

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: May 15, 2024

SUBJECT: Architect of Record Contract Approval
Henderson County / Henderson County Hospital Corporation

PRESENTER: Bryan Rhodes, Capital Projects Construction Manager

ATTACHMENTS: YES
1.) AIA B133-2019

SUMMARY OF REQUEST:

The Board is requested to approve the AIA B133-2019 from LS3P Architects, for the Advanced Planning through the Schematic Design Phase, for all 4 proposed MOB's and authorize staff to proceed, for the Henderson County / Henderson County Hospital Corporation Medical Office Buildings.

BOARD ACTION REQUESTED:

The Board is requested to approve the AIA B133-2019 from LS3P Architects, for the Advanced Planning through the Schematic Design Phase, for all 4 proposed MOB's and authorize staff to proceed, for the Henderson County / Henderson County Hospital Corporation Medical Office Buildings.

Suggested Motion:

I move the Henderson County Board of Commissioners approve the AIA B133-2019 from LS3P Architects, for the Henderson County / Henderson County Hospital Corporation Advanced Planning through Schematic Design, and direct Staff to proceed.

AIA[®] Document B133[®] – 2019

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

AGREEMENT made as of the Twelfth day of April in the year Two Thousand Twenty-Four
(*In words, indicate day, month and year.*)

BETWEEN the Architect's client identified as the Owner:
(*Name, legal status, address, and other information*)

Henderson County
100 N. King Street
Hendersonville, NC 28791

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

LS3P ASSOCIATES LTD.
14 O'Henry Avenue
Suite 210
Asheville, NC 28801

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

Henderson County Government / Henderson County Hospital Corporation
UNC Health Pardee – Four Medical Office Buildings
LS3P Project No.: 0403-240136

The Construction Manager (if known):
(*Name, legal status, address, and other information*)

TBD

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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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User Notes:

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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" or "to be determined by mutual agreement").

§ 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.)

See Exhibit A, Architect's Proposal and its exhibits.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See Exhibit A, Architect's Proposal and its exhibits.

§ 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:

- .1 Design phase milestone dates, if any:

TBD

- .2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 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:
(List number and type of bid/procurement packages.)

N/A

§ 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.)

N/A

§ 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. The Owner's Representative is the only person authorized to act on behalf of the Owner and to make changes to the scope of work and Services under this Agreement. Any change to the Owner's Representative shall be made in writing and sent to the Architect:
(List name, address, and other contact information.)

- .1 Name: Bryan Rhodes, Capital Projects Construction Manager
- .2 Address: Henderson County, 100 N. King Street, Hendersonville, NC 28791
- .3 Tel No. 828-606-9094
- .4 Email: brhodes@hendersoncountync.gov

§ 1.1.8.1 The Owner identifies the following financial representatives:

Owner's Finance Director

- .1 Name:
- .2 Address:

.3 Telephone No.:

.4 Fax No.:

.5 Email:

Owner's Accounts Payable Contact

.6 Name:

.7 Address:

.8 Telephone No.:

.9 Fax No.:

.10 Email:

§ 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.)

Appropriate representatives of Henderson County Hospital Corporation, hereinafter the "Hospital Corporation" (and, perhaps, of other entity/ies designated by the Hospital Corporation), 800 N. Justice St., Hendersonville, NC 28791.

§ 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)

.2 Land Surveyor:

.3 Geotechnical Engineer:

.4 Civil Engineer:

.5 Other consultants and contractors:

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

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4. Any changes to the Architect's Representative shall be made in writing and sent to the Owner:
(List name, address, and other contact information.)

- .1 Name: Martha V. Carnevale, AIA, LEED BD+C
- .2 Address: LS3P ASSOCIATES LTD., 14 O'Henry Avenue, Suite 210, Asheville, NC 28801
- .3 Tel No.: 828-254-1963
- .4 Email: maggiearnevale@ls3p.com

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.12.2 Consultants retained under Supplemental Services:

Optional Additional Services and Special Consultants that are not included in Basic A/E services are noted in Exhibit A, Architect's Proposal. These may be provided for additional fee(s), but will not be performed without written authorization from the Owner.

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

See Exhibit A, Architect's Proposal and its exhibits.

§ 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.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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

§ 2.2.1 The Architect acknowledges that the Owner is relying on the Architect's special skill and expertise in projects of this type herein. Therefore, the Architect's services shall be performed as expeditiously as is consistent with the highest standard of care and with the utmost diligence and the orderly progress of the Project. Architect acknowledges that it will furnish the most skilled personnel for the Project and will give the Project the highest priority. Architect further warrants 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; and has the capacity to meet all of the Owner's schedules. 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, if necessary and if approved by Owner, as the Project proceeds. This schedule shall include Allowances for period of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submission 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 the Architect, such approved schedule shall be deemed a part of this Agreement. Architect also agrees that it will not be damaged by any delay caused by Owner or its consultants and shall not be entitled to any additional compensation for such delay, an extension of time in which Architect is to provide its services being the sole remedy for any delay caused by other parties.

§ 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 and NO/100 DOLLARS (\$ 1,000,000.00) for each occurrence / personal & advertising injury, TWO MILLION and NO/100 DOLLARS (\$ 2,000,000.00) general aggregate / products – completed operations aggregate, and TEN THOUSAND and NO/100 DOLLARS (\$10,000.00) medical expenses.

§ 2.6.2 Automobile Liability covering hired and non-owned vehicles used, by the Architect with policy limits of not less than ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) combined single limit 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

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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 and NO/100 DOLLARS (\$ 1,000,000.00) bodily injury by accident each accident, ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) bodily injury by disease each employee, and ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) bodily injury by disease 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 ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) per claim and ONE MILLION and NO/100 DOLLARS (\$ 1,000,000.00) 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.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and Exhibit A (if any) 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. The Owner agrees that the Architect is not in control of the various authorities having jurisdiction ("AHJ's") over the Project or their respective review and approval schedules. The Architect will assist the Owner and the Contractor in applying for the necessary approvals by the AHJ's but ultimate responsibility for obtaining such approvals remains with the Owner.

§ 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.

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§ 3.1.5 Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

(Paragraph deleted)

§ 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 highest standard of care in its execution of the work of this Project and as applicable to such 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 such laws, codes and regulations and in order to expedite all permitting procedures. The Architect acknowledges that Owner is relying on Architect's expertise in laws, codes and regulations concerning projects of this type. The Architect warrants that all work performed by the Architects, any consultants of the Architect, and any other party being coordinated by the Architect for this Project, shall fully comply with all such laws, codes and regulations. In the event that the Project fails to comply with the Contract Documents, then the Architect shall be responsible to the Owner for any damages, including costs of replacement, lost income and all other direct and indirect costs associated with such failure.

