



## CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Fire	Chief Doug Bess	May 17, 2022

### ITEM

Award the Design/Build contract for the Salida Fire Station

### BACKGROUND

On February 11<sup>th</sup>, 2022 a Request for Professional Services was published to identify and select a strategic Design-Build team to be a partner in the design and construction of a new Fire Station in Salida. We received five bids for the project. A panel consisting of the City Administrator, City Treasurer, Councilwoman Templeton, South Arkansas F.P.D. Board VP Rick Spradlin, Assistant Chief Rohrich and myself reviewed and scored the submittals. Based on the scores, three firms were then chosen for in-person interviews. The two firms that were not chosen, consequently were the high and low bids.

The three firms were interviewed on April 14<sup>th</sup> and the panelists were provided score sheets for this portion of the process. The panel re-convened on April 25<sup>th</sup> to go over our score sheets and overall impression of the firms that were interviewed. In the end, it was a clear choice that Neenan Archistruction would be the ideal fit to partner with the city on the Design/Build of the new Salida Fire Station. Reference checks were conducted and Neenan was held in high regard from those we spoke with.

### FISCAL NOTE

The cost of the contract will be added to the first budget amendment of 2022.

Bidder	Total	Overhead & Profit	Percent of Average
*MW Golden Contractors	\$987,425	3.50%	133.1%
Neenan Archistruction	\$762,945	3.50%	102.9%
BBD-D2C Architects	\$727,735	3.25%	98.1%
Diesslin Structures	\$632,236	4%	85.2%
*SHE/Jaynes	\$598,433	3.4%	80.7%

\*Not interviewed

### STAFF RECOMMENDATION

Award a Design/Build contract for the new Salida Fire Station and authorizing the City Administrator to enter into a Services Agreement between the City and Neenan Archistruction in the amount of \$762,945.

### SUGGESTED MOTION



## CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Fire	Chief Doug Bess	May 17, 2022

A Council person should make a motion to award the Design/Build contract for the Salida Fire Station to Neenan Archistruction.

**ARCHITRUCTION SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF SALIDA, COLORADO**

**AND**

**THE NEENAN COMPANY LLLP**

**DATE: MAY 17, 2022**

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## **AGREEMENT FOR ARCHISTRUCTION SERVICES**

**THIS AGREEMENT FOR ARCHISTRUCTION SERVICES**, made as of this 17<sup>th</sup> day of May, 2022 (“Effective Date”) by and between THE CITY OF SALIDA, COLORADO, a Colorado municipal corporation organized and existing under the laws of the State of Colorado with offices at 448 E. First Street, Suite 112, Salida, Colorado 81201 (“Owner”) and THE NEENAN COMPANY LLLP, a limited liability limited partnership organized and existing under the laws of the State of Colorado, with offices at 3325 South Timberline Road, Suite 100, Fort Collins, Colorado 80525 (“Archistructor”).

### **BACKGROUND**

A. Owner desires to design and construct a building consisting of approximately 20,000 square feet located at 611 Oak Street in Salida, Colorado (“Project” or “Project Site and Program”).

B. Archistructor is a design/build organization that is willing and able to design and construct the Project.

C. The Work (defined below), and Owner’s approval to proceed with the Work, is broken into a two-step process. By executing this Agreement, Owner is only authorizing Archistructor to proceed with the services described in Subparagraphs 2.1.1 through 2.1.6 in exchange for the payments specified at **Exhibit F**. Any further Work by Archistructor requires Owner’s acceptance of Archistructor’s Proposal pursuant to Subparagraph 2.1.7.

D. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Archistructor agree as follows:

### **AGREEMENT**

#### **1. ARTICLE 1—GENERAL PROVISIONS**

##### **1.1 Definitions.**

Capitalized terms used herein will have the meanings ascribed to them where first used or, if not defined where first used, in the following list of definitions.

##### **1.1.1 “Agreement”**

will mean this Agreement for Archistruction Services, including the Exhibits and subsequent Modifications, which Exhibits and Modifications are specifically made a part of this Agreement by this reference.

