

# DRAFT AIA® Document B133® – 2019

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

**AGREEMENT** made as of the «24th» day of « July » in the year 2024  
(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)

Little Diversified Architectural Consulting, Inc.  
615 South College Street, Suite 1600  
Charlotte, NC 28202

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

Union County Jail  
Union County, North Carolina

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

TBD

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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

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### 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.)*

See Exhibit A

§ 1.1.2 The Project's physical characteristics:

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

See Exhibit A

§ 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.)*

«TBD »

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

.1 Design phase milestone dates, if any:

Comprehensive Programming

Deliverable 5-months following NTP

.2 Construction commencement date:

«NA »

**.3 Substantial Completion date or dates:**

« NA »

**.4 Other milestone dates:**

« NA »

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

- [ ☒ ] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- [ ☐ ] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

**§ 1.1.6** The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:  
(List number and type of bid/procurement packages.)

« NA »

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

« NA »

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

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

Christopher Boyd, Director  
Union County Facilities and Fleet Management  
1407 Airport Road  
Monroe, NC 28110

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

Linda Whitaker, Project Manager  
Union County Facilities and Fleet Management  
1407 Airport Road  
Monroe, NC 28110

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

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

«TBD »

- .2 Land Surveyor:

NA

- .3 Geotechnical Engineer:

TBD

- .4 Civil Engineer:

NA

- .5 Other consultants and contractors:  
*(List any other consultants and contractors retained by the Owner.)*

«TBD »

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

Kelly Gordon, AIA  
Community Senior Associate, Little Diversified Architectural Consulting, Inc.  
615 South College Street, Suite 1600  
Charlotte, NC 28202

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

§ 1.1.12.1 Consultants retained under Basic Services:

- .1 Detention Center Programming Experts:

Justice Planners  
Alan Richardson  
1328 Waterway Drive, Unit 3  
North Myrtle Beach, SC 29582

- .2 Detention Center Experts:  
Hemphill-Randal Associates  
Frank Randel  
PO Box 77438  
Charlotte NC, 28271

- .3

§ 1.1.12.2 Consultants retained under Supplemental Services:

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

«See Exhibit A »

**§ 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, 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.

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

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

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

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

**§ 2.6 Insurance.**

- 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 #: 1112048100
- 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.

§ 2.7 Before performing Services under this Agreement, the Architect shall exercise the generally accepted standard of care in examining and familiarizing itself with all federal, state, and local laws, ordinances, rules, and regulations that affect the design, cost, or performance of the Work, and study and carefully correlate the Architect's observations with the preparation of design documents and the administration of the Contract Documents. The Architect shall study and carefully consider any voluntary legal standards the Owner may wish to achieve, including, but not limited to, any tax credit and incentive statutes, ordinances, rules, and regulations governing the Project, including, but not limited to, the Americans with Disabilities Act, Fair Housing Act, or other state or local disability laws. The Architect shall be liable to the Owner for the cost of correcting the Work to the extent resulting from the Architect's negligent failure to comply with the foregoing requirements. In the event of any enforcement actions (whether administrative, litigation, or otherwise) are brought against the Architect and/or Owner by governmental authorities arising out of alleged violations of the Americans with Disabilities Act, Fair Housing Act, or other state or local disability laws, there shall be an allocation of responsibility as between Owner, Architect, and any third party based on each party's relative degree of responsibility with respect to any fines, penalties, or other damages assessed against the Owner and/or Architect and/or damages incurred by them with respect to such alleged violation.

§ 2.8 Prior to the initiation of any Services under this Agreement, the Architect shall make a careful examination of the reasonably observable conditions at the Project site, and any reports or investigations of subsurface and latent physical conditions at the Project site, and shall become informed as to the location and nature of the proposed construction; the ecological and environmental criteria to be followed; the kind, character, and quantity of materials, surface and subsurface, to be encountered; and all other matters that may affect the design of the Project. The Architect shall carefully study and integrate its observations in its preparation of the design documents.