§ 3.1.6 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.

§ 3.1.7 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.

§ 3.1.8 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.

§ 3.1.9 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.

§ 3.1.10 The Architect will use Newforma Project Center as its project information management software platform. Any change from or addition to that platform shall be for the benefit of the Owner and Contractor and will constitute an Additional Service to be billed as a separate task to the Owner.

§ 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. 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 agreed upon with the Owner, 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 discuss with the Owner 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 illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

§ 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 (Sections 3.6.1 – 3.6.6, Basic Construction Phase Services) 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 or sixty (60) days following the original date of Substantial Completion, whichever occurs first.

§ 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, schedules, 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.

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§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction (for this Project that interval shall be two (2) visits per month), 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 at the time of the visits, and to determine, in general, if the Work observed during that visit is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the 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 has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the 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 In accordance with the Architect-approved submittal schedule, 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, schedules, 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.

Init.

§ 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 one year 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.

§ 3.6.7 Enhanced Construction Phase Services

§ 3.6.7.1 The Owner agrees that Work will progress during the period between the Architect's site visits that can and will be concealed from view during subsequent site visits, resulting in Work that the Architect is unable to observe. If the Owner desires to reduce the amount of concealed Work that the Architect is unable to observe, the Architect shall provide Enhanced Construction Phase Services as Additional Services as indicated by the Owner:

- ___ .1 Visit the site one (1) time per week;
- ___ .2 Visit the site two (2) times per week;
- ___ .3 Visit the site every "work day" as outlined in the Contractor's construction schedule; or
- ___ .4 Provide "full time" site representation for the duration of the construction.

§ 3.6.7.2 The Owner agrees that the Architect explained the benefits of Enhanced Construction Phase Services to the Owner. If the Owner voluntarily elected not to engage the Architect to perform such services, then the Owner agrees that without Enhanced Construction Phase Services the Project may experience scheduling, budget, and/or coordination problems which will be more difficult and more costly to remedy than prevent.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be 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, 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.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|--|---|
| § 4.1.1.1 Assistance with Selection of Construction Manager | Not Provided |
| § 4.1.1.2 Programming | Architect |
| § 4.1.1.3 Multiple Preliminary Designs | Not Provided |
| § 4.1.1.4 Measured drawings | Not Provided |
| § 4.1.1.5 Existing facilities surveys | Not Provided |
| § 4.1.1.6 Site evaluation and planning | Not Provided |
| § 4.1.1.7 Building Information Model management responsibilities | Not Provided |
| § 4.1.1.8 Development of Building Information Models for post construction use | Not Provided |
| § 4.1.1.9 Civil engineering | Not Provided |
| § 4.1.1.10 Landscape design | Not Provided |
| § 4.1.1.11 Architectural interior design | Not Provided |
| § 4.1.1.12 Value analysis | Not Provided |
| § 4.1.1.13 Cost estimating | Not Provided |
| § 4.1.1.14 On-site project representation | Not Provided |
| § 4.1.1.15 Conformed documents for construction | Not Provided |
| § 4.1.1.16 As-designed record drawings | Not Provided |
| § 4.1.1.17 As-constructed record drawings | Not Provided |
| § 4.1.1.18 Post-occupancy evaluation | Not Provided |
| § 4.1.1.19 Facility support services | Not Provided |
| § 4.1.1.20 Tenant-related services | Not Provided |
| § 4.1.1.21 Architect's coordination of the Owner's consultants | Not Provided |
| § 4.1.1.22 Telecommunications/data design | Not Provided |
| § 4.1.1.23 Security evaluation and planning | Not Provided |
| § 4.1.1.24 Commissioning | Not Provided |
| § 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3 | Not Provided |
| § 4.1.1.26 Historic preservation | Not Provided |
| § 4.1.1.27 Furniture, furnishings, and equipment design | Not Provided |
| § 4.1.1.28 Other services provided by specialty Consultants | Not Provided |
| § 4.1.1.29 Other Supplemental Services | Not Provided |

§ 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.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

See Exhibit A, Architect's Proposal and its exhibits. These Additional Services will not be performed without direct consultation with review, approval and coordinated with Owner's written consent to proceed for Additional Fees.

§ 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.)

See Exhibit A, Architect's Proposal and its exhibits.

§ 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 Owner's request for extensive sustainable design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .4 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .5 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;
- .6 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;
- .7 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .8 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .9 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .10 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .11 Evaluation of the qualifications of bidders or persons providing proposals;
- .12 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .13 Assistance to the Initial Decision Maker, if other than the Architect;
- .14 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;
- .15 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .16 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
- .17 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;
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services sixty (60) days after (1) the original date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in the Initial Information, whichever is earlier.

§ 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 twice per month visits to the site by the Architect or its consultants during construction
- .3 two (2) inspection 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 two (2) inspection 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 original date of Substantial Completion of the Work listed above or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor and/or Construction Manager, 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 performed within twenty-four (24) months of the date of this Agreement, 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. Within fifteen (15) days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

§ 5.2 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. The Owner shall furnish the services of a Construction Manager, who shall be responsible for preparing all estimates of the Cost of the Work. 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. Furthermore, if the Owner elects to utilize the fast track basis, the Owner acknowledges that there is a greater likelihood of errors, omissions, inconsistencies, ambiguities and lack of coordination in design and other work product produced by the Architect and its consultants which could result in additional design and construction costs, the occurrence of which is inherent in the fast track approach and for which neither the Architect nor its consultants may be held legally responsible.

§ 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, but are not limited to, 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.

§ 5.10 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 including those required under the International Building Code sections 1703 (Approvals) and 1704 (Special Inspections), as applicable.

§ 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. The Owner shall cause the general liability insurance policies issued to the Contractor(s) and its subcontractors providing construction related activities in connection with the Project to list the Architect and its consultants as additional insureds under those policies by way of ISO endorsement CG 20 32 or its equivalent. The Owner shall maintain commercial general liability insurance

coverage in the amount of at least \$1,000,000 per occurrence and in the aggregate also listing the Architect and its consultants as additional insureds.

§ 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 Before executing the Contract for Construction, 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. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 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, without additional compensation, 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. If the Architect is required to make revisions to the Contract Documents at the conclusion of the Construction Documents Phase Services, the Architect shall be entitled to compensation, as an Additional Service for changes to Contract Documents that result from (1) scope changes directed by the Owner that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Architect, (3) revisions to the Contract Documents directed by the Owner that resulted in an increase in the Construction Budget, or (4) matters beyond the reasonable control of Architect.

§ 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 warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 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. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Upon such termination, the Owner shall refrain from making further reproductions of the Architect's and its consultants' Instruments of Service and shall return to the Architect within seven (7) days of termination all such originals and reproductions in the Owner's possession and/or control subject to Section 9.7 below.

