

MULTIPLE PROJECT AGREEMENT

BETWEEN

UNION COUNTY, NORTH CAROLINA

AND

McMILLAN PAZDAN SMITH, PLLC  
D/B/A McMILLAN PAZDAN SMITH ARCHITECTURE

FOR

PROFESSIONAL ARCHITECTURAL SERVICES

DATE: February 6, 2024

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McMILLAN PAZDAN SMITH, PLLC  
D/B/A McMILLAN PAZDAN SMITH ARCHITECTURE  
FOR  
PROFESSIONAL ARCHITECTURAL SERVICES

THIS IS AN AGREEMENT made as of February 6, 2024, between Union County, North Carolina, with principal offices at 500 N. Main St., Monroe, North Carolina 28112, hereinafter referred to as “OWNER” and McMillan Pazdan Smith, PLLC d/b/a McMillan Pazdan Smith Architecture, with offices at 1422 S. Tryon St., Suite 700, Charlotte, NC 28203, hereinafter referred to as “ARCHITECT.”

OWNER desires to retain ARCHITECT, a professional architectural firm, to provide certain architectural services on one or more projects in which OWNER is involved; and

ARCHITECT desires to provide such services on such projects as may be agreed, from time to time, by the parties.

OWNER and ARCHITECT, in consideration of their mutual covenants, herein agree in respect of the performance of professional services by ARCHITECT and the payment for those services by OWNER as set forth below.

**SECTION 1 - PROJECT TASK ORDER**

1.1 This Agreement shall apply to as many projects as OWNER and ARCHITECT agree will be performed under the terms and conditions of this Agreement. Each project ARCHITECT performs for OWNER hereunder shall be designated by a “Task Order.” A sample Task Order is attached to this Agreement and marked as Exhibit “A”. No Task Order shall be binding or enforceable unless and until it has been properly executed by both OWNER and ARCHITECT. Each properly executed Task Order shall become a separate supplemental agreement to this Agreement. Notwithstanding anything herein to the contrary, this Agreement does not require OWNER to purchase any minimum amount of professional services, and a decision by OWNER to not make any purchase hereunder will violate neither this Agreement nor any implied duty of good faith and fair dealing. OWNER has no financial obligation under this Agreement absent OWNER’s execution of a valid and binding Task Order.

1.2 In resolving potential conflicts between this Agreement and the Task Order pertaining to a specific project, the terms of the Task Order shall control.

1.3 ARCHITECT represents and agrees that it is qualified and fully capable to perform and provide the professional architectural services and other services required or necessary under this

Agreement in a fully competent and professional manner, and that any consultants ARCHITECT engages (“Consultants”) are also fully capable and qualified to perform and provide the services that they will provide hereunder.

1.4 In performing services pursuant to this Agreement and any Task Order, ARCHITECT shall comply with all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. ARCHITECT shall also exercise reasonable care and diligence in performing its services under this Agreement in accordance with generally accepted standards for architectural practice in the region which is the situs of the project or task subject to the Task Order (“Standard of Care”).

1.5 ARCHITECT shall be responsible for all errors or omissions, in the drawings, specifications, and other documents prepared by ARCHITECT. It shall be the responsibility of ARCHITECT throughout the period of performance under this Agreement, including any Task Order, to use reasonable professional care and judgment to guard OWNER against defects and deficiencies in any work.

1.6 ARCHITECT shall correct at no additional cost to OWNER any and all errors, omissions, discrepancies, ambiguities, mistakes, or conflicts in the drawings, specifications, and other documents prepared by ARCHITECT.

1.7 Time is of the essence in this Agreement. ARCHITECT shall perform all services in a timely manner in accordance with any schedules set forth herein, including any Task Order. ARCHITECT shall ensure all necessary or appropriate applications for approvals are submitted to federal, state, and local governments or agencies in a timely manner so as not to delay the design or activities of the PROJECT.

1.8 Any of ARCHITECT’s key personnel, along with its Consultants and their key personnel, may be listed in a Task Order. No changes to ARCHITECT’s key personnel or its Consultants and their key personnel shall be permitted without the written consent of OWNER, which consent shall not be unreasonably withheld.