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

§ 3.1 The Architect's Basic Services consist of all services described in this 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.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, 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 the services provided by the Architect and the Architect's Consultants with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to reasonably rely on the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, 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 written notice to the Owner 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 Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

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

§ 3.1.6 The Architect shall 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.

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

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

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

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal. The Architect shall assist the Owner in reviewing the Construction Manager's proposal. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager in writing.

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

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

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

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner 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.

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

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

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



**§ 3.3.5.1** The Architect shall 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.

**§ 3.3.5.2** The Architect shall consider and explain to the Owner and the Construction Manager, 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.

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

**§ 3.3.7** Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase as part of Architect's Basic Services and at no cost to the Owner.

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

#### **§ 3.4 Design Development Phase Services**

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

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

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

#### **§ 3.5 Construction Documents Phase Services**

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

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

**§ 3.5.3** During the development of the Construction Documents, the Architect shall assist the Owner and Construction Manager in the development and preparation of bidding and procurement information that describes the time, place, and conditions of bidding, including bid or proposal forms. The Architect shall also compile a project manual that includes special conditions of the contract for construction and specifications, and may include bidding requirements and sample forms.

**§ 3.5.4** Upon the Architect's completion of the Construction Documents Phase of the Services, the Architect shall provide to the Owner and Construction Manager a list of all tests, inspections, and reports that are required by the Contract Documents, including, but not limited to, those provided by the Architect as a Basic Service. This list must designate the party responsible for the engagement and payment of the providers for those services.

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

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

## **§ 3.6 Construction Phase Services**

### **§ 3.6.1 General**

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction as modified and approved by Owner's attorney. Owner shall provide Architect a copy of the Owner/Construction Manager Agreement for review, and Architect shall inform Owner within seven days of receipt if any of the Architect's obligations under the Owner/Construction Manager Agreement are not included within Architect's Basic Services. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

**§ 3.6.1.2** Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates thirty (30) days after the date the Architect properly issues the final Certificate for Payment. The Owner may modify the duties, obligations, and responsibilities of the Architect upon written notice to the Architect. Upon notice to the Architect by the Owner of a reduction in the Architect's duties, obligations, and responsibilities, the Architect's Basic Fee shall be reduced to reflect the Architect's reduced cost of performance. If the Architect believes that a modification of its duties, obligations, and responsibilities will materially increase the cost of its performance, before performing services based on the changed scope or within ten (10) calendar days, whichever comes first, the Architect shall submit to the Owner a written request for an increase of its fees. Such request shall specify the added scope and the anticipated costs related to the change in scope. If the Owner approves an increase in the Architect's Basic Fee, the Owner and the Architect shall mutually execute a written amendment to this Agreement. The Architect hereby waives the right to an equitable adjustment or other increase in its Basic Fee or to invoice the Owner for Additional Services if the Architect does not submit a timely request for such an adjustment. Under no circumstances shall the Architect be entitled to additional compensation or time if the additional compensation or time is attributable to the negligence of the Architect or the Architect's Subconsultants or to the Architect's failure to fully perform under this Agreement.

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

### **§ 3.6.2 Evaluations of the Work**

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

**§ 3.6.2.2** The Architect shall identify in writing to the Owner any and all Work that the Architect knows, based on the Architect's site observations, does not conform to the Contract Documents, and shall make a recommendation to the Owner as to whether and/or under what conditions the Work should be accomplished by the Owner. The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the terms indicated in the Contract Documents and shall be in writing or in the form of drawings.

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

### **§ 3.6.3 Certificates for Payment to Construction Manager**

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

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

#### **§ 3.6.4 Submittals**

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

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, etc., but only for the limited purpose of checking for conformance with 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 Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. 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 Construction Manager 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 Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with the design expressed in the Drawings and Specifications. The Architect shall be entitled to reasonably rely upon 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 authorization for 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 Construction Manager in accordance with the requirements of the Contract Documents.

#### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. 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 Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that 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 (1) check conformance of the Work with the requirements of the Contract Documents; and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected. 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 Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

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

«NA »

§ 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.)*

«NA »

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

## **§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

**§ 4.2.1** If the Architect determines that services beyond the Basic Services are required, the Architect shall notify the Owner in writing with reasonable promptness and explain the facts and circumstances 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 necessitated by a material change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including but not limited to size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Contract Documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work or Guaranteed Maximum Price proposal exceeds the Owner's budget, except where such excess is due to (i) changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment; or (ii) any negligent error or omission by Architect or its Consultants or Subconsultants;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 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;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party or material witness thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; and
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as Constructor project delivery method to an alternative project delivery method.

**§ 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 Construction Manager's submittal materially out of sequence from the submittal schedule approved by the Architect;

- .3 Preparing Change Orders, and Construction Change Directives that require the preparation or revision of Instruments of Service 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 Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom. When seeking authorization from the 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 projected cost of 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 «NA » ( « » ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 «NA » ( « » ) visits to the site by the Architect during construction
- .3 «NA » ( « » ) 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 «NA » ( « » ) 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 later, 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 «four» ( « 5 » ) months 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. Neither the Architect's request for this information, nor the Owner's provision of it, nor the Owner's failure to provide it, shall be construed to create a duty on the part of the Owner to the Architect, the Architect's Subconsultants, insurers, or creditors, or to any other person or entity to supplement, publish, or distribute this information. Likewise, this Section shall not be construed to make anyone a third-party beneficiary of this Agreement.

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

**§ 5.3** The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Architect shall thereafter be entitled to an adjustment in the Architect's compensation to the extent that such modification to the budget results in a material increase in the Architect's Scope of Services.

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

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



§ 5.5 Upon request by the Architect and if available to the Owner, the Owner shall furnish surveys describing physical characteristics 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 inverts and depths. If requested by the Owner, the Architect shall provide this information as an Additional Service.

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

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

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

§ 5.9 The Owner shall 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, 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 Subconsultants with services provided by the Owner.

§ 5.10 Unless otherwise provided in this Agreement, 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.

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

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

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

§ 5.14 The Architect shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement and in the agreement between the Owner and the Construction Manager 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 Construction Manager, including the General Conditions of the Contract for Construction.

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

## **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 the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs.

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

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

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

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1.

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

## 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 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 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.

§ 7.4 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.

§ 7.5 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 or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

### **§ 8.2 Dispute Resolution**

**§ 8.2.1** 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 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 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** 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.

**§ 8.4** 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

**§ 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. 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** The Owner may terminate this Agreement upon not less than seven days' written notice should the Architect fail substantially to perform in accordance with the terms of this Agreement 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. The Architect waives its right to pursue Owner for damages other than those specifically set forth herein.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date the Project reaches final completion and Owner has made final payment to the Construction Manager.

## **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.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified by the Owner’s legal counsel, and in this Agreement. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. 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 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. 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 in 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 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 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 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, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
(Insert amount)

«\$126,000 as outlined in Exhibit A »

- .2 Percentage Basis  
(Insert percentage value)

«NA » (« ») % 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)

«NA »

§ 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.)

« NA »

§ 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.)

« NA »

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

« NA »

§ 11.5 When compensation for Basic Services is based on a stipulated sum, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	« »	percent (	« »	%)
Design Development Phase	« »	percent (	« »	%)
Construction Documents Phase	« »	percent (	« »	%)
Construction Phase	« »	percent (	« »	%)

Programming – based on % complete  
each month (5 months total)

Total Basic Compensation	one hundred	percent (	100	%)
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The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 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. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«NA »

**Employee or Category**

**Rate (\$0.00)**

## § 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and out-of-town travel and subsistence if approved in writing by the Owner;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, 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, except work performed in-house by the Architect.

§ 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.

## § 11.10 Payments to the Architect

### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of «NA » (\$ « » ) 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 «NA » (\$ « » ) 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 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.

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

§ 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 B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

- .3 Exhibits:

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

[ **«NA »** ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.

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

«NA »

[ **« X »** ] 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 »

**4** Other documents:

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

«NA »

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

**OWNER** (Signature)

« »« »

(Printed name and title)

**ARCHITECT** (Signature)

« Charles J. Todd, COO, NC Lic #9433 »« »

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