§ 7.3.1 In the event the Owner uses the Instruments of Service (including without limitation any future additions or alterations to the Project) without retaining and maintaining the retention of the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify, defend, and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service

under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 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.

(Paragraph deleted)

§ 7.5 The Architectural Works and Instruments of Service developed under this Agreement are subject to re-use fees. The re-use of these designs for other projects may be negotiated upon written request from the Owner. Upon receipt of such request, the Architect may prepare a fee proposal for site adaptation and revisions/adjustments including the re-use fees and submit same to the Owner. Should the Architect not be retained to provide site adaptation and revision services, the Owner shall compensate the Architect for such re-use fees negotiated with the Architect and shall execute in favor of the Architect a complete release of liability and indemnity agreement for such proposed re-use.

§ 7.6 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, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 8 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 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 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. Such waiver shall survive the fulfillment or termination of this Agreement and shall benefit and/or burden the heirs, assigns, and/or successors of the parties hereto.

(Paragraph deleted)

§ 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. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution 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. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 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:

(Check the appropriate box.)

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.

§ 8.3 Arbitration – Intentionally Deleted.

(Paragraphs deleted)

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, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.7 In addition to any amounts paid under Section 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 pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

Services worked until date of termination to be paid in full.

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

§ 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 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of North Carolina, excluding choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. Choice of law provisions governing this Agreement include the application of statutes of limitation and/or repose. Arbitration (if any) under this Agreement is an action subject to those laws.

§ 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, unmodified, 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 and the Architect may assign this Agreement pursuant to a merger or asset acquisition.

§ 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 may 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 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.

§ 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. In the event that the Architect or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until the Owner retains appropriate specialist consultant's or contractor's to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.

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§ 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. The Owner shall allow the Architect to post a sign at the Project site at the Architect's expense containing the Architect's name, logo, and contact information. Such sign shall remain at the site during the design and construction phases of the Project. The Architect shall coordinate the appearance and location of its sign with those of the other Project participants.

§ 10.8 If the Architect or Owner receives information specifically designated 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 as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information (.1) 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, (.2) to the extent such information is reasonably necessary for the receiving party to defend itself in, assert a claim in, or administrate any dispute, or (.3) to the extent withholding such information would create the risk of significant harm to the public. The receiving party may also disclose such information to its employees, consultants, attorneys, brokers, carriers, or contractors.

§ 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.

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
(Insert amount)

\$1,129,000.00
- .2 Percentage Basis
(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3 Other
(Describe the method of compensation)

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

See Exhibit A, Architect's Proposal and its exhibits.

§ 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:
(Insert amount of, or basis for, compensation.)

See Exhibit A, Architect's Proposal and its exhibits.

§ 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 twenty-five percent (25 %), or as follows: *(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

§ 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 shall be as follows:

| | |
|---|-----------------------|
| Advance Planning & Programming: | \$42,500.00 |
| Schematic Design (SD) through 100%: | \$972,000.00 |
| Civil Engineering Fee for Advance Planning & SD | |
| Easler Property: | \$14,500.00 |
| Mills River: | \$13,500.00 |
| Brevard / Transylvania County | |
| Site Evaluations and Early Due Diligence: | \$9,000.00 |
| Schematic Design of the Selected Site: | \$9,500.00 |
| Pardee Hospital Main Campus | |
| Site Evaluations and Early Due Diligence: | \$9,000.00 |
| Schematic Design of the Selected Site: | \$9,500.00 |
| Landscape Fee for Advance Planning & SD | \$8,000.00 |
| Surveys: | \$34,500.00 |
| Reimbursable Expenses (Not to Exceed): | \$15,000.00 |
| Total: | \$1,129,000.00 |

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

See Exhibit A, Architect's Proposal and its exhibits.

| | |
|-----------------------------|----------------------|
| 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 ten percent (10 %) 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:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

The Owner shall reimburse the Architect for the actual cost, with no mark-up, should this be a requirement in excess of what the Architect's normal limits and types are.

§ 11.10 **Payments to the Architect**

§ 11.10.1 **Initial Payments**

§ 11.10.1.1 An initial payment in an amount equal to fifteen percent (15%) of the total fee 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 thirty (30) 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.)

1.5 % per month

§ 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:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 CHANGES TO THE CONTRACT DOCUMENTS / AS-BUILT DOCUMENTS / RECORD DRAWINGS

§ 12.1.1 All Owner directed changes to the Contract Documents shall be in writing and shall specify the change required. The Architect shall not be responsible for the acts and/or omissions of any person performing any of the Work or for instruction given by the Owner to anyone performing any of the Work. During the construction process the Owner may direct the Architect to accept the Contractor's work that does not conform to construction documents or is below standard. Should this occur, the Owner agrees to release, indemnify and hold the Architect and the Architect's officers, partners, agents, employees, and Consultants harmless from any and all claims, liabilities, losses, and costs, including but not limited to reasonable attorney's fees and costs of litigation, arising or allegedly arising from deviations from the Architect's recommendations.

§ 12.1.2 "As-Built" documents consist of modifications (redline changes) to the Contract Documents to reflect as-built conditions. Record Drawings consist of the Contract Documents with all written change orders and modifications made during construction incorporated therein. The Contractor is responsible for tracking, obtaining, delivery, and retention of all written change orders and modifications made during construction for the purpose of creating "As-Built" documents. The Contractor is further responsible for recording as-built information to the Contract Documents throughout the construction of the Project. The Architect will provide .pdf versions of its design drawings to the Owner and the Contractor as a basic service. Record drawings will be provided by the Architect to the Owner in electronic format under a separate agreement for an additional fee. The Contractor will provide to the Architect the information necessary for the Architect to perform such service. The Architect may rely on the accuracy of the as-built information provided by the Owner and/or Contractor in preparing the Record Drawings.

§ 12.2 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) to the extent said failures or delays are caused by forces beyond that party's reasonable control and occurring without its fault or negligence. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

§ 12.3 VALUE ENGINEERING LIABILITY

The Architect shall not be liable for any damages or costs incurred by the Owner and/or the Contractor as a result of cost reduction, scope reduction, or value engineering efforts on the Project.

§ 12.4 BASIS OF OPINION

Projects requiring observation and reporting of existing structures may have conditions concealed from reasonable view that differ from available documentation or other information. The Architect is not responsible for the costs or delays resulting from the later discovery of such actual conditions. This Agreement and any subsequent Representation is a statement of professional opinion based on the information available during the assessment and/or evaluation of the subject property. Such opinion is formed by the judgment of the Architect from the knowledge of available facts and other identified information. This Agreement and any subsequent Representation only reflect the conditions on the day of site observation. The Owner hereby acknowledges that existing conditions can and will change relative to the information contained in this Agreement and/or any Representation.