## **SECTION 2 - BASIC SERVICES**

ARCHITECT shall provide OWNER with all architectural services required to satisfactorily complete all phases and requirements of a Task Order within the time limitations set forth therein in accordance with the Standard of Care. ARCHITECT’s basic services and responsibilities (“Basic Services”) for each Task Order are defined in the Appendix, Exhibit A, “Scope of Services”, which is part of this Agreement as if fully set forth herein. A detailed Scope of Services for each Task Order, or for Additional Services, will be developed at the direction of OWNER and will formally become a part of this Agreement through a Task Order executed by both parties, which Task Order shall include payment provisions and provisions for time of completion by ARCHITECT.

## **2.1 General.**

ARCHITECT's Basic Services and responsibilities to OWNER are as defined in the Task Order applicable to each project. These services may include providing professional architectural consultation and advice and furnishing architectural design and/or construction administration services and related architectural/engineering services incidental thereto.

## **SECTION 3 – ADDITIONAL SERVICES**

### **3.1 General**

Additional Services are not included in the Basic Services; and shall be provided if authorized by Task Order; and shall be paid for by OWNER as provided in this Agreement, in addition to compensation for Basic Services.

### **3.2 Other Additional Services**

When required and authorized by OWNER, ARCHITECT shall perform the following Additional Services:

3.2.1 Those services resulting from significant changes in the general scope, extent, character or design of the PROJECT, including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing. ARCHITECT shall revise previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ARCHITECT's control, and not foreseeable to ARCHITECT.

3.2.2 Preparation of alternate, separate, or sequential bid documents or other extra services in connection with bidding or construction prior to the completion of a final design, when requested by OWNER.

3.2.3 Any type of property surveys, other special field surveys or related services needed for the transfer of interests in real property, and architectural surveys and staking to enable a contractor to proceed with the PROJECT.

3.2.4 Preparation of applications and supporting documents for private or governmental grants, loans or advances on the PROJECT in addition to those furnished under Basic Services; preparation, review and/or evaluation of environmental impact statements and assessments, and the effect on the design requirements for the PROJECT of any such statements and documents prepared by others.

3.2.5 Investigations and studies, in addition to those provided under Basic Services, involving, but not limited to, operations, preventive maintenance programs, maintenance and overhead expenses, value engineering during the course of design, feasibility studies, cash flow and economic evaluations, rate schedules and appraisals, assistance to OWNER with obtaining

financing for the PROJECT; evaluation of processes available for licensing and assistance to OWNER in obtaining process licensing; perform detailed quantity surveys of material, equipment and labor; and audits or inventories required during construction of the PROJECT.

3.2.6 Acquisition of services of Consultants or subcontractors for services other than Basic Services.

3.2.7 Assistance to OWNER with bid protests, or rebidding not due to the fault of ARCHITECT.

3.2.8 Preparation to serve as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the PROJECT.

3.2.9 Services related to work directive changes and change orders to reflect changes requested by OWNER or contractor on a construction project.

3.2.10 Revisions to drawings and specifications occasioned by the acceptance by OWNER of substitutions proposed by a contractor outside of the standard substitutions process.

3.2.11 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction; (2) acceleration of the progress schedule involving services beyond normal working hours; (3) default by any contractor; (4) failure of the contractor to complete its work within the time stipulated in the contract documents; and (5) approval of extensions of the time for performance. In no event shall ARCHITECT treat any services rendered under this Section as Additional Services for which it is entitled to additional compensation hereunder if ARCHITECT caused or contributed in any way to making the additional or extended service necessary.

3.2.12 Services other than Basic Services during a PROJECT's construction phase in connection with any partial utilization of the PROJECT by OWNER prior to substantial completion of the PROJECT.

3.2.13 Assistance in the closing of any financial transaction for the PROJECT.

3.2.14 Preparation of mitigation plans and environmental evaluations related to the compliance with wetlands protection regulations.

#### **SECTION 4 - OWNER'S RESPONSIBILITIES**

OWNER shall perform the following:

4.1 Designate in writing a person to act as OWNER's representative with respect to services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret OWNER's policies and make decisions with respect to ARCHITECT's services for the PROJECT, except those decisions which require approval by the County Manager or Board of Commissioners pursuant hereto.

4.2 Provide to ARCHITECT any data, plans, reports and other information in possession of, and reasonably accessible by, OWNER which are relevant to the execution of ARCHITECT's duties on the PROJECT; provide all criteria and full available information as to OWNER's requirements for the PROJECT, including design criteria, objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations.