##### **1.1.2 “Allowances”**

will mean dollar amounts allocated to certain categories of the Work for which the actual cost is not ascertainable at the time of the submittal of Archistructor's Proposal. The dollar amounts for all Allowance items (without Archistructor's Fee, General Conditions, costs for bonds (if applicable) and insurance, and costs for any Regulatory Agencies) will be identified in the Open Items List (defined at Subparagraph 2.1.7.1.4) and will be included in the costs for Divisions 1 through 16 within the Schedule of Values (defined at Subparagraph 2.1.7.1.2). Allowance items will be adjusted by Change Order (defined at Paragraph 7.2) as the actual costs become known and the Work is more specifically defined.

1.1.3 "Archistructor's Consultants"

will mean those design professionals hired by Archistructor to perform portions of the design for the Work, including Architect if Architect is not at The Neenan Company LLLP.

1.1.4 "Intentionally Not Used"

1.1.5 "Archistructor's Fee"

will mean the fee for Archistructor's overhead and profit. The amount of Archistructor's Fee will be identified in Archistructor's Proposal. Archistructor's Fee will be subject to Paragraph 7.5.

1.1.6 "Archistructor's Proposal"

will mean that proposal furnished by Archistructor to Owner pursuant to Subparagraph 2.1.7, setting forth, among other things, the Scheduled Substantial Completion Date (defined at Paragraph 5.3), the Stipulated Sum Price for Construction, and any design and pre-construction fees that are in addition to the fee set forth at **Exhibit F**.

1.1.7 "Intentionally Not Used"

will mean the fee for managing the warranty portion of the Work. The amount of Archistructor's Warranty Fee will be identified in Archistructor's Proposal. Archistructor's Warranty Fee will be subject to Paragraph 7.5. Notwithstanding the foregoing, costs incurred by Archistructor for Additional Warranty Costs pursuant to Subparagraph 8.4.1 will be in excess of Archistructor's Warranty Fee.

1.1.8 "Architect"

will refer to **Whitney A. Churchill** at The Neenan Company LLLP who is a licensed professional Architect in the State of Colorado (#203708) and will be the Architect of Record.

1.1.9 "Construction Documents"

will mean those documents produced pursuant to Subparagraph 2.1.8.

1.1.10 “Contract Documents”

will mean those documents identified at Paragraph 1.2, including Modifications thereto.

1.1.11 “Contract Price”

will mean the stipulated sum fee set forth at **Exhibit F** for design and pre-construction services, plus any additional stipulated sum fees for design and pre-construction services set forth in Subparagraph 2.1.7.1.1 of Archistructor’s Proposal, plus the Stipulated Sum Price for Construction; all subject to adjustment by Change Order.

1.1.12 “Cost of the Work”

will mean the cost of all labor, materials, third party fees, equipment, premiums for bonds (if applicable) and insurance, and services reasonably incurred by Archistructor to perform the construction portion of the Work.

1.1.13 “Drawings”

will mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions for the construction portion of the Work; generally including plans, elevations, sections, details, schedules, and diagrams, but, in accordance with Subparagraph 1.2.3, specifically excluding all computer animation and perspective sketches prepared by Archistructor.

1.1.14 “Equitable Adjustment” or ”Equitably Adjusted”

will mean a change in the Contract Price and/or the Schedules and Scheduled Substantial Completion Date to which a party is entitled in accordance with the provisions of this Agreement for an event that affects the party’s costs and/or time for performance of its obligations for this Agreement. An Equitable Adjustment will be accomplished by a Change Order. The costs for an Equitable Adjustment of the Contract Price will be determined pursuant to Paragraph 7.5. The time for an Equitable Adjustment of the Schedules and Scheduled Substantial Completion Date will be determined by the impact to the critical path of the Work.

1.1.15 “Exhibits”

will mean those Exhibits identified in Paragraph 13.12.

1.1.16 "General Conditions"

will mean those items and the associated costs identified at Division 1 within the Schedule of Values and elsewhere within the Schedule of Values for specific items, including, but not limited to, Archistructor’s supervisory and administrative personnel engaged in the Work and their transportation, travel, accommodations and meals in the performance of the Work; and establishing, operating and demobilizing the Site office, including, but not limited to, temporary

office and storage facilities, office equipment, telephone service, postage and express delivery, and copying documents.