§ 12.5 The Owner agrees that no set of plans and specifications is entirely free of errors and omissions and that additive Change Orders which arise out of errors or omissions in the plans and specifications and which result in an increase in the amount of the contract for the construction of the Project are possible. All costs of architectural errors, omissions or other changes which result in "betterment" or "value added" to the Owner shall be borne by the Owner, not the Architect (to the extent of the betterment or value added), and shall not be the basis of a claim.

§ 12.6 The Architect's design services are intended solely for the design and construction of the Project as set forth in Exhibit A, Architect's Proposal under the ownership and control of a single owner. If the Project is changed to any other purpose or use whatsoever, including, but not limited to, subdivision of the Project into individual units for sale, the Architect shall have no liability and shall be released from all obligations and responsibility for the Project. Further, in such event, any and all of the Owner's rights, license and/or ownership interest in the construction documents shall be void. The Owner shall be expressly prohibited from making any further use of the construction documents for any

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purpose, including, but not limited to the conversion of this Project to another purpose. The Owner acknowledges the risks inherent in multi-owner projects and that these risks and exposure were not contemplated in the Architect's fee for the Project as originally contemplated. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees, consultants and subconsultants (collectively Architect) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with any change, conversion, or alternative use of the Project. In the event of a conversion to a multi-owner regime, the Owner agrees to allow the Architect to review and comment on regime documents and the maintenance manual.

§ 12.7 The Architect's liability (if any) to the Owner for any and all claims and/or damages shall be limited to a maximum of and shall not exceed, either individually or in the aggregate, the total amount of the Architect's fee received for this Project.

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

(Paragraphs deleted)

- .2 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

- AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.

(Insert the date of the E234-2019 incorporated into this agreement.)

- Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A, Architect's Proposal and its exhibits dated April 12, 2024

- .3 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)

Martha V. Carnevale, AIA, LEED BD+C
Vice President | Principal

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

ARCHITECT (Signature)

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



April 12, 2024

Mr. Christopher Todd
Director of Business and Community Development
Henderson County, NC

Mr. Bryan Rhodes
Capital Projects Construction Manager
Henderson County, NC

100 North King Street
Hendersonville, NC 28791

RE: Henderson County Government / Henderson County Hospital Corporation
UNC Health Pardee - Four Medical Office Buildings
Advance Planning, Programming and Schematic Design Fee Proposal

Dear Chris and Bryan,

LS3P is pleased to submit a proposal for design services for the four Medical Office Buildings (MOBs) in and near Henderson County, North Carolina, for Advance Planning, Programming, and full Schematic Design Services to facilitate cost estimating by the County's selected Construction Manager at Risk and future planning for the four projects. We understand that pending approval from the Henderson County Board of Commissioners, a formal contract for execution will follow this agreement.

PROJECT DESCRIPTION

The scope of work will include iterative design sessions with your staff and the users of UNC Health Pardee resulting in separate Functional Programs and full Schematic Design Packages for the four MOBs specific to the identified and to be selected sites. Our understanding of the scope of the project is as follows:

- Henderson County is the 'client/owner', funder and contract holder.
- UNC Health Pardee is the occupant/user of the buildings.
- Preferred schedule is for presentation of GMPs to occur during the April 2025 LGC session for consideration.
- The four specific sites are as follows:
 1. South Henderson County / Flat Rock / Upward Road Area / Spartanburg Hwy. – referred to as the "Easler Property."
 2. Mills River.
 3. Brevard / Transylvania County.
 4. Downtown Hendersonville adjacent to UNC Health Pardee Hospital Main Campus; property not yet identified – referred to "Pardee Hospital Main Campus."
- Primary Care services will occupy an estimated half of each facility.
- Each MOB will be approximately 40,000 SF and properly branded to represent UNC Health Pardee which will be determined as part of the Schematic Design phase:

- Brevard / Transylvania County MOB to be unique due to possible developer restrictions on the property. Restriction may require two separate, 25,000 SF buildings, making it unique from the other two story, 40,000 SF buildings.
- Downtown Hendersonville MOB will house an Ambulatory Surgery Center, unlike the other MOB.
- Easler Property and Mills River MOB are understood to be Prototype 1 and 2, requiring one architectural and engineering design effort. Civil engineering, landscape architecture, permitting, zoning, bidding, and construction administration will be distinct for each building.
- Project delivery will be Construction Manager at Risk procurement method. Contractor will be engaged by at least the end of the Advance Planning Phase, providing cost control and value engineering services. Cost estimating of the final Schematic Design (SD) Phase packages is anticipated at the end of the SD phase and will inform the phasing of the balance of the design efforts.
- Once SD and cost estimating have been completed, the Henderson County/UNC Health Pardee team can review and prioritize projects to move into the next phases of design – Design Development, Construction Documents, Bidding, and Construction Administration (phases not included in this proposal). Based on the direction from your team, we will provide fee proposals for the work to proceed, including any prototypical designs, cost saving measures identified in the estimating process, and ‘core and shell’ portions of the buildings to be upfit later.
- We understand that the desire of your team is for LS3P to create a design aesthetic that exemplifies:
 - Patient-oriented buildings managed by a County-owned, non-profit hospital system.
 - Consistent interior and exterior design elements to enhance the UNC Health Pardee brand.
- No money for construction will be expended before January of 2025.
- The care delivery model programmed and conceptually designed as part of the UNC Health Pardee Medical Office Building at 2775 Hendersonville Road is desired as a model for the Primary Care clinics, where possible.
- Drive thru pharmacies are desired at all four sites.
- Initial cost models by the County were run using \$500/SF for \$18M - \$20M per building construction cost. This did not factor in the possible restrictions on the property for two separate, 25,000 SF buildings at the Brevard / Transylvania County site. At the County’s cost/SF, this would equal \$25M. Fees for this design effort were considered using construction costs of \$85M to include this unique site restriction and possible square footage. The Ambulatory Surgery Center in Hendersonville and the Transylvania County site may have higher construction and soft costs. \$5M for soft costs per building was mentioned as rough soft costs needed by the County. It is anticipated that the Ambulatory Surgery Center at Hendersonville will have higher soft costs than the other MOB.
- Decisions will be made during Programming regarding the inclusion of the following spaces for each building:
 - Lab for patient use only versus to also include public use/access
 - Physical Therapy
 - Infusion
 - Specialty clinics

SCOPE OF SERVICES

1. Task 01 – Advance Planning & Programming for 4 MOBs at different locations

- **Advance Planning:** We will guide the planning to determine high level key project elements that will influence the design and process. These include special owner/user requirements, site evaluation where not previously selected, preliminary project schedule, and sustainability and energy efficiency objectives. The team will refine the care delivery model programmed and conceptually designed as part of the UNC Health Pardee Medical Office Building at 2775 Hendersonville Road for a new building to start compiling the building blocks for the new MOB.
- **Space Program:** Working with Henderson County, UNC Health Pardee leadership, primary care providers, and other user groups, LS3P will prepare Space Programs outlining clinical, administrative, public, and support spaces and their square footage requirements in a room-by-room space program for each building. These programs will be the basis of the building floor plans. The LS3P team will share case studies of other primary care clinic layouts and similarly sized MOB designs and successes as part of the programming and design discussions.
- **Meetings:** We suggest up to four (4) in-person meetings for this phase as well as a bi-weekly in person or virtual architectural design meetings to confirm the program for the projects as required.

