

DRAFT AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the « » day of « » 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)

«City of Angleton »
«121 S. Velasco, Angleton, TX 77515 »
«Telephone: 979-849-4364 »
«www.angleton.tx.us »

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

«Burditt Consultants, LLC »« »
«310 Longmire Road, Conroe, TX 77304 »
«Telephone: 936-756-3041»
«Fax: 936-539-3240»

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

«Angleton – Abigail Arias Park Project-RFQ #2024-03 »
«Angleton Texas»
«Professional design services for development and construction of a +/-6 acre park with playgrounds, splash pad, trails, skate area and park amenities per minimum park standards.»

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.

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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.)

«Preliminary program established per RFQ No. 2024-03 Exhibit A. Program is subject to change according to the approved Scope and Cost of the Work: 8/15/2024, and pursuant to the Terms of the Agreement provided herein. »

§ 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.)

«Approximately 6-acre, open parcel with frontage road access. Parcel neighbors an apartment complex, single residential lots and connects to American Legions parcel. Anderson Cemetery is located across the street. »

§ 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.)

«TWO MILLION DOLLARS (\$2,000,00.00 USD) »

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

.1 Construction commencement date:

«Approximately 10 months after the date of the Executed Agreement but no later than 18 month (Includes Schematic Design, Design Development, Construction Document, Permitting, Bidding/Procurement, and Contract Negotiation phase. »

.2 Substantial Completion date or dates:

« Approximately 180 days after the Notice to Proceed, established upon execution of Agreement between Owner and the Awarded Contractor. »

.3 Other milestone dates:

«N/A »

§ 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 Sealed Proposal method in accordance with Texas Government Code Chapter 2269 and other applicable chapters and provisions.»

§ 1.1.6 The Owner identifies the following representative in accordance with Section 5.3 and in accordance with the City of Angleton procurement ordinance and policies.: *(List name, address, and other contact information.)*

«Chris Whittaker»
«City Manager»
City of Angleton
121 S. Velasco, Angleton, TX 77515
«Telephone: 979-849-4364»
«Email: cwhittaker@angleton.tx.us»

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

«N/A »

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

.1 Geotechnical Engineer: **To be determined after execution of the Agreement.**

« »« »
« »
« »
« »
« »

.2 Civil Engineer: **To be determined after execution of the Agreement**

« »« »
« »
« »
« »
« »

- .3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

«N/A »

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

«Claudia T. Walker, RLA»
«310 Longmire Rd.»
«Conroe, Texas 77304»
«cwalker@burditt.com»
«936-756-3041»
« »

§ 1.1.10 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.)

§ 1.1.10.1 Consultants retained under Basic Services:

- .1 Structural Engineer: To be determined after execution of the agreement.

« »« »
« »
« »
« »
« »

- .2 Civil Engineer: To be determined after execution of the agreement.

« »« »
« »
« »
« »
« »

§ 1.1.10.2 Consultants retained under Supplemental Services:

«To be determined after execution of the agreement.»

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

«N/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 appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall may 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.

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 competent architects practicing in 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 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.

§ 2.4 The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.4.1 Commercial General Liability with policy limits of not less than «One Million Dollars» (\$ «1,000,000.00») for each occurrence and «Two Million Dollars» (\$ «2,000,000.00») in the aggregate for bodily injury and property damage.

§ 2.4.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than «One Million Dollars» (\$ «1,000,000.00») 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.

§ 2.4.3 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.

§ 2.4.4 Workers' Compensation at statutory limits.

§ 2.4.5 Employers' Liability with policy limits not less than «One Hundred Thousand Dollars» (\$ «100,000.00») each accident, «One Hundred Thousand Dollars» (\$ «100,000.00») each employee, and «Five Hundred Thousand Dollars» (\$ «500,000.00») policy limit.

§ 2.4.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than «One Million Dollars» (\$ «1,000,000.00») per claim and «Two Million Dollars» (\$ «2,000,000.00») in the aggregate. Professional liability shall be maintained for not less than four (4) years following, Substantial Completion of the Project as defined in the AIA Document A201, Contract between Owner and the Contractor. Insurance of the following types and with indemnification limits not less than the amounts indicated are required.

