

DRAFT AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

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

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

«[Union County, North Carolina](#)»
«[500 North Main Street](#)»
«[Monroe, NC 28112](#)»
«»

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

«[C Design Inc.](#)»
«[1000 West Morehead](#)»
«[Suite 170](#)»
«[Charlotte, North Carolina, 28208](#)»
«»
«»
«»
«»

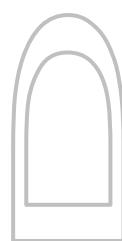
for the following Project:
(Name, location and detailed description)

«[Union County Transportation Department Office Expansion and Upgrades](#)»
«[1407 Airport Rd](#)»
«[Monroe, North Carolina 28110](#)»

The Owner and Architect agree as follows.

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

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



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

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

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

« [Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal](#) »

§ 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.)

« [Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal](#) »

§ 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.)

« [Construction Budget = \\$2,100,000.00](#) »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« [Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal](#) »

.2 Construction commencement date:

« [Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal](#) »

.3 Substantial Completion date or dates:

« [Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal](#) »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

« [Competitive Bid](#) »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« [N/A](#) »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address, and other contact information.)

[Christopher Boyd, Director](#)↔↔
[Facilities and Fleet Management](#)↔↔
[Union County](#)↔↔
[1407 Airport Road](#)↔↔
[Monroe, NC 28110](#)↔↔
↔↔

§ 1.1.8 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.)

« »

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

4 Geotechnical Engineer

↔↔↔↔
↔↔
↔↔
↔↔
↔↔

.2 Civil Engineer:



.13 Other, if any:

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



§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

« L. Joseph Humphrey »
« Civic Market Leader | Principal »
« C Design Inc. »
« 1000 West Morehead Street, Suite 170 »
« Charlotte, NC 28208 »

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Civil Engineer:

« Clint Lawrence, PE »« »
« Principal »
« Lawrence And Associates »
« 115 N Church St »
« Monroe, NC 28112 »

.24 Structural Engineer:

« Lance Williams, PE »« »
« Vice President - Practice Leader»
« STEWART »
« 1001 N. Tryon Street, Suite 1400 »
« Charlotte, NC 28202 »



.32 Mechanical Engineer:

« [James Currie, PE](#) »« »
« [Principal](#) »
« [CMTA](#) »
« [8801 J.M. Keynes Drive](#) »
« [Suite 240](#) »
« [Charlotte, NC 28269](#) »

.43 Electrical Engineer:

« [Dan Boland, PE](#) »« »
« [Senior Electrical Engineer](#) »
« [CMTA](#) »
« [8801 J.M. Keynes Drive](#) »
« [Suite 240](#) »
« [Charlotte, NC 28269](#) »



§ 1.1.11.2 Consultants retained under Supplemental Services:

[.1 Geotechnical Engineer:](#)

« [ESP & Associates](#) »« »
« [Chris Brown, PE](#) »
« [GTI Group Manager, Geo-Environmental](#) »
« [ESP Associates](#) »
« [3475 Lakemont Blvd](#) »
« [Fort Mill, SC 29708](#) »

[.2 Topographic & Utility Survey:](#)

« [Clint Lawrence, PE](#) »« »
« [Principal](#) »
« [Lawrence And Associates](#) »
« [115 N Church St](#) »
« [Monroe, NC 28112](#) »

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

« [Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal](#) »
« »

§ 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, [when appropriate, appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation](#) execute a Change Order reflecting the adjustments necessitated by the material change in the Initial

Information. 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. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 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 ~~and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form~~, 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.

§ 1.4 The Services covered by this Agreement are subject to the Owner's approved budget for the Cost of the Work as specified in Section 1.1.3 above. In the absence of an express provision to the contrary in this Agreement, the Architect shall perform the required Services in a manner that will render a Cost of the Work that does not exceed the Owner approved budget for the Cost of the Work.

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.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. This designation shall be submitted in writing for the Owner's prior approval. Once approved, the designated representative shall not be changed without the Owner's written authorization.

§ 2.4 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.