2. Task 02 – Schematic Design

- **Floor Plans for Medical Office Buildings:** Using the Space Program, LS3P will prepare conceptual floor plans showing room sizes, appropriate adjacencies, and circulation in floor plan format. Through iterative discussions with the Henderson County / UNC Health Pardee team, we will assess design options until a final layout is agreed upon.
- **Exterior Design Concepts & Branding:** With the floor plans as guidance, LS3P will prepare exterior design concepts and massing for each of the four MOB sites. The understanding is that the expression will be similar from building to building, to create an exterior brand, but that specific programmatic elements or site constraints will influence the exact exterior design for each building.
- **Interior Design Concepts & Branding:** Concurrent with the schematic design work, LS3P will produce conceptual options for branding strategies of key areas via interior elevations and finish suggestions.
- **MEP Engineer evaluation:** To accurately estimate price, LS3P intends to have Newcomb & Boyd determine the strategy and extent of MEP design work. A MEP narrative will be produced to inform the costing exercise.
- **Structural Engineer evaluation:** To accurately estimate price, LS3P intends to have Kloesel Engineering determine the main systems for the structural design. A structural narrative will be produced to inform the costing exercise.

- **MOB Site Design:** LS3P will work with UNC Health Pardee users to determine the options for best use of the four sites. Recommended options will be influenced by access, visibility, parking, grading, and wayfinding. Each site will include the following:
 - Preliminary site plans for the overall sites including building siting and orientation.
 - For the Pardee Hospital Main Campus MOB, multiple sites may need to be investigated to determine the best location. Our team will provide test-fits and conceptual layouts and sketches of up to three potential sites. Up to 4 meetings with team members are included for this site selection work.
 - For the Brevard / Transylvania County MOB, we understand two potential sites have been identified and both sites may need to be investigated to better determine which site is favorable for the MOB. We understand UNC Health Pardee would like to consider a site located off of Market Street in Brevard. We also understand that you would like to evaluate a property located within the Brevard ETJ called the Picklesimer Site. Up to 3 meetings with team members are included for this site selection work.
 - Conceptual grading plans.
 - Conceptual stormwater plan for each project site.
 - Conceptual utility plans.
 - Preliminary calculations for stormwater control to determine preliminary size requirements for a detention/treatment concept.
 - Visibility and branding opportunities.
 - Site access and traffic patterns, pedestrian access, if feasible. Review of zoning for proposed compliance.
 - Parking numbers and location.
 - Utilities discussion with municipalities and “will serve” letter if applicable for water and sewer.
 - Accessible access to the building’s main entrance.
 - Determine if NC DOT will require a Traffic Impact Analysis (TIA). TIA not included in this scope of work.
 - Determine additional survey requirement for the projects if not already completed under this scope (3 identified sites have fee proposals for surveys included within).
 - Review wetland delineation for anticipated impacts resulting from proposed development, if required.

- **Meetings:** We suggest up to five (5) in-person meetings for this phase as well as a weekly virtual meeting as required.

3. Task 03 – Contractor Cost Estimate

- **Pricing Documents:** Based upon Owner approval of Task 01 and Task 02, LS3P will provide Schematic Design Documents and Narratives to the County’s selected CMAR for pricing. We anticipate the CMAR will provide SD cost estimating for all four MOB’s separately to inform decision making for the County for future phases of design and construction. LS3P and our team intends to support the selected CMAR in the cost estimating process.

PROJECT TEAM

The LS3P design team is anticipated to include the following team members with additional supporting staff from within the firm.

| | |
|-----------------------|------------------------------------|
| Maggie Carnevale, AIA | Principal |
| Willy Schlein, AIA | Healthcare Practice Leader |
| Christina Smith, AIA | Healthcare Sector Leader |
| Helen Byce, AIA | Project Architect, Medical Planner |
| Jonathan Capp, AIA | Project Architect |
| Sydney Godfrey, IIDA | Project Interior Designer |
| Crystal Vaughn, IIDA | Project Interior Designer |
| John Sunday | BIM Technician / Drafter |

PROJECT SCHEDULE:

LS3P will confirm the project schedule with the Owner, and selected CMAR, but a suggested preliminary schedule is included. Services will commence upon approval of the outlined proposal.

FEE SCHEDULE:

We have been asked to propose taking each project through the Advance Planning, Programming, and Schematic Design phases only, not full basic services. These services are to be provided by the Architect and standard engineering consultants (structural, mechanical, electrical, plumbing and fire protection – typically narratives only). Fees were generated using (3) 40,000 SF buildings and one site with (2) 25,000 SF separate buildings. The Easler Property and Mills River MOB are anticipated to be prototypes, so a reduced Programming and Schematic Design fee was calculated for those two buildings. Fees for future phases will be re-evaluated and proposed upon when the CMAR Schematic Design cost is agreed upon and actual priority projects are identified.

Design Fee

The Owner shall compensate the Architect for Design Services as detailed above as follows:

| | |
|--|------------------------|
| — Advance Planning & Programming | \$42,500 |
| — Schematic Design (SD) through 100% | \$972,000 |
| Schematic Design typically is approximately 20% of an overall fee architectural/ engineering (A/E) design fee. | |
| — Civil Engineering Fee for Advance Planning & SD | |
| ○ Easler Property | \$14,500 |
| ○ Mills River | \$13,500 |
| ○ Brevard / Transylvania County | |
| ▪ Site Evaluations and Early Due-Diligence | \$9,000 |
| ▪ Schematic Design of the selected site | \$9,500 |
| ○ Pardee Hospital Main Campus | |
| ▪ Site Evaluations and Early Due-Diligence | \$9,000 |
| ▪ Schematic Design of the selected site | \$9,500 |
| — Landscape Fee for Advance Planning & SD | \$8,000 |
| — Surveys - boundary, detailed topographic and utility location information provided by Ed Holmes & Associates land surveying for 3 of the 4 selected sites | <u>\$34,500</u> |
| — Reimbursable Expenses – not to exceed | <u>\$15,000</u> |
| TOTAL: | \$1,129,000 |

Note:

- Upon receipt of an executed proposal, LS3P shall begin design services immediately.
- Fee paid for this scope of work is part of the total overall A/E design fee. Should the scope of the project change dramatically after this Schematic Design work, additional fees will be required to repeat the Programming and Schematic Design phase of work before proceeding into design development.