§ 2.4.7 **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 as set out in Texas Local Government Code Sec. 271.904, 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.

§ 2.4.8

1. The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative may contact the State Board of Insurance to confirm that the issuing company(ies) are admitted and authorized to issue such policies in the State of Texas.
2. The policy so issued in the name of Architect shall also name the Owner as additional insured, except for professional liability insurance and worker's compensation insurance.
3. **To the extent an Architect contracts with sub-consultants to perform any scope of Architect's services required by this Agreement, Architect shall ensure sub-consultants maintain the minimum level of insurance as required by Architect under this Agreement. Architect's naming of a sub-**

consultant as an additional insured on any policy held by the Architect shall not relieve Architect or its sub-consultants of this obligation to provide separate coverage.

4. Architect shall have its insurance carrier(s) furnish to Owner insurance endorsements and exclusions as well as Certificates of Insurance in forms satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, the Owner is named as additional insured. Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If Architect neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Architect's expense.
5. Insurance provided pursuant to this Section shall be considered a part of the Architect's Basic Services and shall not be Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.
6. Architect's General Liability, Automobile Liability, and Worker's Compensation Insurance policies shall be endorsed to provide a waiver of subrogation in favor of the Owner.

§ 2.4.9 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.4.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall assist in the selection of a Contractor and shall consult with the Contractor to maintain the Project budget, increase value to the Owner, and ensure constructability. The Architect shall provide draft design documents for estimating and pricing at the 30%, 60% and 90% completion for review by the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The provision of the foregoing information does not relieve the Architect of its obligations nor does not absolve or lessen the Architect's obligations to perform its Work in accordance with the standard of care defined in this Agreement. The Architect shall not incorporate the information into the design elements or scope based solely on representations by the Owner or its agents. The Architect shall independently verify the information provided by or for the Owner and shall evaluate said information before incorporating it into the design or utilizing it for design decisions.

The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the 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 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.

§ 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.

§ 3.1.7 The Architect shall submit plans for the Project to the Texas Department of Licensing and Regulation (TDLR) for handicap accessibility review. The Owner acknowledges that the Construction Documents are not completed until TDLR has approved them and any comments they require are incorporated in them even though construction may have begun or even been completed before comments are received. The Architect will forward the TDLR final inspection report to the Contractor for corrective work listed in the report to be completed.

§ 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. Architect will perform a detailed code and zoning review for the Project and consult with the Owner on any changes that impact the design.

§ 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 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. The Architect shall prepare and distribute meeting notes documenting the basic issues, resolutions and action items agreed to during the Schematic Design Phase.

§ 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. Architect shall coordinate the consultants' Schematic Design Services.

§ 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 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. The Architect shall submit to Owner an updated Project Schedule for the Project.

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

§ 3.2.8 The Architect shall collaborate with the Owner to make adjustments to the scope of Work (Project requirements), Schematic Design cost opinion, and the Owner's construction budget such that they are in agreement and approval prior to moving to the next phase.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the 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 update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

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

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the 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 in effect at the time of document preparation or reasonably foreseeable.

§ 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.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 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 the Owner's approval.

§ 3.4.5.1 The Architect shall attend meetings with Owner and Owner's staff to review the Construction Documents, the Construction Documents opinion of the Cost of Work, and status of the Project Schedule. The Architect shall prepare and distribute meeting notes documenting the basic issues, resolutions and action items agreed to during the Construction Documents Phase.

§ 3.4.6 The Architect shall collaborate with the Owner to make adjustments to the scope of Work (Project requirements), Construction Documents Phase opinion of the Cost of Work, and the Owner's construction budget such that they are in substantial agreement prior to moving to the next phase of work

§ 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 digital versions (PDF) 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.
- .5 review substitution requests from bidder up until 7 days prior to the bid due date, issue addenda documenting any approved substitution requests 3 days prior to bid due date;
- .6 assisting Owner in bid evaluations, as necessary or as requested by 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 digital versions 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 review substitution requests from bidder up until 7 days prior to the bid due date, issue addenda documenting any approved substitution requests 3 days prior to bid due date; and
- .5 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. 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.