§ 2.5 Insurance.

a. 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.

i. WORKERS' COMPENSATION

Statutory 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

ii. 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

\$5,000 Medical Expense Limit

iii. **COMMERCIAL AUTOMOBILE LIABILITY**
\$1,000,000 Combined Single Limit - Any Auto

iv. **PROFESSIONAL LIABILITY**
\$1,000,000 Claims Made

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

b. ADDITIONAL INSURANCE REQUIREMENTS

i. 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.

ii. Before commencement of any work or event, Architect shall provide a Certificate of Insurance in satisfactory form as evidence of the insurances required above.

iii. Architect shall have no right of recovery or subrogation against Union County (including its officers, agents and employees).

iv. It is the intention of the parties that the insurance policies afforded by Architect shall protect both parties and be primary and non-contributory coverage for any and all losses covered by the above-described insurance.

v. Union County 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.

vi. Notwithstanding the notification requirements of the Insurer, Architect hereby agrees to notify Union County's Risk Manager at 500 N. Main Street # 130, Monroe, NC 28112, within two (2) days of the cancellation or substantive change of any insurance policy set out herein. Union County, in its sole discretion, may deem failure to provide such notice as a breach of this Agreement.

vi. The Certificate of Insurance should note in the Description of Operations the following:
Department: Facilities Management
Contract #:

vii. Insurance procured by Architect shall not reduce nor limit Architect's contractual obligation to indemnify, save harmless and defend Union County for claims made or suits brought which result from or are in connection with the performance of this Agreement.

viii. Certificate Holder shall be listed as follows:
Union County
Attention: Keith A. Richards, Risk Manager
500 N. Main Street, Suite #130
Monroe, NC 28112

ix. 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. 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.

§ 2.5.1 Commercial General Liability with policy limits of not less than $\text{($ } \text{)}$ for each occurrence and $\text{($ } \text{)}$ in the aggregate for bodily injury and property damage.

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

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, 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.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than $\text{($ } \text{)}$ each accident, $\text{($ } \text{)}$ each employee, and $\text{($ } \text{)}$ policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than $\text{($ } \text{)}$ per claim and $\text{($ } \text{)}$ in the aggregate.

§ 2.5.7 **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.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of these all services described in this Article 3 Agreement, unless such service is expressly noted as an Additional or Supplemental Service in Article 4, 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, consult with the Owner, 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 the services provided by the Architect and the Architect's Consultants with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to reasonably rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants, when that information is transmitted by the Owner to the Architect and is expressly designated in writing by the Owner to be reliable. The Architect shall provide prompt

written notice to the Owner ~~if within five (5) days after~~ 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 Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include 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 performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect ~~or Owner~~. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

§ 3.1.5 The Architect shall ~~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. review laws, codes, and regulations applicable to the Architect's services. The Architect's design, documents, and services, and those of the Architect's Consultants, shall conform to all applicable requirements imposed by governmental authorities and utility services having jurisdiction over the Project, which requirements are in effect at the time the services are provided; provided, however, that where such requirements are reasonably capable of contradictory interpretations, the Architect shall utilize his best professional efforts and judgment in applying the applicable requirement to the Project.~~

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

§ 3.2 Schematic Design Phase Services

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

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

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

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for 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.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. ~~The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.~~

§ 3.2.5.2 The Architect shall consider and explain to the Owner, in writing if requested, 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.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work ~~prepared in accordance with Section 6.3. Architect shall provide for the Owner's approval a written itemized estimate of the Cost of the Work based upon the Schematic Design package produced by the Architect, with costs projected to the scheduled date of completion of the Procurement Phase Services. If that estimate does not conform to the initial Owner-provided budget for the Cost of the Work, as set forth in Section 1.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the Owner's then-current budget for the Cost of the Work.~~

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's written authorization of any adjustments in the Project requirements and or the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents 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.