REIMBURSABLE EXPENSES

Reimbursable Expenses: Day-to-day expenses incurred solely in the interest of this project shall be reimbursable and include shipping and mailing costs, courier services, supplies, travel to and from sites computer plots, printing, and photographic reproduction. These expenses will be invoiced monthly at our and our consultant’s actual cost times a multiple of one and one-tenth (1.1) for administrative expenses. Reimbursable expenses will be billed as incurred with a not to exceed cost of \$15,000.

BILLING & PAYMENT

LS3P shall bill monthly for work completed the prior month. Billing will be on a percentage of the overall work completed per phase. Payments are due and payable 30 days from the date of our invoice. Amounts not paid after 45 days after the invoice date shall bear interest at the rate of 1.5% per month.

ADDITIONAL SERVICES

Additional services not covered in the above scope of work as part of this proposal but found to be necessary in the Advance Planning and Programming and Schematic Design phases shall be approved by the Owner before LS3P proceeds with additional work. Additional services for consultants are billed at 1.25 times the consultant's direct invoice to the Architect. Examples may include but are not limited to:

- Scope associated with site plan approvals, rezoning, or changes for land/project entitlement.
- Cost estimating.
- Geotechnical or Soils Exploration.
- Full A/E design including design development, construction documents, bidding, and construction administration.
- Reprogramming/Advance Planning and/or Schematic Design of any building should the scope of the project change after this Schematic Design signoff by the Owner.
- Separate architectural and engineering design effort for either the Easler property MOB or the Mills River MOB should it be determined that they are not able to be prototypical.
- Traffic Impact Analysis (TIAs) or studies and engineering.
- Traffic signal or pedestrian signal designs.
- Turn lane design.
- Off-Site Utility Design improvements, public water or sewer extensions.
- Flood studies or permitting.
- Stream/Wetland/Environmental delineation or permitting.
- Permit fees.
- Retaining Wall designs.
- Research tours of other facilities.
- Life cycle costs analysis or green building certifications.
- Furniture, Fixtures and Equipment Design and coordination.
- Professional Renderings and Animations.
- Value engineering services or redesign after the completion of schematic design.
- Specialty Services not called out in this proposal.
- Medical Equipment planning.
- Meetings and design presentations not specifically enumerated in this scope of work.

We look forward to continuing our relationship with Henderson County with the four medical office buildings. Please contact us with any questions regarding this proposal.

Sincerely,



Maggie Carnevale, AIA, LEED BD+C, NCARB
Principal | Vice President



Willy Schlein, AIA, LEED AP
Healthcare Practice Leader | Vice President |
Associate Principal

LS3P

Attachment: Exhibit A, Hourly Rate Schedule
Henderson Master Schedule

Proposal accepted:
Henderson County

Signature

Date

EXHIBIT A to the Owner-Architect Agreement dated April 12, 2024

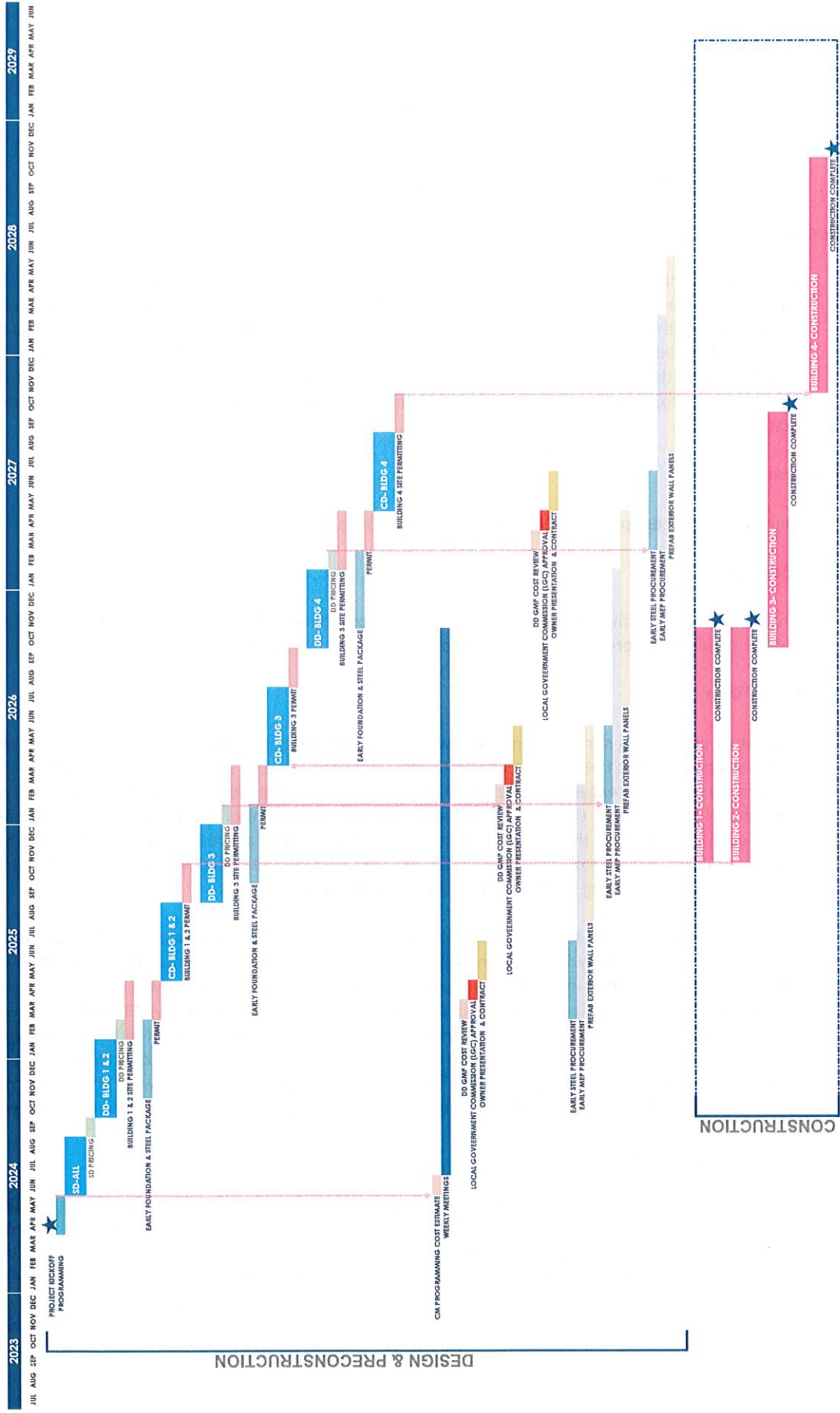




EXHIBIT 1

7/1/2023

I. STANDARD TERMS

Confidential – Not for distribution without permission of LS3P ASSOCIATES LTD.