§ 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 Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues 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. 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. Failure to notify the Owner of observed defects and deficiencies constitutes a breach of this Agreement and shall be a deviation from the Architect's agreed standard of professional care. While on site, the Architect will attend OAC Meetings with the Owner and Contractor to review the Project status, previous set of construction meeting notes, submittal logs, ASI logs, RFI logs, sustainability documentation (if applicable), and construction schedule status along with coordination issues that need resolution by the Owner, Architect and Contractor.

§ 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 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 subject to the Owner's approval. The Architect will review substitution requests from the Contractor only for materials and products which become unavailable during the Construction Phase due to circumstances beyond the Contractor's control or on request by the Owner for the purposes of reducing the Project budget.

§ 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 by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the 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 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, within 10 days excluding delivery time to and from the Contractor. For sequential reviews involving Architect's consultants, Owner, or another affected party, allow an additional 7 days. If the Contractor makes large, bulk submittals at one-time, additional time may be allocated to the Architect and his consultants to review them. The initial date for submittal review by Architect shall not commence until the submittal has been provided to the Architect in its entirety, the specific product being submitted is marked as such in the product literature, and the submittal has been reviewed and stamped by the Contractor. The date for initiation of submittals received after 3 pm shall be dated the following day

§ 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, 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 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. 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.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information. The Architect shall prepare Architect's Supplemental Instructions (ASIs) when deemed necessary by the Architect and issue them to Contractor.

§ 3.6.4.5 The Architect shall maintain a 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 Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the 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 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.

§ 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 year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Included in Basic Services
§ 4.1.1.2 Multiple preliminary designs	Included in Basic Services
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Included in Basic Services
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil Engineering	Included in Basic Services
§ 4.1.1.9 Landscape Architectural Design	Included in Basic Services
§ 4.1.1.10 Structural Engineering Design	Included in Basic Services
§ 4.1.1.11 Architectural interior design	Not Provided
§ 4.1.1.12 Value analysis	Not Provided

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.13 MEP Engineering Design	Included in Basic Services
§ 4.1.1.14 Detailed cost estimating beyond that required in Section 6.3	Not Required
§ 4.1.1.15 On-site project representation	Not Provided
§ 4.1.1.16 Conformed documents for construction	Included in Basic Services
§ 4.1.1.17 As-designed record drawings	Included in Basic Services
§ 4.1.1.18 As-constructed record drawings	Not Provided
§ 4.1.1.19 Post-occupancy evaluation	Not Provided
§ 4.1.1.20 Facility support services	Not Provided
§ 4.1.1.21 Tenant-related services	Not Provided
§ 4.1.1.22 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.23 Telecommunications/data design	Not Provided
§ 4.1.1.24 Security evaluation and planning	Not Provided
§ 4.1.1.25 Commissioning	Not Provided
§ 4.1.1.26 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.27 Fast-track design services	Not Provided
§ 4.1.1.28 Multiple bid packages	Not Provided
§ 4.1.1.29 Historic preservation	Not Provided
§ 4.1.1.30 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.31 Geotechnical Analysis	Owner
§ 4.1.1.32 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.33 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

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

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

«N/A »

§ 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.)

1. « Existing facilities surveys - Services may include the following Scope:
 - a. Onsite point-cloud scanning and standard laser measuring of existing facilities within the Scope of the Contract Documents.
 - b. Complete facility survey package provided to Owner and Architect, including or AutoCAD files for developing and coordinating with the Contract Documents.

»

§ 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 The provision of Additional Services in excess of those referenced in this Section 4, et. al. shall not entitle the Architect to additional compensation or an adjustment in the Architect's schedule unless specifically authorized by Owner and memorialized by written change order to this Agreement. .

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization: Such written authorization to proceed shall not be construed as a change order or acquiescence to a request for change order unless the Owner expressly states in such written authorization that the notice constitutes a change order entitling the Architect to additional compensation.