1.1.17 Intentionally Not Used

1.1.18 “Hazardous Material”

will mean any substance or material identified as causing harm to human health or the environment under any Laws or Regulations, or any other substance or material which may be considered hazardous to human health or the environment and subject to statutory or regulatory requirements governing handling, disposal and/or clean-up.

1.1.19 "Laws" or “Laws and Regulations” or “Laws or Regulations”

will mean any applicable laws, statutes, rules, regulations, ordinances, codes and orders of any Regulatory Agencies that are applicable to the Project or the Work.

1.1.20 “Modification”

will mean Change Orders and any written amendments to this Agreement or Exhibits, including those contained in Archistructor’s Proposal, all as executed by both Owner and Archistructor.

1.1.21 “Owner’s Other Contractors”

will mean contractors, design professionals and any person or entity, other than Archistructor, Archistructor’s Consultants or Subcontractors, retained by Owner to perform construction work or operations related to the Work pursuant to Paragraph 3.4.

1.1.22 “Permits and Approvals”

will mean all Regulatory Agencies’ approvals, licenses, notices, and permits, including permits for construction, required for the Work that are in effect at the time this Agreement is executed; except those permits, approvals, licenses, and notices identified at **Exhibit C**.

1.1.23 “Preliminary Project Schedule”

will mean the preliminary schedule for performance of the Work set forth at **Exhibit A**, which will include detail for the design and pre-construction portions of the Work, detail for the Permits and Approvals processes, and the anticipated date for commencement of the construction portion of the Work. The Preliminary Project Schedule will be Equitably Adjusted based on development of the design and pre-construction portions of the Work and the Permits and Approvals processes.

1.1.24 “Professional Standards”

will mean the standard of care for all architectural, engineering, and construction services performed or furnished pursuant to this Agreement, which will be the standard of care and skill ordinarily provided by competent licensed architects or registered professional engineers designing projects, or licensed contractors constructing projects, of similar size, scope, and complexity at the same location of the Project at the same time as the Work.

1.1.25 “Project Schedule”

will mean the schedule for performance of the Work that replaces the Preliminary Project Schedule as set forth in Subparagraph 2.1.7.1.7 of Archistructor’s Proposal. The Project Schedule adds detail for the construction portion of the Work as further identified at Paragraph 5.1. The Project Schedule will be Equitably Adjusted based on timing of Owner’s acceptance of Archistructor’s Proposal and issuance of permits for the construction portion of the Work.

1.1.26 “Project Scope Definition”

will mean the initial definition of Owner’s objectives relative to the Project developed during the Project Analysis Phase of the Design Phase Services (defined at Paragraph 2.1), including budgetary criteria, scheduling criteria, Site requirements and limitations (including zoning issues and topographical constraints) and preliminary facility requirements (including approximate area requirements and spatial relationships).

1.1.27 “Regulatory Agencies”

will mean governmental bodies, agencies, authorities and courts having jurisdiction over the Project or the Work.

1.1.28 “Site”

will mean the location where the construction portion of the Work is to be performed, bounded by the legal description of the land on which the Project is to be constructed if the Project is a new building.

1.1.29 “Specifications”

will mean that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the construction portion of the Work, and performance of related services, all in outline format.

1.1.30 “Stipulated Sum Price for Construction”

will mean the fixed price charged by Archistructor to perform the construction portion of the Work, subject to adjustment by Change Order. The stipulated sum fee for design and pre-construction services set forth at **Exhibit F**, plus any additional stipulated sum fees for design and pre-construction services pursuant to Subparagraph 2.1.7.1.1, are fees in addition to the Stipulated Sum Price for Construction.

1.1.31 “Subcontractor”

will mean a person or entity retained by Archistructor as an independent contractor or supplier to provide labor, materials, equipment and/or services necessary to complete a specific portion of the Work, provided, however, that Subcontractor will not include the Architect, Archistructor’s Consultants or any of Owner’s Other Contractors. “Subcontract” will mean any agreement between a Subcontractor, or Archistructor’s Consultant, and Archistructor relating to the Work.