4.3 After receiving notice from ARCHITECT, furnish, if necessary, services of soils/geotechnical engineers, archeological professionals or other consultants. These services may include, without limitation, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment, with reports and appropriate professional recommendations.

4.4 Provide land surveys to include property, boundary, easement, right-of-way, utility surveys, property descriptions, zoning, deed or other land use restrictions.

4.5 Arrange for access to, and make all provisions for ARCHITECT and its Consultants to enter upon public and private property as required by ARCHITECT and its Consultants, to perform services under this Agreement.

4.6 Review all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ARCHITECT.

4.7 Provide, if necessary, environmental assessments, or environmental impact statements related to the PROJECT; furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and approvals and consents from others as may be necessary for completion of the PROJECT, except those approvals, permits and consents to be provided by ARCHITECT pursuant to this Agreement.

4.8 Provide accounting and insurance counseling services as necessary for OWNER regarding the PROJECT, and auditing services as OWNER may require to ascertain how or for what purpose any contractor has used the monies paid under any construction contract.

4.9 Advertise for proposals from bidders, open the proposals at an appointed time and place, and pay for all costs incidental thereto.

4.10 Give prompt notice to ARCHITECT whenever OWNER observes or otherwise becomes aware of any condition that affects the scope or timing of ARCHITECT's services, or any defect or nonconformity in the work of any contractor.

4.11 Render approvals and decisions as is necessary for the orderly progress of ARCHITECT's services. ARCHITECT shall be entitled to rely upon the accuracy and completeness of all information and services provided by OWNER or at OWNER's direction, unless ARCHITECT knows or in the exercise of reasonable professional skill and care should or

would have reason to know that information and services provided by OWNER were inaccurate or not completely accurate.

## **SECTION 5 - PERIODS OF SERVICE**

5.1 The provisions of this Section 5 and the various rates of compensation for ARCHITECT's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion of the Services contained herein. ARCHITECT's obligation to render services hereunder will extend for a period which may reasonably be required for the performance of ARCHITECT's services and required extensions thereto. If specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided, and if such dates are exceeded through no fault of ARCHITECT, all rates, measures and amounts of compensation provided herein may be subject to equitable adjustment.

5.2 The services required for the various phases shall be performed within the time stipulated and mutually agreed in the Task Order for which services are authorized.

5.3 ARCHITECT's services shall be considered complete at the earlier of (1) the date when the submissions for that phase of ARCHITECT's services have been accepted by OWNER; or (2) thirty (30) days after the date when such submissions are delivered to OWNER for final acceptance, provided no dispute exists as to the quality of ARCHITECT's submissions.

5.4 If OWNER requests significant modifications or changes in the general scope, extent or character of the PROJECT, the time of performance of ARCHITECT's services and the various rates of compensation may be adjusted equitably.

## **SECTION 6 - PAYMENTS TO ARCHITECT**

### **6.1 Methods of Payment for Services and Expenses of ARCHITECT**

6.1.1 Payroll Cost shall mean the salary and wages at the time services are performed of all personnel engaged directly on the PROJECT, including, but not limited to, architects, engineers, scientists, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment; excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation, holiday pay, and other benefits.

6.1.2 Direct Labor Costs shall mean salary and wages at the time services are performed of all personnel engaged directly on the PROJECT, including, but not limited to, architects, engineers, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel, but does not include indirect payroll-related costs or fringe benefits.



6.1.3 Per Diem shall mean an hourly rate as stated in the Task Order to be paid to ARCHITECT as total compensation for each hour an employee of ARCHITECT works on the PROJECT, plus Reimbursable Expenses.

6.1.4 Overhead Multiplier shall mean a factor by which the Direct Labor Cost is multiplied to compensate for general and administrative overhead. When the basis of compensation is Per Diem, the Overhead Multiplier includes profit. When the basis of compensation is Cost Plus Fixed Fee, the Overhead Multiplier Does not include profit.

6.1.5 Reimbursable Expenses shall mean the actual expenses incurred directly or indirectly in connection with the PROJECT, limited to: transportation and subsistence incidental thereto, providing and maintaining field office facilities including furnishings and utilities if such office is reasonably necessary, subsistence and transportation of resident project representatives and their assistants, express mail, reproduction of reports, drawings, specifications, bidding documents, and similar PROJECT-related items in addition to those required as Basic Services. Reimbursable Expenses for each Task Order issued pursuant hereto shall be limited by a not-to-exceed amount designated in the Task Order.

