



OA4-2023 – Owner/Architect Agreement For Architectural Services (Lump Sum Fee Compensation)

CAUTION: THIS DOCUMENT HAS LEGAL CONSEQUENCES. ALA recommends that the parties seek the advice of their attorney(s) prior to executing or modifying this Agreement. By executing this Agreement, the parties assume sole and complete responsibility for the content contained hereinafter.

1.0 AGREEMENT: This Owner/Architect Agreement for Architectural Services *Agreement* (“Agreement”) is made and entered into this 20th day of June, 2024,
by Matthew J. Santini (City of Cartersville) (the “Owner”)
and Elizabeth Dunay (E Dunay Design) (the “Architect”).

1.1 Owner’s Name: Matthew J. Santini (City of Cartersville)
Address: 1 Friendship Plaza
City, State, Zip: Cartersville, Georgia 30120
Phone number: 770-387-5616
Cell number:

1.2 Architect’s Name: Elizabeth Dunay
Address: 366 Plainville Rd NE
City, State, Zip: Rome, GA 30161
Phone number:
Cell number: 706-766-0366

2.0 PROJECT: The project is *The Train Depot Restroom Renovations* located at *1 Friendship Plaza, Cartersville, Georgia, 30121*, and consists of *The Train Depot Restroom Renovations*.

3.0 BASIC SERVICES: The Architect agrees to perform basic services on behalf of the Owner, including usual and customary structural, mechanical, electrical, and plumbing engineering services:

3.1 Design Services: The Architect shall provide all required design services based upon the Owner’s program and construction budget. The design services of the Architect shall include diagrams, sketches, and drawings to illustrate and define the aesthetics and size of the project.

3.2 Construction Documents Services: The Architect shall prepare construction documents consisting of drawings and specifications, including plans, elevations, details, and sections, sufficient in detail to bid and construct the project.

3.3 Bidding: The Architect shall assist the Owner in the preparation and assembly of documents to be issued for bids. The selection of the Contractor for the project shall be made by the Owner.

3.4 Construction Administration: The Architect shall provide construction administration services on behalf of the Owner during the construction phase of the project. Such services shall include the following:

3.4.1 Site Observation: The Architect shall visit the site at intervals as the Architect reasonably deems to be appropriate, or as stated in Section 18, to observe if construction is generally in accordance with the construction documents.



- 3.4.2 **Submittals:** The Architect shall review Contractor’s and its subcontractors’ shop drawings, product data and samples for conformance with the design intent indicated on the construction drawings. The Architect shall not review the submittals for dimensions, quantities, coordination of components, the adequacy or completeness of the shop drawing details, or performance of materials or equipment indicated on the submittals. Review of the submittals shall not constitute approval of any construction means, methods, procedures, techniques, sequences, or safety precautions or procedures, since these are the sole responsibility of the Contractor.
- 3.4.3 **Changes in Work:** The Architect shall prepare Change Orders and Construction Change Directives for changes in the Work. Such Change Orders and Construction Change Directives shall be approved by the Owner prior to any work on the changes being performed. The Architect may order minor changes to the Work which do not affect the Contract Sum or the Contract Time.
- 3.4.4 **Review of Contractor’s Requests for Payment:** The Architect shall evaluate the Contractor’s requests for payment, including supporting data, and certify the amounts due the Contractor for work, products, and materials installed in the project. The Architect’s Certification for Payment represents to the Owner that based on the Architect’s evaluation of the work installed and the data presented for payment, to the best of the Architect’s knowledge, information and belief, the Contractor is entitled to payment.
- 3.4.5 **Rejection of Nonconforming Work:** The Owner and Architect shall have the authority to reject nonconforming work installed by the Contractor. The Architect shall bring any known nonconforming work to the attention of the Owner.
- 3.4.6 **Access to Project Site:** The Architect shall have access to the project site at all times.
- 3.4.7 **Determination of the Dates of Substantial Completion and Final Completion:** Upon notification by the Owner, the Architect shall conduct inspections to determine the dates of Substantial Completion and Final Completion. The Architect shall not make any other inspection(s) unless specifically requested to do so in writing by the Owner. Such requested inspection(s) shall be performed as an Additional Service(s).
- 4.0 **COMPENSATION:** The Owner agrees to compensate the Architect for the LUMP SUM FEE of twenty thousand six hundred dollars (\$ 29,100.00) to perform the Basic Services described in Article 3.0. Progress payments for Basic Services in each phase shall total the following percentages of the total LUMP SUM FEE stated above: *[List amount, written percent, and numerical percent for each phase below.]*
- | Phase | Amount | Percent of Overall Fee |
|--------------------------------------|--------------------|------------------------|
| a. Schematic Design Phase | \$8,680.00 | Percent (30%) |
| b. Design Services Phase | \$9,210.00 | Percent (32%) |
| c. Construction Documents Phase | \$7,210.00 | Percent (25%) |
| d. Bidding Phase | \$1,000 | Percent (3%) |
| e. Construction Administration Phase | \$3,000 | Percent (10%) |
| f. Total Basic Compensation | \$29,100.00 | Percent (100%) |
- 4.1 **Initial Payment:** An initial payment of seven thousand dollars and zero cents. (\$7,000.00) is due and owing contemporaneously with the execution of this Agreement. The initial payment shall be applied to the Final Payment.