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or 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 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 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 Design services in regards to existing physical conditions that could not be reasonably known or discovered prior to construction; .

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

- .1 Reviewing a 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;
- .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.

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

- .1 « Two » (« 2 ») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 « Twelve » (« 12 ») visits to the site by the Architect during construction
- .3 « One » (« 1 ») 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 « One » (« 1 ») 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 earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within « Eighteen » (« 18 ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 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.

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

§ 5.5 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 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the

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

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 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.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.11 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 shall be through the Architect.

§ 5.12 Before executing the Contract for Construction, the Owner 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 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.

§ 5.13 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.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include 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 an extensive 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.

§ 6.3.1 The Architect shall compile the preliminary opinion of the Cost of Work based on all or a portion of the following: design progress, utilizing historical data, material quotations, discussions with trade professions, and

experience with similar projects. Bids will not be solicited for the Architect's estimating purposes; therefore, competitive bidding or lack thereof may affect the actual costs. The Owner shall acknowledge the following assumptions and cautions relative to the Architect's evaluations of the Owner's budget and preliminary opinion of the Cost of Work:

1. The Opinion of the Cost of Work will assume a competitive sealed proposal process for the entire scope of Work, as defined by the plans and specifications. Competitive sealed proposal process is defined as receiving responsive proposals from a minimum of three (3) Contractor proposers.
2. If the number of proposals indicated in 6.3.1.1 above are not received by the Owner, the proposals may deviate from the Architect's evaluation of the Owner's budget or the preliminary opinion of the Cost of Work.

Due to unpredictable conditions in the construction and other industries causing unusual fluctuations, such as the influence of commodity trading markets, regional/global supply and demand, regional inflation, global geopolitical policy changes, or natural disasters/acts of God, such as hurricanes, flooding, etc.; costs and availability of products and labor may fluctuate causing the Architect's evaluation of the Owner's budget and preliminary opinion of the Cost of Work to differ from actual bids.

§ 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 Work shall be adjusted 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 in its sole discretion, may choose adjust the Project accordingly.

§ 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 As part of the total compensation which Owner has agreed to pay Architect for the professional services to be rendered under the Contract, Architect agrees that hard copies of all finished and unfinished "Instruments of Service" including but not limited to documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, bid packet/construction contract documents/ advertisement for bids incorporating any Owner standard provisions provided by Architect, all of which are produced by Architect and paid for by Owner are, and will remain, the property of the Owner. Architect will furnish Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however,

ownership of the underlying work product shall remain the intellectual property of the Architect. Owner shall have the right to use such work products for Owner's purposes on this Project. However, such documents are not intended to be suitable for reuse by Owner or others. Any reuse without the express written consent of the Architect will be at the Owner's sole risk and without liability or legal exposure to the Architect. The above notwithstanding, Architect shall retain all rights in its standard drawing details, designs, specifications, databases, computer software and any other proprietary and intellectual property information provided pursuant to this Contract.

§ 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.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. The parties acknowledge and agree that indemnification by the City is prohibited by the Texas Constitution Sec. III, Art. 51, and therefore any type of hold harmless provision obligating the City is likely unenforceable or enforceable only to the extent authorized by the Constitution and laws of the State of Texas.

§ 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.

§ 8.1.2 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be submitted to senior management for each party for attempted resolution and then be referred to non-binding mediation as a condition precedent to the institution of legal proceedings by either party.

§ 8.2.2 Mediation, shall be administered through a private mediator mutually selected by the parties. In the event the parties cannot agree on a mediator, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement.

§ 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.

§ 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.)

[] Litigation in a court of competent jurisdiction

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.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give fourteen days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted, expenses only paid if directly attributable to fault of Owner.

§ 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 fourteen days' written notice.

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

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

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

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

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 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.