6.1.6 Lump Sum shall mean a fixed amount agreed upon in advance, subject to modification and amendments, for services rendered.

6.1.7 Cost Plus Fixed Fee shall mean compensation based on Direct Labor Cost times an Overhead Multiplier plus Reimbursable Expenses, plus payment of a fixed amount agreed upon in advance, subject to modifications and amendments, for ARCHITECT 's services.

## **6.2 Basis and Amount of Compensation for Additional Services.**

Compensation for Additional Services shall be on the basis of Per Diem, Cost plus Fixed Fee, or Lump Sum to be agreed upon at time of request for Additional Services. The estimated amount of Additional Services will be determined at the time the Additional Services are requested.

## **6.3 Intervals of Payments**

6.3.1 Payments to ARCHITECT for Basic Services shall be made once every month by OWNER. ARCHITECT's invoices will be submitted once every month and will be based upon total services completed at the time of billing. OWNER shall make prompt payments in response to ARCHITECT's invoices.

6.3.2 Payments for Additional Services rendered and Reimbursable Expenses authorized shall be made once every month. ARCHITECT's invoices will be submitted once every month and will be based upon total services completed at the time of billing. OWNER shall make prompt payments in response to ARCHITECT's invoices.



## **6.4 Other Provisions Concerning Payments**

6.4.1 If OWNER fails to make any undisputed payment due ARCHITECT for services and expenses within sixty (60) days after receipt of ARCHITECT's statement, ARCHITECT may, after giving seven (7) days' written notice to OWNER, suspend services under this Agreement until ARCHITECT has been paid in full all amounts due for services, expenses and charges.

6.4.2 If during any authorized phase the PROJECT is suspended or abandoned in whole or in part for more than ninety (90) days through no fault of ARCHITECT, ARCHITECT shall be compensated for all services performed prior to receipt of written notice from OWNER of such suspension or abandonment, together with any Reimbursable Expenses then due. If the PROJECT is resumed after being suspended for more than ninety (90) days, ARCHITECT's compensation may be equitably adjusted.

6.4.3 If and to the extent that the contract time initially established in any construction contract documents is exceeded or extended through no fault of ARCHITECT, compensation for any Basic Services required during such extended period of administration of the construction contract may be equitably adjusted.

6.4.4 If any items in any invoices submitted by ARCHITECT are disputed by OWNER for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER shall promptly notify ARCHITECT of dispute and request clarification and/or remedial action. After any dispute has been settled, ARCHITECT shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

6.4.5 Accounting records of ARCHITECT's compensation for Additional Services and Reimbursable Expenses pertaining to the PROJECT shall be maintained by ARCHITECT and its Consultants and subcontractors in accordance with generally accepted accounting practices and shall be available for inspection by OWNER or OWNER's representatives at mutually convenient times for a period of three (3) years after completion of the PROJECT.

## **SECTION 7 - GENERAL CONSIDERATIONS**

### **7.1 Term**

This Agreement is effective as of the date first written above ("Effective Date"). The Agreement shall have an initial term of two (2) years from the Effective Date ("Initial Term"). At OWNER's sole option, OWNER may renew this Agreement for an additional one-year term upon at least thirty (30) days' written notice to ARCHITECT prior to the expiration of the Initial Term.

### **7.2 Termination**

7.2.1 If, through any cause within ARCHITECT's reasonable control, ARCHITECT fails to fulfill in a timely and proper manner its obligations under this Agreement, or if ARCHITECT

violates any of the covenants, agreements, terms or conditions of this Agreement, OWNER shall thereupon have the right to terminate this Agreement, or any individual Task Order, by giving ten (10) days' written notice to ARCHITECT of such termination and specifying the date when termination shall be effective. If ARCHITECT cures the defaults set forth in the notice, then it shall be obligated to continue to perform under this Agreement.

Notwithstanding the above, ARCHITECT shall not be relieved of liability to OWNER for damages sustained by it by virtue of any breach of the Agreement by ARCHITECT. OWNER may withhold payments to ARCHITECT for the purpose of settlement until such time as the exact amount of damages due OWNER from ARCHITECT is determined.