4.2 **Reimbursable Expenses:** Reimbursable expenses shall be paid at the actual cost incurred by the Architect plus *[insert written percent]* twenty percent *[insert numerical amount]* (20 %).

4.3 **Other -**

5.0 **CONSULTANTS:** The Architect and Owner may each employ consultants to perform work on the project.

5.1 **ARCHITECT’S CONSULTANTS.** The Owner agrees to compensate the Architect for the cost of the consultants at the actual cost incurred by the Architect plus *[insert written percent]* ten percent *[insert numerical percent]* (10%). The consultants retained by the Architect may include, but are not necessarily limited to the following:

5.1.1 Structural Engineer

5.1.2 Mechanical Engineer included in Basic Compensation

5.1.3 Electrical Engineer included in Basic Compensation

5.2 **OWNER’S CONSULTANTS.** The Owner’s consultants may include, but are not necessarily limited to the following:

5.2.1 Surveyor included in Basic Compensation

5.2.2 Geotechnical Engineer *[Owner shall provide a current geotechnical survey for all new construction on the project site]*

5.2.3 Civil Engineer included in Basic Compensation

5.2.4 Environmental Consultant

5.2.5 Hazardous Materials Consultant

5.2.6 Traffic Consultant

5.2.7 Detailed Cost Estimating

5.2.8 *[Identify other consultant(s)]* _____

6.0 **ADDITIONAL SERVICES:** Owner requested services that are not part of the Architect’s Basic Services described in Article 3.0 above, shall be considered as Additional Services. The Owner hereby agrees to compensate the Architect for such Additional Services at the following hourly rates. *[List services or billing categories and associated hourly rates below.]*

<u>Service / Billing Category</u>	<u>Billing Rate</u>
a. Architect	\$150 per hour
b. Draftsman	\$90 per hour
c. Office Administrator	\$40 per hour



- 7.0 **PAYMENT DUE DATE:** Payments are due and payable thirty (30) days from the date of the Architect's invoice. Amounts unpaid thirty (30) days after the date of the Architect's invoice shall bear interest at the rate of *[insert written percent]* three percent per month *[insert numerical percent]* (3%/mo.) (unless such percentage of interest rate is impermissible under applicable law, in which case interest rate shall accrue at the maximum amount permissible under applicable law). The Architect shall invoice the Owner once a month. The Owner agrees that the Architect may suspend services without liability if payment is not received within forty-five (45) days of date of the Architect's invoice.
- 8.0 **JOBSITE SAFETY:** The Owner hereby agrees and acknowledges that the Architect shall not be responsible for any construction means, methods, techniques, sequences, procedures, or safety precautions utilized on the project, since these are solely the responsibility of the Contractor.
- 9.0 **OWNER PROVIDED INFORMATION.** The Architect shall be entitled to rely on the accuracy and completeness of any information provided to the Architect by the Owner or the Owner's consultants. The Architect shall not review said information for accuracy or completeness.
- 10.0 **HAZARDOUS MATERIALS.** The Architect assumes no responsibility or liability for the discovery or removal of any hazardous substances found at the jobsite.
- 11.0 **PERMITS AND APPROVALS.** It is the responsibility of the Owner to obtain all necessary permits and approvals for the project. The Architect shall assist the Owner in such endeavors as mutually agreed to in writing.
- 12.0 **TERMINATION.** This Agreement may be terminated by either party upon written notification to the other party via Time/Date Stamped Certified Mail or by personal delivery. The Owner agrees to pay the Architect for all services performed and all reimbursable expenses incurred, to the date of notification of termination.
- 13.0 **INCORPORATED DOCUMENTS.** The following documents are incorporated into this Agreement:
- 13.1 **Terms and Conditions, ALA Document TC-OA-2020.**
- 13.2 _____ *[list any other documents to be incorporated]*
- 14.0 **MISCELLANEOUS PROVISIONS.** This Agreement also includes the following provisions: *[List any miscellaneous provisions below.]*
- a. _____
- b. _____



15.0 If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

Architect and Owner hereby binds themselves, their partners, successors, assigns, subsidiaries, parent companies, affiliates and legal representatives to all of their obligations under the Contract Documents.