A. Agreement

This Proposal, including this Exhibit 1, is the entire and integrated agreement between Owner and LS3P, supersedes all prior negotiations or agreements, either written or oral, and shall be governed by the laws of the state of North Carolina without regard to principles of conflicts of law. This Proposal may only be amended in a writing signed by both parties. If any provision of this Proposal is invalid or unenforceable, the remainder of this Proposal will still be valid. By signing, The Owner agrees to the terms of this Proposal, including this Exhibit 1, and agrees to pay LS3P in accordance with the terms stated herein.

B. Exclusions

Only those services specifically included in this Proposal are included in the base services.

C. Expiration Time

This Proposal is effective up to 90 days from the Proposal date set forth above. After ninety (90) days, the terms set forth herein shall be subject to renegotiation unless otherwise agreed.

D. Standard of Care

LS3P shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. LS3P shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Owner agrees that LS3P is not in control of the various authorities having jurisdiction (“AHJ’s”) over the Project or their respective review and approval schedules. LS3P will assist Owner and the Contractor in applying for the necessary approvals by the AHJ’s but ultimate responsibility for obtaining such approvals remains with Owner.

LS3P shall not be required to review and shall not be responsible for any deviations from the Contract Documents not clearly noted by the Contractor nor shall LS3P be required to review partial submissions or those for which submissions for correlated items have not been received. Owner agrees that no set of plans and specifications is entirely free of errors and omissions and that additive Change Orders which arise out of errors or omissions in the plans and specification and which result in an increase in the amount of the contract for the construction of the Project are possible. All costs of architectural errors, omissions or other changes which result in “betterment” or “value added” to Owner shall be borne by Owner, not LS3P (to the extent of the betterment or value added), and shall not be the basis of a claim.

E. Owner Information and Services

Owner shall provide full information about the objectives, schedule, constraints, and existing conditions of the Project and shall establish a budget with reasonable contingencies that meet the Project requirements. Owner acknowledges, however, that LS3P has no control over the cost of labor, materials, or equipment, over the Contractor’s methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. LS3P shall be entitled to rely upon the accuracy and completeness of the services and information furnished by Owner, consultants, and contractors



including those consultant services required under the International Building Code sections 1703 (Approvals) and 1704 (Special Inspections), as applicable. Owner shall identify a representative authorized to act on Owner's behalf with respect to the Project. Owner shall render decisions and approve LS3P's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of LS3P's services. Owner's Representative is the only person authorized to act on behalf of Owner and to make changes to the scope of work and services under this Agreement. Any change to Owner's representative shall be made in writing and sent to LS3P. Such representative is as follows:

- .1 Name:
- .2 Address:
- .3 Tel No.:
- .4 Email:

Owner identifies the following financial representatives:

Owner's Finance Director

- .1 Name:
- .2 Address:
- .3 Tel No.:
- .4 Email:

Owner's Accounts Payable Contact

- .1 Name:
- .2 Address:
- .3 Tel No.:
- .4 Email:

LS3P will use Newforma Project Center as its project information management software platform. Any change from or addition to that platform shall be for the benefit of Owner and Contractor and will constitute an Additional Service to be billed as a separate task to Owner.

F. Termination or Suspension

Either party at any time with or without cause may terminate this Proposal by written notice to the other. Termination shall be effective seven (7) days after the date the notice is received. Upon effective termination, all services provided and expenses incurred up to and including the date of termination shall be immediately reimbursable, due, and payable to LS3P. Failure of Owner to make payments to LS3P under this Proposal shall be cause for termination.

In the event of a suspension of services, LS3P shall have no liability for any damages to Owner incurred because of such suspension. Termination or suspension of services by LS3P shall in no way relieve Owner of its obligation to compensate LS3P for services provided and expenses incurred up to and including the date of termination or suspension. If Owner suspends the Project, LS3P shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, LS3P shall be compensated for expenses incurred in the interruption and resumption of LS3P's services. LS3P's fees for the remaining services and the time schedules shall be equitably adjusted.



G. Ownership of Documents

Designs, drawings, specifications, and other documents prepared by LS3P and/or its consultants are Instruments of Service for use solely with respect to this Project. LS3P and its consultants reserve all respective rights in and to those Instruments of Service including, but not limited to, copyrights.

H. Photography / Job Sign

LS3P reserves the right to photograph the Project and use said photographs in future promotional material. Photography sessions will be coordinated with Owner to avoid distraction during business hours. Owner shall allow LS3P to post a sign at the Project site at LS3P's expense containing LS3P's name, logo, and contact information. Such sign shall remain at the site during the design and construction phases of the Project. LS3P shall coordinate the appearance and location of its sign with those of the other Project participants.

I. Mutual Waiver of Consequential Damages

Owner and LS3P waive consequential damages against each other for claims, disputes, or other matters in question arising out of or relating to this Project. This waiver is also applicable to damages due to termination and/or value engineering and will survive termination of this Proposal.

J. Limitation of Liability

LS3P'S LIABILITY (IF ANY) TO OWNER FOR ANY AND ALL CLAIMS AND/OR DAMAGES SHALL BE LIMITED TO A MAXIMUM OF AND SHALL NOT EXCEED, EITHER INDIVIDUALLY OR IN THE AGGREGATE, THE TOTAL AMOUNT OF LS3P'S FEE RECEIVED FOR THIS PROJECT.

K. Insurance

Owner and LS3P waive all rights against each other for damages to the extent covered by property insurance applicable to this Work except such rights as they may have to proceeds of such insurance held by Owner as a fiduciary. Owner shall cause the general liability insurance policies issued to the Contractor(s) and its subcontractors providing construction related activities in connection with the Project to list LS3P and its consultants as additional insureds under those policies by way of ISO endorsement CG 20 32 or its equivalent. Owner agrees to maintain general liability coverage in the amount of \$1,000,000.00 per occurrence and in the aggregate for the duration of the Project. Owner agrees to name LS3P and its consultants as additional insureds on its general liability policy providing coverage to this Project.

L. Third Party Claims

This Proposal shall not create any right, remedy, relationship, and/or cause of action in any third party.