7.2.2 If, through any cause within OWNER's reasonable control, OWNER fails to fulfill in a timely and proper manner its obligations under this Agreement, or if OWNER violates any of the covenants, agreements, terms or conditions of this Agreement, ARCHITECT shall thereupon have the right to terminate this Agreement by giving ten (10) days' written notice to OWNER of such termination and specifying the date when termination shall be effective. If OWNER cures the defaults set forth in the notice, then it shall be obligated to continue to perform under this Agreement.

7.2.3 OWNER may terminate this Agreement, or any individual Task Order, without cause at any time upon provision of not less than five (5) days' written notice from it to ARCHITECT. If the Agreement is terminated by OWNER as provided herein, ARCHITECT shall be paid for Basic Services and Additional Services actually performed prior to the termination of this Agreement, less any payments previously made.

7.2.4 Upon termination, ARCHITECT shall promptly discontinue all services under this Agreement unless the termination notice from OWNER directs otherwise.

### **7.3 Reuse of Documents**

7.3.1 ARCHITECT hereby assigns to OWNER, without reservation, all copyrights in all PROJECT-related documents, models, photographs, and other expression created by ARCHITECT as required deliverables pursuant to this Agreement. Among those documents are certain "Instruments of Service," including any design drawings and construction documents. OWNER's obligation to pay ARCHITECT is expressly conditioned upon ARCHITECT's obtaining a valid written comprehensive assignment of copyrights from its Consultants (and subcontractors if applicable) and in terms identical to those that obligate ARCHITECT to OWNER as expressed in this Subsection, which copyrights ARCHITECT, in turn, hereby assigns to OWNER. OWNER in return hereby grants ARCHITECT and its Consultants a non-revocable, non-exclusive license to reproduce the documents for purposes relating directly to ARCHITECT's performance of its obligations under this Agreement, use in ARCHITECT's professional activities for ARCHITECT's archival records, and for ARCHITECT's reproduction of drawings and photographs in ARCHITECT's marketing materials.

7.3.2 To the extent that liability arises from misuse of the Instruments of Service or reuse of the Instruments of Service on a PROJECT other than the PROJECT contemplated herein by

OWNER or another architect or engineer, ARCHITECT shall not be responsible for that misuse or reuse of the Instruments of Service on a project other than the PROJECT contemplated herein.

#### **7.4 Confidentiality**

ARCHITECT shall maintain the confidentiality of information specifically designated as confidential by OWNER, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent ARCHITECT from establishing a claim or defense in an adjudicatory proceeding. ARCHITECT understands and agrees that in addition to any other information designated as confidential by OWNER, the detailed plans and drawings of public buildings and infrastructure facilities, pursuant to G.S. 132-1.7, are not considered public record and ARCHITECT shall keep such information confidential. ARCHITECT shall require of its Consultants and subcontractors similar agreements to maintain the confidentiality of information required to remain confidential by this Agreement.

#### **7.5 Insurance**

At ARCHITECT's sole expense, ARCHITECT shall procure and maintain the following minimum insurances with insurers authorized to do business in North Carolina and rated A-VII or better by A.M. Best, or as otherwise authorized by the Union County Risk Manager.

**A. WORKERS' COMPENSATION**

Statutory (coverage for three or more employees) limits covering all employees, including Employer's Liability with limits of:

|           |                         |
|-----------|-------------------------|
| \$500,000 | Each Accident           |
| \$500,000 | Disease - Each Employee |
| \$500,000 | Disease - Policy Limit  |

**B. COMMERCIAL GENERAL LIABILITY**

Covering all operations involved in this Agreement.

|             |                                         |
|-------------|-----------------------------------------|
| \$2,000,000 | General Aggregate                       |
| \$2,000,000 | Products/Completed Operations Aggregate |
| \$1,000,000 | Each Occurrence                         |
| \$1,000,000 | Personal and Advertising Injury Limit   |

**C. COMMERCIAL AUTOMOBILE LIABILITY**

|             |                                  |
|-------------|----------------------------------|
| \$1,000,000 | Combined Single Limit - Any Auto |
|-------------|----------------------------------|

**D. PROFESSIONAL LIABILITY**

|             |           |
|-------------|-----------|
| \$1,000,000 | Per Claim |
|-------------|-----------|

ARCHITECT shall provide evidence of continuation or renewal of Professional Liability Insurance for a period of two (2) years following termination of the Agreement.

