation shall be adjusted based on a mutually agreeable lump sum fee, or at current hourly rates at the time the Supplemental service is provided. »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

«Additional Services described in Section 4.2, if required, shall be proposed to the Owner in writing for approval prior to performing the Additional Service. Architect's compensation shall be adjusted based on a mutually agreeable lump sum fee, or at current hourly rates at the time the Additional service is provided. »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus «ten » percent ( «10 » %), or as follows:

« Architect's consultants' fees will be included in the Supplemental and Additional Service proposal provided to the Owner in writing for approval prior to performing the Supplemental or Additional Service. »

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services is broken down in Exhibit A (Architect's Proposal dated June 14, 2022 - Exhibit C Fee Breakdown). The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«NA »

**Employee or Category**

**Rate (\$0.00)**

### § 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «fifteen » percent ( «15 » %) of the expenses incurred.

§ 11.9 **Architect's Insurance.** If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

« »

## § 11.10 Payments to the Architect

### § 11.10.1 Initial Payments

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

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of « » (\$ « » ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid «sixty » ( «60 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
(Insert rate of monthly or annual interest agreed upon.)

«2 » % « per annum over the then prevailing prime rate of Vectra Bank of Colorado. »

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

« § 12.1 The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with

disabilities and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. »

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 Exhibits:

[ « A » ] Architect’s Proposal Dated June 14, 2022

«Fee Proposal describing the scope of work and deliverables. »

[ «B » ] Architects Proposal dated June 14, 2022 Exhibit B – Schedule

«Proposed Project Schedule »

[ «C » ] Architects Proposal dated June 14, 2022 Exhibit C – Fee Breakdown

« Proposed Fee by Discipline and by Phase »

- .4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

« »

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

\_\_\_\_\_  
**OWNER** (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**ARCHITECT** (Signature)

«Curtis W. Fentress, »«President & CEO »

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