AGREED TO AND ACCEPTED BY

ARCHITECT:

Co Name E Dunay Design, LLC

By: *Elizabeth Dunay*

Print Name: Elizabeth Dunay

Title: Architect, RA 014615

OWNER:

Co Name:
**CITY OF CARTERSVILLE, a
Georgia municipal corporation**

By: _____

Matthew J. Santini, Mayor

Attested to:

By: _____

Julia Drake, City Clerk

TC-OA-2020 – Terms and Conditions -- Owner/Architect

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THE FOLLOWING TERMS AND CONDITIONS are hereby incorporated into the Agreement between the Architect and Owner:

COPYRIGHTS and LICENSES. The Architect and the Architect's Consultants shall each be deemed the respective authors and owners of any materials produced under this Agreement and shall retain all common law, statutory and other reserved rights, including copyrights. The Owner acknowledges that the Architect and the Architect's consultants have prepared said materials and agrees to limit use of the same to this site-specific project only. The Owner is granted a conditional nonexclusive license to utilize the materials produced under this Agreement on this Project on this project site only, which license is conditional upon payment in full to the Architect for all services performed or to be performed under this Agreement. The Owner's license may be revoked upon any breach of this Agreement. The Owner agrees to defend, indemnify, and hold the Architect and the Architect's consultants harmless from any causes of action, claims, losses, damages and expenses of any kind whatsoever, including reasonable attorney's fees, resulting from the unauthorized reuse of the Architect's and the Architect's consultants' materials.

DISPUTE RESOLUTION.

a. Mediation. Any disputes between Architect and Owner shall be subject to mediation as a condition precedent to arbitration or litigation. Mediation shall be administered by the American Arbitration Association in accordance with the applicable rules in effect as of the date of this Agreement. Nothing contained herein shall preclude the Architect from filing any lien arising out of the Architect's services to comply with notice and filing deadlines prior to resolution of the dispute.

If the parties do not resolve the dispute through mediation, the method of binding dispute resolution shall be one of the following:

Arbitration Litigation in the Superior Court of Bartow County to whose jurisdiction the parties hereby consent

b. Arbitration. If the parties did not make a selection above, arbitration shall be the default, and this paragraph shall govern. Arbitrations shall be subject to the Federal Arbitration Act. An arbitration shall address any claim, dispute or other matter in question arising out of or related to this Agreement that was not resolved by mediation, and shall be administered by the American Arbitration Association pursuant to rules in effect as of the date of this Agreement. A demand for arbitration shall be made in writing and delivered to the other party and to the American Arbitration Association prior to the expiration of the applicable statute of limitations. Both parties hereto consent to joinder, at the request of either party, with any other arbitration involving this Project and common questions of law or fact.

LIMITATION OF LIABILITY. The Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect to the Owner for any and all claims, losses, costs, expenses, or damages of any nature whatsoever, including attorneys', and expert witness fees and costs, from any cause or causes, so that the total aggregate liability of the Architect to the Owner shall not exceed the Architect's total fee received for services rendered on this project. It is intended that this limitation apply to any and all liability or causes of action, however alleged or arising, unless otherwise specifically prohibited by law.

STATUTE OF LIMITATIONS PERIOD. The Statute of Limitations period shall commence to run on the Date of Substantial Completion of the project. In no case shall the Statute of Limitations period commence to run later than the date when the Architect's services are substantially completed.

VENUE. The parties agree to be subject to the jurisdiction of the County of *Barton*, State of *Georgia*. The laws of the State of *Georgia* shall govern the interpretation of this Agreement. If no selection is made, the laws of the locale of the Project shall apply and the venue shall be in the county where the Project is located.

MISCELLANEOUS.

- a. The Architect and Owner each bind themselves, their agents, successors, assigns and legal representatives to this Agreement. This Agreement may not be assigned without the written consent of the other party.
- b. Nothing in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against the Architect or Owner.
- c. Each party hereto represents that it has all necessary licenses to perform the services contemplated by this Agreement.