1.1.32 “Weather Conditions Allowance”

will mean an Allowance amount, if any, identified in Archistructor’s Proposal for costs and expenses that are incurred by Archistructor in order to facilitate the construction portion of the Work when the Work is affected by inclement weather (“Weather Conditions”). Inclement weather may include, but is not limited to, the occurrence of snow, ice, frost, rain, drought, heat, cold, and high winds. Costs and expenses incurred within the Weather Conditions Allowance will include, but are not limited to, those resulting from snow, ice, frost, and water mitigation or removal; temporary heat or cooling equipment and consumption expense; temporary enclosures and protection; and mud removal from, and repair of, construction access, including replacement of fill material. The Weather Conditions Allowance will not be for costs incurred by Archistructor for Excusable Delays, including Adverse Weather Days (defined at Paragraph 5.5) in excess of the number of Adverse Weather Days set forth in Archistructor’s Proposal.

1.1.33 “Work”

will mean all design, pre-construction, construction, and other services required by the Contract Documents to be performed by Archistructor for the Project.

**1.2 Contract Documents.**

1.2.1 The Contract Documents will include all items necessary for proper execution and completion of the Work by Archistructor. Performance by Archistructor will be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.2 The following documents will be the Contract Documents, and in case of any inconsistency, conflict or ambiguity among the Contract Documents, the higher standard or greater requirement will prevail:

1.2.2.1 this Agreement, including its Exhibits;

1.2.2.2 Schematic Design Documents, Design Development Documents, or Construction Documents, (all defined at Paragraph 2.1) whichever is most recently completed;

1.2.2.3 Archistructor's Proposal, which may include modifications to this Agreement; and,

1.2.2.4 Modifications and Exhibits to any of documents referenced above.

1.2.3 Notwithstanding the foregoing Subparagraph, Contract Documents specifically exclude all computer animation and perspective sketches prepared by Archistructor, which documents are furnished by Archistructor solely to assist Owner in understanding the conceptual design for the Project and not to fully represent components of the design for the Project.

### **1.3 Architectural and Engineering Services.**

1.3.1 Architectural and engineering services required under the Contract Documents will be performed by qualified and duly licensed architects, engineers and other design professionals. Except in an emergency event, Owner will instruct or direct Architect and Archistructor's Consultants only through Archistructor unless Owner and Archistructor agree otherwise.

1.3.2 Architect and Archistructor's Consultants will review Laws and Regulations. Architect and Archistructor's Consultants will, in accordance with Professional Standards, incorporate in the Work those applicable Laws and Regulations and the requirements imposed by Regulatory Agencies.

1.3.3 Archistructor is familiar with the Americans with Disabilities Act Architectural Guidelines Standard 4.28, as modified ("ADAAG"), and, in accordance with Professional Standards, the Work will be designed and constructed in accordance with the requirements of ADAAG. However, it is acknowledged that standards for design practice under the American with Disabilities Act of 1990 as modified ("ADA"), including ADAAG guidelines; the regulations under ADA, including the Fair Housing reference; as well as other applicable Laws and Regulations protecting the disabled; are newly evolving, and may, in fact, sometimes be in conflict with existing building codes and/or the interpretation thereof. Therefore, in the event of a conflict between ADAAG and applicable building codes for the Work, Archistructor will utilize the more stringent design requirement protecting the disabled. Additionally, Archistructor will not be responsible if any aspect of its design does not conform to ADAAG or Fair Housing requirements if the claim of non-conformance arises by virtue of a binding interpretation made by an entity with jurisdiction after the date of issuance of the Permits and Approvals for the construction portion of the Work.

1.3.4 Any other provisions of this Agreement notwithstanding, Archistructor will not be responsible for additional costs and delay created by any exercise by a life safety official in his or her authority under the "General Authority and Responsibilities" section of the version of the International Fire Code applicable to the Work (or the exercise by any other inspector of similar rights under other applicable code provisions) to order changes in

applicable portions of the Contract Documents after issuance of the Permits and Approvals for the construction portion of the Work, but only if such Contract Documents were, at the time of their submittal to the applicable Regulatory Agencies issuing the Permits and Approvals for the construction portion of the Work, in compliance with all applicable Laws and Regulations and only if such changes in such Contract Documents does not result from errors and omissions by Archistructor.