#### **ADDITIONAL INSURANCE REQUIREMENTS**

- A. ARCHITECT's General Liability policy shall be endorsed, specifically or generally, to include the following as Additional Insured:

**UNION COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY INSURANCE POLICY.**

- B. Before commencement of any work or event, ARCHITECT shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.
- C. ARCHITECT shall have no right of recovery or subrogation against OWNER (including its officers, agents and employees), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.
- E. OWNER shall have no liability with respect to ARCHITECT's personal property whether insured or not insured. Any deductible or self-insured retention is the sole responsibility of ARCHITECT.
- F. Notwithstanding the notification requirements of the Insurer, ARCHITECT hereby agrees to notify OWNER's Risk Manager at 500 N. Main Street, Suite #130, Monroe, NC 28112, within two (2) days of the cancellation or substantive change of any insurance policy set out herein. Union, in its sole discretion, may deem failure to provide such notice as a breach of this Agreement.
- G. The Certificate of Insurance should note in the Description of Operations the following:

Department: Facilities Management  
Contract #: 8625

- H. Insurance procured by ARCHITECT shall not reduce nor limit ARCHITECT's contractual obligation to indemnify and save harmless OWNER for claims made or suits brought which result from or are in connection with the performance of this Agreement.

I. Certificate Holder shall be listed as follows:

Union County  
Attention: Risk Manager  
500 N. Main Street, Suite #130  
Monroe, NC 28112

J. If ARCHITECT is authorized to assign or subcontract any of its rights or duties hereunder and in fact does so, ARCHITECT shall ensure that the assignee or subcontractor satisfies all requirements of this Agreement, including, but not limited to, maintenance of the required insurances coverage and provision of certificate(s) of insurance and additional insured endorsement(s), in proper form prior to commencement of services.

## **7.6 Controlling Law**

7.6.1 This agreement shall be construed and enforced in accordance with the laws of the State of North Carolina. The parties to this agreement confer exclusive jurisdiction of all disputes arising hereunder upon the General Courts of Justice of Union County, North Carolina.

7.6.2 By its signature on this Agreement, ARCHITECT represents and warrants that it is licensed and authorized to do business in the state of North Carolina and shall obtain all necessary licenses and permits required to perform the services set forth in this Agreement.

## **7.7 Dispute Resolution**

7.7.1 OWNER, as a North Carolina local government, shall use the dispute resolution process adopted by the State Building Commission pursuant to G.S. 143-135.26(11). This dispute resolution process will be available to all parties involved in the PROJECT, if the PROJECT is a building construction project, including OWNER, ARCHITECT, any contractor, and the first-tier and lower-tier subcontractors of a contractor and shall be available for any issues arising out of the construction process, provided that the amount in controversy is \$15,000 or more. ARCHITECT shall make this process available to its Consultants and subcontractors, when applicable, by inclusion of this provision in its Consultant and subcontractor agreements. OWNER and ARCHITECT agree that they shall submit any and all unsettled claims or counterclaims, disputes, or other matters in question between them arising out of or relating to the Agreement or the breach thereof in which the amount in controversy is at least \$15,000 to mediation in accordance with said rules.

7.7.2 The parties understand and agree that mediation in accordance with this Subsection 7.7 shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Section.

7.7.3 The parties agree that if there is no resolution of a dispute pursuant to this Subsection 7.7, the next step in the dispute resolution process, and the binding method of dispute resolution, shall be litigation in a court of competent jurisdiction.

7.7.4 The following disputes are not subject to mediation under this Subsection 7.7: (i) a dispute seeking a non-monetary recovery; (ii) a dispute seeking a monetary recovery less than \$15,000, and (iii) a dispute not involving the construction of a building.

## **7.8 Successors and Assigns**

7.8.1 OWNER and ARCHITECT hereby bind their respective partners, successors, executors, administrators, legal representatives and, to the extent permitted by Subsection 7.8.2. below, their assigns, to the terms, conditions and covenants of this Agreement.

7.8.2 Neither OWNER nor ARCHITECT shall assign, sublet or transfer any rights under or interest in this Agreement (including, but without limitation, monies that may become due or monies that are due) without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law.

7.8.3 Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ARCHITECT from employing Consultants and subcontractors as ARCHITECT may deem appropriate to assist in the performance of services under this Agreement; however, the cost of any such professionals shall be passed through to OWNER without any surcharge, finder's fee or other added charge imposed by ARCHITECT.