M. Means, Methods, Schedule, and Safety

LS3P has no control over, charge of, or responsibility for hazardous materials or the means, methods, schedule, and/or safety in connection with this Project. LS3P and LS3P's consultants shall have no responsibility for the discovery, presence, handling, disposal of, or exposure of persons to hazardous materials or toxic substances in any form at the Project Site. LS3P or its consultants shall not be held liable for any hazardous materials or toxic substances related claim. Owner will have all hazardous materials or toxic substances removed independently before construction begins. If any additional



hazardous material or toxic substances are encountered during the course of the work, Owner shall be responsible for providing industrial hygienist services necessary to carry out abatement, removal, or encapsulation of the material. LS3P or LS3P's consultants shall not be held liable for the discharge or release of contaminants or other pollutants. Owner agrees to indemnify and hold harmless LS3P and its consultants from and against all third-party claims related to hazardous materials and/or toxic substances.

N. Notices

The only valid addresses for receipt of notice are as follows:

LS3P: LS3P ASSOCIATES LTD.
 14 O'Henry Avenue
 Suite 210
 Asheville, NC 28801

Owner: _____

O. Basis of Opinion

Projects requiring observation and reporting of existing structures may have conditions concealed from view that differ from available documentation or other information. LS3P is not responsible for the costs or delays resulting from the later discovery of such actual conditions. This Proposal and any subsequent representation is a statement of professional opinion based on the information available during the assessment and/or evaluation of the subject property. Such opinion is formed by the judgment of LS3P from the knowledge of available facts and other information. This Proposal and any subsequent representation only reflect the conditions on the day of site observation. Owner hereby acknowledges that existing conditions can and will change relative to the information contained in this Proposal and/or any subsequent representation.

P. Payment

Design Services will be billed monthly in accord with the percentage of work complete and the terms of compensation. Additional Services by LS3P, Additional Services by consultants, and/or reimbursable expenses shall be billed monthly based upon accrued amount including mark-ups. Owner shall pay LS3P the balance due upon receipt of invoice. If unpaid invoices become more than sixty (60) days overdue, LS3P may, upon seven (7) days written notice to Owner, contact Owner directly for payment and/or stop work until payment is received. In the event of non-payment, Owner shall reimburse LS3P for any attorney's fees incurred to collect the unpaid receivables. LS3P will begin work on this Project once the Proposal signed by both parties have been received. Payments on this Project should be sent directly to:

LS3P ASSOCIATES LTD.
PO Box 96327
Charlotte, NC 28296-0327



Q. Dispute Resolution

Dispute resolution shall be by stepped negotiations in the following order: (1) exchange of written statements of position, (2) meeting of representatives with full settlement authority, (3) mediation, and then (4) litigation.

R. Enhanced Construction Phase Services

Owner agrees that Work will progress during the period between LS3P’s Basic Construction Phase Services site visits that can and will be concealed from view during subsequent site visits, resulting in Work that LS3P is unable to observe. If Owner desires to reduce the amount of concealed Work that LS3P is unable to observe, LS3P shall provide Enhanced Construction Phase Services as Additional Services as indicated by Owner:

- Visit the site one (1) time per week;
- Visit the site two (2) times per week;
- Visit the site every “work day” as outlined in the Contractor’s construction schedule; or
- Provide “full time” site representation for the duration of the construction.

Owner further agrees that LS3P explained the benefits of Enhanced Construction Phase Services to Owner. If Owner voluntarily elected not to engage LS3P to perform such services, then Owner agrees that without Enhanced Construction Phase Services the Project may experience scheduling, budget, and/or coordination problems which will be more difficult and more costly to remedy than prevent.

II. STANDARD BILLING PROVISIONS

Confidential – Not for distribution without permission of LS3P

LS3P provides Architecture, Interiors, and Planning Services on a time and materials basis as follows:

1. Compensation for Services provided by LS3P personnel shall be at the following hourly rates:

| | |
|--|-------|
| Senior Officer / Principal | \$275 |
| Officer / Principal | \$250 |
| Senior Project Manager | \$225 |
| Senior Project Designer | \$225 |
| Project Manager | \$200 |
| Senior Architect / Senior Interior Designer | \$190 |
| Architectural Staff III / Interior Design Staff III / Design Staff III | \$170 |
| Architectural Staff II / Interior Design Staff II / Design Staff II | \$150 |
| Architectural Staff I / Interior Design Staff I / Design Staff I | \$135 |
| Designer | \$125 |
| Senior Technician | \$135 |
| Technician | \$125 |
| Administrative | \$100 |



2. For Services of Professional and Engineering Consultants including and not limited to Structural, Civil, Mechanical, Electrical, Plumbing, and Surveying Services, a multiple of 1.25 times the amount billed to LS3P will apply.
3. Billing will occur monthly or at the completion of the work, whichever comes sooner, with payments due upon receipt.
4. After thirty (30) days from the date of invoice, payments due and unpaid shall bear a late charge of one and one-half percent (1.5%) per month from the date of invoice.
5. Reimbursable Expenses (i.e., Travel, Reproductions, Plots, Postage, Handling and Delivery, Renderings, Models, etc.), incur a multiple of 1.1 times the amount expended by LS3P. Large quantity reproductions, blue-line prints, black-line prints, sepia prints, high resolution scans, and other special graphic media formats will be outsourced at vendor pricing plus customary 10% markup.
6. Digital Reproduction of Documents and Instruments of Service (limited to computer generated drawings and not to be considered Contract Documents as defined by the General Conditions for the Contract for Construction) may be obtained for specific qualified purposes with appropriate authorization and subject to an LS3P Letter of Agreement stating Terms and Conditions for release. Drawing Sheets prepared using Autodesk® Revit®, Autodesk® AutoCAD®, and Bentley® MicroStation® application software shall have the following per sheet billing rates as Digital Documents:

| <u>Electronic Files Formats</u> | <u>Per Sheet</u> |
|---------------------------------------|------------------|
| DWG (Autodesk® Drawing File) | \$30.00 |
| DGN (Bentley® Design File) | \$30.00 |
| DXF (Autodesk® Data Exchange File) | \$30.00 |
| DWF (Autodesk® Design Web Format) | \$10.00 |
| PDF (Adobe® Portable Document Format) | \$4.00 |

Autodesk Revit and AutoCAD drawing files represented in the DWG and DXF file formats and Bentley MicroStation design files represented in the DGN file format are viewable, printable and editable using application software. Autodesk Design Web Format or DWF files and Adobe® Portable Document Files or PDF files formats are viewable and printable using Autodesk Design Review and Adobe Acrobat Reader, respectively. These software viewers are available as free downloads. DWF and PDF file formats are not editable and may be scaled, red-lined or otherwise marked up without changing the original files. Additional charges for file format conversion may apply.

7. Minimum billable time for Depositions and Testimony is One-Half Day.
8. This standard schedule is subject to change 6 months from date of issuance.