§ 3.3.2 The Architect shall provide for the Owner's approval a written itemized update the estimate of the Cost of the Work prepared in accordance with Section 6.3 based upon the Design Development package produced by the Architect, with costs projected to the scheduled date of completion of the Procurement Phase Services. If that estimate does not conform to the initial Owner-provided budget for the Cost of the Work, as set forth in Section 1.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the Owner's then-current budget for the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to including the estimate of the Cost of the Work required under Subsection 3.3.2, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's written approval of the Design Development Documents, and on the Owner's written authorization of any adjustments in the Project requirements and or the budget for the Cost of the Work, the Architect shall prepare Construction Documents for 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 Contractor 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.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the prepare Construction Documents that conform to the laws, codes, ordinances, regulations, and other requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and

may include bidding requirements and sample forms. Unless otherwise agreed by the Owner's attorney, the Architect shall use as Conditions of the Contract General Conditions of the Contract for Construction, AIA Document A201, 2017 edition, as modified by the Owner's attorney. In the event the Architect requires additional terms in the General Conditions specific to the Project, the Architect shall so indicate on the Owner's attorney's proposed General Conditions and provide to the Owner's attorney for review. Any such modifications shall be clearly marked. The Architect shall provide all bid documents to the Owner's attorney in sufficient time for review prior to bidding.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. Upon 75% completion of the Construction Documents Phase of Services, the Architect shall provide for the Owner's approval a written itemized estimate of the Cost of the Work – with costs projected to the scheduled date of completion of the Procurement Phase Services. If that estimate does not conform to the initial Owner-provided budget for the Cost of the Work, as set forth in Section 1.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the Owner's then-current budget for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request obtain the Owner's written approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 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 Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended by the Owner. If the Owner and Contractor 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.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor'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 Contractor or of any other persons or entities performing portions of the Work. However, to the extent that the Architect's or the Architect's Consultants' negligent conduct, failure to perform, or omissions result in damage to the Owner, the Architect will be liable for those damages. Nothing in this Agreement shall relieve the Architect of liability for the consequences of the failure to fully perform its Services in accordance with this Agreement or its standard of care.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Basic Services for the Contract Administration services Construction Phase Services under this Agreement commences with the award of the Contract for Construction and terminates on upon the date the Architect issues issuance to Owner of the final Certificate for Payment.

§ 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, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall be responsible

to the Owner for failing to report known material deviations in the Work based on the scope of observations included in the Architect's Basic Services under this Agreement. 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 Contractor, 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 Contractor, 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 Contractor. 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 terms indicated in 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 Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor 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 Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor 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 Contractor'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 Contractor 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 in writing by the Architect in connection with the Certificate of Payment.

§ 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 Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 Submittals

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

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor 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. Prior to bidding of the Project, the Architect shall provide to Owner's Designated Representative specific written notice of any such professional design services or certifications by design professionals required of the Contractor by the Architect in the Contract Documents. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor'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. Nothing in this Agreement shall be construed as an Owner's authorization to the Architect to delegate design responsibility.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall promptly acknowledge receipt of, 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 complete and accurate record of submittals and copies of submittals supplied by the Contractor 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 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 complete and accurate 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 Contractor; 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. The Architect shall ~~to~~ check conformance of the Work with the requirements of the Contract Documents and ~~to~~ verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Architect shall also observe the start-up of all major systems, including but not limited to mechanical, electrical, fire protection, and other similar systems.

§ 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 Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (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 Contractor under the Contract Documents.

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are 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. The Architect agrees that the fee for Basic Services as stated in Section 11.1 of this Agreement is adequate and sufficient consideration for his provision of all professional services (including those of his consulting engineers and other consultants) necessary for his complete performance in providing the complete design, bidding, and construction administration of the Project whether or not those services are individually expressed in this Agreement, the only exceptions to this being (1) the cost of those services that are expressly designated as being the "Owner's responsibility" in the table within this Section or are otherwise expressly designated as "Owner-provided;" (2) the cost of those engineering or consulting services that become necessary as a result of a changed in project scope affecting the Architect and that are the subject of a written agreement between the Owner and the Architect; and (3) services provided in accordance with Subsections 4.2.1, 4.2.2, and 4.2.5 herein. 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 (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

§ 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.)

[« Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal »](#)

↔↔

§ 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.)

[« Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal »](#)

↔↔

§ 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 E204™-2017, Sustainable Projects Exhibit, 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 If the Architect determines that services beyond the Basic Services are required Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing with reasonable promptness and explain the facts and circumstances giving rise to the need of its position. The notice shall

specifically state the basis for that determination and the fees and expenses that the Architect believes will be incurred by the Owner if the Owner authorizes such services. Under no circumstances will the Owner be obligated to compensate the Architect or its Subconsultants for fees and expenses related to Additional Services unless the Owner authorizes the performance of such services in writing. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Significant Services—services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing Significantly 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;
- .4 Services necessitated by decisions of the Owner 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;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party or material witness thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner in writing 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 Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service, provided that such Change Orders or Construction Change Directives constitute a major change in the nature of the Project as a result of increased funding, and so long as such action is not due in whole or in part to the negligence of the Architect or its Subconsultants or their failure to perform services in accordance with this Agreement;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom. When seeking authorization from Owner to provide this Additional Service, Architect shall inform Owner of the amount of credit to Owner is reasonably expected to be realized from the substitution and the projected cost of the Additional Service; or
- .6 Providing Contract Administration Services after issuance to the Owner of the final Certificate for Payment, provided that assistance provided to Owner for acquiring one-year contractor warranty work is part of Basic Services and not included as an Additional Service.

§ 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 «» («») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 «» («») visits to the site by the Architect during construction
- .3 «» («») inspections 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 «» («») inspections for any portion of the Work to determine final completion.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within «three» (« 3 ») months of the date of this Agreement following Substantial Completion, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 5.3 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.

§ 5.4 Upon request by the Architect and if available to the Owner, The the Owner shall furnish surveys describing to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. Information provided may include zoning and locations and dimensions pertaining to existing buildings. It may also include information concerning available utility services, above and below grade, including invert and depths. If requested by the Owner, the Architect shall provide this information as an Additional Service. 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 invert and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall furnish the services of consultants identified in Section 1.1.9 herein and other than those designated in Section 1.1.11 herein, or authorize the Architect to furnish them as an Additional Service

~~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 Architect shall coordinate its Services and those of its consultants with services provided by the Owner. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.~~

§ 5.9 ~~Unless otherwise provided in this Agreement, The~~ the Owner shall furnish tests, inspections and other-than-normal-or-customary 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.

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

§ 5.11 The Owner and the Architect shall provide each to the other prompt written notice to the Architect if the Owner becomes upon becoming aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service; provided, however, that this Section shall impose no duty to the Owner to discover such errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor 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 Contractor otherwise relating to the Project. Communications by and with the Architect's consultants Consultants shall be through the Architect.

§ 5.13 ~~Before executing the Contract for Construction, the Owner~~ The Architect shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement and in the Contract for Construction and the General Conditions of the Contract for Construction. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.15 ~~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, which cost and design have been previously approved in writing by the Owner, and shall include contractors' 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 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 Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, 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 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted shall consider adjustment to its budget for the Cost of the Work to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect 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.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

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.

§ 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 hereby assigns to the Owner, without reservation, all copyrights in all Project-related documents, models, photographs, and other expression created by the Architect. Among those documents are certain "Instruments of Service," including the design drawings and the Construction Documents. The Owner's obligation to pay the Architect is expressly conditioned upon the Architect's obtaining a valid written comprehensive assignment of copyrights from its Consultants in terms identical to those that obligate the Architect to the Owner as expressed in this section, which copyrights the Architect, in turn, hereby assigns to the Owner. The Owner in return hereby grants the Architect and its Consultants a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Architect's performance of its obligations under this Agreement, for the Architect's archival records, and for the Architect's reproduction of drawings and photographs in the Architect's marketing materials.

§ 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 Contractor, 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.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining 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 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. To the extent that liability arises from misuse of the Instruments of Service by the Owner or another architect or engineer, the Architect shall not be responsible for that misuse.