7.8.4 Except as may be expressly stated otherwise in this Agreement, nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ARCHITECT, and all duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of OWNER and ARCHITECT and not for the benefit of any other party.

## **7.9 Equal Employment and Nondiscrimination**

In connection with the services under this Agreement, ARCHITECT agrees to comply with the applicable provisions of state and federal equal opportunity statutes and regulations.

## **7.10 Indemnification**

ARCHITECT agrees to protect, indemnify, and hold OWNER, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of this agreement and/or the performance hereof that are proximately caused by the negligence or intentional misconduct of ARCHITECT, its officers, employees, Consultants, subcontractors or agents except to the extent the same are caused by the negligence or willful misconduct of OWNER. It is the intent of this



provision to require ARCHITECT to indemnify OWNER to the fullest extent permitted under North Carolina law.

#### **7.11 Owner Not Liable for Special or Consequential Damages**

OWNER shall not be liable to ARCHITECT, its agents, or representatives or any of its Consultants or subcontractors for or on account of any stoppages or delay in the performance of any obligations of OWNER, or any other consequential, indirect, or special damages or lost profits related to this Agreement.

#### **7.12 Relationship of the Parties**

The relationship of the parties established by this Agreement is solely that of independent contractors. Nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, co-owners, or otherwise as participants in a joint venture. Neither party nor its agents or employees is the representative of the other for any purpose, and neither party has power or authority to act for, bind, or otherwise create or assume any obligation on behalf of the other.

#### **7.13 Changes and Modifications**

OWNER and ARCHITECT agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made a part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement.

#### **7.14 Severability and Waiver**

In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon OWNER and ARCHITECT. One or more waivers by either of any provision, term, condition or covenant shall not be construed by the non-waiving party as a waiver of a subsequent breach of the same provision by the waiving party.

#### **7.15 Extent of Agreement**

7.15.1 This Agreement, including all exhibits, and any and all amendments, modifications, and supplements duly executed by OWNER and ARCHITECT in accordance with this Agreement, shall govern and supersede any and all inconsistent or contradictory terms, prior oral or written representations or understandings, conditions or provisions set forth in any purchase orders, requisitions, requests for proposals, authorizations of services, notices to proceed or other forms or documents issued by OWNER with respect to the PROJECT or ARCHITECT's services. This Agreement shall constitute the entire understanding and agreement of OWNER and ARCHITECT with respect to ARCHITECT's services on the PROJECT.



7.15.2 ARCHITECT and OWNER shall execute and deliver such further instruments as may reasonably be requested by the other with respect to completion of the transaction contemplated by this Agreement. None of the instruments shall contain undertakings or representations not set forth in the Agreement or inconsistent herewith.

#### **7.16 Notice and Service Thereof.**

Notices required hereunder shall be in writing and shall be deemed to have been duly given if mailed by certified or registered mail, return receipt requested, or by personal delivery as follows:

(a) If to OWNER:

Facilities Director  
Union County, NC Government  
1407 Airport Road  
Monroe, NC 28110

With a copy to:

County Attorney  
Union County, NC Government  
500 North Main Street, Suite 925  
Monroe, NC 28112

(b) If to ARCHITECT:

McMillan Pazdan Smith, PLLC  
d/b/a McMillan Pazdan Smith Architecture  
1422 S. Tryon St., Suite 700  
Charlotte, NC 28203

or to such other persons or places as OWNER or ARCHITECT shall furnish in writing to the other.

Any services and/or work performed, prior to execution of this Agreement, by ARCHITECT for OWNER in connection with the PROJECT shall be covered and governed by this Agreement and deemed rendered pursuant hereto.

#### **7.17 E-Verify.**

E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. ARCHITECT shall ensure that ARCHITECT and any Consultant or subcontractor performing work under this Agreement:

(i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the

requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this provision by ARCHITECT will be considered a breach of this Agreement, which entitles OWNER to terminate this Agreement, without penalty, upon notice to ARCHITECT.

### 7.18 Iran Divestment Act.

Pursuant to Article 6E of Chapter 147 of the North Carolina General Statutes, OWNER must require most entities with which it contracts, which would include ARCHITECT under this Agreement, to certify that the entity is not identified on a list created by the State Treasurer pursuant to N.C.G.S. § 147-86.58 (the "Final Divestment List"). This requirement is related to ensuring that entities with which local governments contract are not involved in investment activities in Iran. ARCHITECT certifies that: (i) it is not listed on the Final Divestment List; and (ii) it will not utilize any Consultant or subcontractor performing work under this Agreement which is listed on the Final Divestment List.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and have executed this Agreement as of the day and year first written above.