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

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

§ 10.5 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.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated 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. The parties acknowledge and agree the Owner is subject to the Texas Public Information Act as set out in Texas Government Code Chapter 552.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

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

- .1 Percentage Basis
(Insert percentage value)

«Eleven» («11») % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6. with initial agreed upon fee of ONE HUNDRED NINETY-EIGHT THOUSAND DOLLARS. (\$198,000.00 USD)



- .2 Other – Adjustments to project budget will be made throughout the project based upon the City’s most recently approved OPINION OF PROBABLE COST (OPC) as developed and approved at the conclusion of each Phase. Opinion of probable costs are required to be approved in writing by City as the end of each Phase. The fee for the next phase will be adjusted commensurate with the agreed upon lump sum fee of eleven Percent (11%) of the OPC of Cost of Work and proportionally allocated to the individual phase fee increment shown in the fee schedule in 11.5.

§ 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.)

«N/A »

§ 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 «TEN» percent («10»%), or as follows:
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

« Any additional services must be approved by Owner in writing and may require city council approval. »

§ 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:

Schematic Design	« Twenty »	percent (« 20 »	%)
Design Development	Twenty-Five	percent	(25%)	
Construction Documents	« Thirty-Five »	percent (« 35 »	%)
Bidding & Construction Phase	« Twenty »	percent (« 20 »	%)
Total Basic Compensation	one hundred	percent (100	%)

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

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

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

«Exhibit B – 2024 Hourly Rates »

§ 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 Registration fees and permitting fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .2 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 as a plus «TEN » percent (« 10» %) of the expenses incurred.

« »

§ 11.9 Payments to the Architect

§ 11.9.2 Progress Payments

§ 11.9.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable in accordance with Chapter 2251 of the Texas Government Code. Amounts unpaid «THIRTY » (« 30 ») days after the invoice date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

§ 11.9.2.2 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.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

« A. GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, IN ACCORDANCE WITH SEC 271.904 TEXAS LOCAL GOVERNMENT CODE, ARCHITECT SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS EMPLOYEES, AGENTS, AND REPRESENTATIVES (HEREINAFTER REFERRED TO INDIVIDUALLY AS AN “INDEMNITEE” AND COLLECTIVELY AS THE “INDEMNITEES”) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS’ FEES AND COSTS INCURRED BY INDEMNITEES WHICH ARE:

1. DUE TO THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE, OR OTHER LEGAL REQUIREMENT IN THE PERFORMANCE OF THIS AGREEMENT, BY ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL;

2. CAUSED BY OR RESULTING FROM ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION IN VIOLATION OF ARCHITECT'S STANDARD OF CARE, BY THE ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL;

3. CAUSED BY OR RESULTING FROM ANY CLAIM ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL

PROPERTY RIGHT IN CONNECTION WITH THE INFORMATION FURNISHED BY OR THROUGH ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL;

4. DUE TO THE FAILURE OF ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL TO PAY THEIR CONSULTANTS OR SUBCONSULTANTS AMOUNTS DUE FOR SERVICES PROVIDED IN CONNECTION WITH THE PROJECT; OR

5. OTHERWISE ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE SERVICES UNDER THIS AGREEMENT, INCLUDING SUCH CLAIMS, DAMAGES, LOSSES OR EXPENSES ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM, BUT ONLY TO THE EXTENT SUCH CLAIMS, DAMAGES, LOSSES, COSTS AND EXPENSES ARE CAUSED BY OR RESULT FROM ANY NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF THE ARCHITECT, ITS AGENT, ANY CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL.

B. REIMBURSEMENT OF GOVERNMENTAL AGENCY'S FEES IN DEFENSE OF CLAIMS. To the extent Owner incurs attorney's fees in defense of any claim asserted against the Owner which arises or results from the alleged acts or omissions of the Architect described in Section A above, Architect shall reimburse Owner its reasonable attorney's fees in proportion to the Architect's liability found after a final adjudication of liability.

»

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

«Exhibit A - Basic Scope of Work
Exhibit B – 2024 Hourly Rates»

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

OWNER *(Signature)*

«Chris Whittaker» «City Manager »
(Printed name and title)

ARCHITECT *(Signature)*

«Claudia T. Walker, RLA » « Dir. of Landscape
Architecture »
(Printed name, title, and license number, if required)