§ 7.4 The Architect hereby agrees to indemnify and hold harmless the Owner and its affiliated or related entities, and any officer, agent, and employee of any of them, against all claims, damages, loss, liability, or expense (including reasonable attorneys' fees and litigation expenses) asserted against or suffered by any of them for infringement of any copyright, patent, or other intellectual property arising out of any plans, designs, drawings, or specifications furnished by the Architect in the performance of this Agreement, unless the Owner specifically directs the Architect to use the particular item and causes the infringement. Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, 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 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by 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 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.

§ 8.2 Mediation/Dispute Resolution

§ 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. The 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 this construction project, including the Owner, the Architect, the Contractor, and the first-tier and lower-tier Subcontractors and shall be available for any issues arising out of the contract or construction process, provided that the amount in controversy is \$15,000 or more. The Architect shall make this process available to its Subcontractors and Consultants by inclusion of this provision in the subcontractor and consultant agreements. The Owner and the 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 Contract Documents or the breach thereof in which the amount in controversy is at least \$15,000 to mediation in accordance with said rules.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, 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. The provisions of this Section are subject to any other provision of this Agreement concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Section.

§ 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. The parties understand and agree that mediation in accordance with this Section 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.

§ 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. The parties agree that if there is no resolution of a dispute pursuant to this Section 8.2, the next step in the dispute resolution process, and the binding method of dispute resolution, shall be litigation in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.4 Consolidation or Joinder~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

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

ARTICLE 9 TERMINATION OR SUSPENSION

~~§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement and such failure results through no fault of the Architect, then the Architect may terminate this Agreement, or suspend provision of services, upon twenty-one (21) days' written notice to Owner. This notice shall specify detailed grounds for the intended termination or suspension. 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 for more than 90 consecutive days, 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 The Owner may terminate this Agreement upon not less than seven days' written notice should the other party Architect fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination and fail to cure such condition within seven days of the written notice.~~

§ 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 only for services properly performed prior to termination, and Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. The Architect waives its right to pursue Owner for damages other than those specifically set forth herein.

§ 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:



.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 Completionthe Project is fully completed, and Owner has made final payment to the Contractor.

§ 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 and any disputes which shall arise hereunder shall be governed by the laws of the State of North Carolina. The parties do hereby confer exclusive jurisdiction over any disputes which shall arise under this Agreement upon the General Courts of Justice for the State of North Carolina, sitting in Union County, place where the Project is located, excluding that jurisdiction's 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.

§ 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, as modified by the Owner.

§ 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. The Architect shall not assign its interests or obligations under this Agreement without the written consent of the Owner, which consent may be withheld by the Owner for any reason.

§ 10.3.1 The services provided by the Architect are, for purposes of this Agreement, deemed to be personal services. The Architect shall assign the team of persons designated in Section 1.1.11 herein ("the Project Team") to perform their designated tasks. The Architect shall not make substantial changes to the Project Team without the approval of the Owner. Should circumstances beyond the control of the Architect result in the need to change the Project Team, any replacement of a listed team member shall be approved in advance by the Owner. However, nothing in this clause shall be construed to limit the Owner's rights to terminate the Contract as provided in this Agreement. Termination by the Owner as a result of a change in the Architect's Project Team shall be deemed a justifiable termination within the meaning of Section 9.5.

§ 10.4 If the Owner requests the Architect to execute certificates or consents from lenders or governmental authorities, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days

prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such certificates and consents that are consistent with this Agreement, provided the proposed certificate or 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. The Architect shall, however, immediately inform the Owner in writing if the Architect becomes aware of any toxic substances or hazardous materials on the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, under no circumstances shall 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 may provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in 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 after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8. The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. The Architect understands and agrees that in addition to any other information designated as confidential by the Owner, the detailed plans and drawings of public buildings and infrastructure facilities, pursuant to G.S. § 132-1.7, is not considered public record and Architect shall keep such information confidential.

§ 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)

Seventy-Nine Thousand Dollars and 00/100 \leftrightarrow \$79,000.00 Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal »



.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.)

« N/A »

§ 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.)

[« Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal »](#)

↔↔

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « tenwenty » percent (« 210 »%), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

[« Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal »](#)

↔↔

§ 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:

<u>Advanced Planning Phase</u>	« <u>79,000.00</u> »	percent (« <u>100</u> » %)
Schematic Design Phase	« »	percent (« » %)
Design Development Phase	« »	percent (« » %)
Construction Documents Phase	« »	percent (« » %)
Procurement Phase	« »	percent (« » %)
Construction Phase	« »	percent (« » %)
Total Basic Compensation	one hundred	percent (<u>100</u> %)

§ 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. All requests for payment shall be in the form reasonably requested by the Owner and shall include backup documentation reasonably requested by the Owner.

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

[« Refer to EXHIBIT A: Advanced Planning Architectural Services Agreement Proposal »](#)

↔↔

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 if approved in writing by the Owner;
- .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 writing in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested in writing by the Owner or required for the Project, except work performed in-house by the Architect;
- .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 « zero » percent (« 0 » %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 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 2.5, and for which the Owner shall reimburse the Architect.)

↔↔

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of « zero » (\$ « 0.00 ») 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 <--> (---) 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.)

~~<--> % <--> Payments for services shall be made monthly and shall be in proportion to services performed. The Architect shall issue monthly invoices, on or about the same day each month. The Owner shall pay amounts properly due not more than twenty (20) days after the date of receipt of a valid invoice for such amounts by Owner's Finance Department. Amounts properly due yet unpaid thirty (30) days after the Owner's receipt of that invoice shall bear simple interest at an annual rate of twelve percent (12%), unless otherwise limited by law. The Architect shall submit with each invoice a current, itemized statement of amounts invoiced, amounts received, Reimbursable Expenses invoiced and received, and all other funds sought from the Owner and received by the Architect. The Owner has the right to inspect the Architect's documentation at any time to determine that the work has proceeded to the point asserted in any invoice for payment.~~

§ 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 submitted to the Owner when payment is requested.~~

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 Indemnification](#)

§ 12.1.1 In addition to any indemnification obligations noted elsewhere in this Agreement, the Architect shall protect, indemnify, and hold harmless the Owner, its officers, employees, and agents from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or other 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 due, in whole or in part, to the negligent acts, errors, or omissions or intentional misconduct of the Architect, its officers, its employees, its agents, and its Consultants; and such protection, indemnification, and holding harmless shall include, without limitation, any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or other 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 related to infringement of intellectual property rights. The Architect shall investigate, handle, and respond to the same at its sole expense and agrees to bear all other costs and expenses related thereto.

[§ 12.2 Other Special Terms and Conditions](#)

§ 12.2.1 All services listed in this Article 12, unless otherwise specifically designated as Supplemental or Additional Services, shall be considered Basic Services for which the Architect shall receive no additional compensation.

§ 12.2.2 In performing the services requested by the Owner, the Architect shall comply with all laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, to include compliance of the plans and specifications with applicable requirements of the Americans with Disabilities Act. Also without limiting the generality of the foregoing, the Architect shall comply with all applicable provisions of Article 8 of Chapter 143 of the North Carolina General Statutes regarding public contracts. By way of illustration, and not limitation, the Architect shall (i) observe formal bidding requirements in its preparation of the Contract Documents; (ii) require a minimum of three bids prior to opening on initial bid; and (iii) assist the Owner with minority participation in the bidding process, all as required by statute.

§ 12.2.3 Security of Data. Architect will take all steps reasonably necessary to safeguard all data, files, reports, and other information of Owner from access, loss, disclosure, destruction, or erasure. Any costs or expenses of replacing other damages resulting from the loss of such data will be borne by Architect to the extent such loss or damage occurs through its negligence. In the event Architect is allowed or required to provide online support to Owner, the method used shall not provide Architect with access to any information other than that absolutely necessary to allow Architect to provide support, and Owner shall be allowed to require reasonable security procedures for such access.

§ 12.2.4 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. The Architect agrees to ensure that the Architect and any 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. »

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 B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)



.3 Exhibits:

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

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 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: Advanced Planning Architectural Services Agreement Proposal »

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

« »

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

OWNER (Signature)

Brian Matthews

County Manager« »»

(Printed name and title)

ARCHITECT (Signature)

« L. Joseph Humphrey, AIA »

« Civic Market Leader | Principal »

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