WITNESS

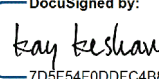
UNION COUNTY

By:   
DocuSigned by:  
6F93471AAAD34A4...  
 Lynn West  
 Clerk to the Board

By:   
DocuSigned by:  
B14014C7F9F4414...  
 Brian W. Matthews  
 County Manager (SEAL)

WITNESS:

McMILLAN PAZDAN SMITH, PLLC D/B/A  
 McMILLAN PAZDAN SMITH ARCHITECTURE

  
DocuSigned by:  
7D5F54F0DDFC4B8...  
 Kay Keshav  
 Project Coordinator

By:   
DocuSigned by:  
E560006A593D4D0...  
 Scott Hinson  
 Principal - Charlotte Office Director (SEAL)

Approved As To Legal Form RLM

No Preaudit Required

## APPENDIX

### Exhibit A

**Sample**

#### TASK ORDER

**\*\*\*NOTE: EACH TASK ORDER SHOULD BE SPECIFICALLY TAILORED TO INCLUDE ANY ADDITIONAL INFORMATION, TERMS AND CONDITIONS WHICH APPLY TO A PARTICULAR PROJECT, BUT WHICH DO NOT APPLY TO ALL OF THE OTHER PROJECTS TO BE PERFORMED UNDER THE MULTIPLE PROJECT AGREEMENT. THE “TASK ORDER NUMBER,” “PROJECT NAME,” “PROJECT DESCRIPTION,” “SCOPE OF BASIC SERVICES TO BE PERFORMED BY ARCHITECT ON THE PROJECT,” “PERIODS OF SERVICE,” AND “PAYMENTS TO ARCHITECT” WILL LIKELY BE INCLUDED IN EACH TASK ORDER. THE REMAINING “PARTS” SHOULD BE DELETED FROM THE TASK ORDER UNLESS THEY ARE NEEDED TO STATE INFORMATION, TERMS OR CONDITIONS WHICH DIFFER FROM THOSE CONTAINED IN THE MULTIPLE PROJECT AGREEMENT.**

This Task Order pertains to an Agreement by and between UNION COUNTY (“OWNER”), and McMILLAN PAZDAN SMITH, PLLC D/B/A McMILLAN PAZDAN SMITH ARCHITECTURE (“ARCHITECT”), dated \_\_\_\_\_, (“the Agreement”). ARCHITECT shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: \_\_\_\_\_

**\*\*\*NOTE: THIS IS A SEQUENTIAL NUMBER BASED UPON THE YEAR IN WHICH THE AGREEMENT IS EXECUTED. FOR EXAMPLE, IF THE AGREEMENT WAS EXECUTED IN 2019, THE FIRST TASK ORDER WOULD BE NUMBER “2019-1,” THE SECOND TASK ORDER WOULD BE NUMBER “2019-2,” ETC.\*\*\***

RELATED RFQ NUMBER: 2023-070

PROJECT NAME:

PART 1.0 PROJECT DESCRIPTION:

PART 2.0 SCOPE OF BASIC SERVICES TO BE PERFORMED BY ARCHITECT ON THE PROJECT:

PART 3.0 ADDITIONAL SERVICES, NOT PART OF BASIC SERVICES:

PART 4.0 OWNER'S RESPONSIBILITIES:

PART 5.0 PERIODS OF SERVICE:

- PART 6.0 PAYMENTS TO ARCHITECT:
- 1. Payment for Basic Services
  - 2. Payment for Additional Services:

PART 7.0 OTHER:

This Task Order is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

UNION COUNTY,  
NORTH CAROLINA

McMILLAN PAZDAN SMITH, PLLC D/B/A  
McMILLAN PAZDAN SMITH ARCHITECTURE

By:\_\_\_\_\_

By:\_\_\_\_\_

Name: Brian W. Matthews

Name:\_\_\_\_\_

Title: County Manager

Title:\_\_\_\_\_

Address: 500 N. Main St.  
Monroe, NC 28112

Address:\_\_\_\_\_  
\_\_\_\_\_