#### **1.4 Representations.**

1.4.1 Archistructor represents that it has the requisite authority to enter into this Agreement and by doing so will not be breaching or violating any other agreement to which it is a party and that it is solvent and financially capable of performing its obligations under this Agreement in a timely manner.

1.4.2 Owner represents that it has the requisite authority to enter into this Agreement and by doing so will not be breaching or violating any other agreement to which it is a party and that it is solvent and financially capable of performing its obligations under this Agreement in a timely manner.

#### **1.5 Representatives.**

1.5.1 Archistructor's representative for the Work will be **Sergio Ortiz**, who is the primary contact with Owner regarding all matters relating to the Work and is authorized to act on Archistructor's behalf with respect to the Work. Notwithstanding the foregoing, only an officer or authorized agent of Archistructor will be authorized to sign a Change Order or other legal document regarding the Work or this Agreement on behalf of Archistructor.

1.5.2 Owner's representative for the Work will be **Doug Bess, Fire Chief**, who is the primary contact with Archistructor regarding all matters relating to the Work and is authorized to act on Owner's behalf with respect to the Work, including authorization to sign a Change Order or other legal document regarding the Work or this Agreement on behalf of Owner.

### **2. ARTICLE 2—ARCHISTRUCTOR'S RESPONSIBILITIES**

#### **2.1 Design Phase Services.**

##### **2.1.1 Project Analysis Phase**

2.1.1.1 During the Project Analysis Phase, Archistructor will work with Owner in establishing the general requirements for the Work and providing an initial evaluation of the proposed Site. The services for this phase include the following:



2.1.1.1.1 establishing the general scope of the Project, including approximate area requirements and spatial relationships;

2.1.1.1.2 identifying Owner's objectives, limitations and design criteria;

2.1.1.1.3 establishing a Preliminary Project Schedule and a Project budget;

2.1.1.1.4 solely for the purpose of facilitating the design and not for the purpose of programming, listing, planning, selection, coordination, procurement, installation, or certification of Owner's or Owner's tenant's equipment; developing from Owner furnished data a list of equipment that will be located in the building, including all appliances, office and specialty equipment, and other fixed items that will be located in the building;

2.1.1.1.5 reviewing alternative approaches to design and construction of the Project with Owner;

2.1.1.1.6 performing preliminary analysis of the proposed Site with respect to zoning, topography, availability of utilities, and other Site development issues, including limitations and restrictions those items create for the design of the Project, if any;

2.1.1.1.7 preparing a conceptual Site development plan to establish the appropriateness of the proposed Site with respect to Owner's requirements for the Project; and,

2.1.1.1.8 identifying all reasonably known Permits and Approvals processes.

2.1.1.2 After completing the services described above, Archistructor and Owner will meet and confer about Archistructor's conclusions and recommendations and establish the Project Scope Definition.

## 2.1.2 Schematic Design Phase

2.1.2.1 Based on the Project Scope Definition created during the Project Analysis Phase and based on Owner-furnished information described in Paragraph 3.3, Archistructor will prepare for Owner's review and approval conceptual design documents, consisting of Drawings and other documents which describe the scope and character of the Project and which establish the scale and relationship of the Project components ("Schematic Design Documents"). The Schematic Design Documents will include the following:

2.1.2.1.1 a Site plan, indicating building location, parking and landscaped area, grading and drainage concepts, and major Site improvements;

2.1.2.1.2 floor plans, including interior layouts, structural bay sizes, and overall dimensions;

2.1.2.1.3 building elevations and sections;

2.1.2.1.4 preliminary identification of building systems and materials;

2.1.2.1.5 preliminary outline Specifications; and,

2.1.2.1.6 perspective sketch

2.1.2.1.7 solely for the purpose of facilitating the design and not for the purpose of programming, listing, planning, selection, coordination, procurement, installation, or certification of Owner's or Owner's tenant's equipment; developing from Owner furnished data a list of equipment that will be located in the building, including all appliances, office and specialty equipment, and other fixed items that will be located in the building; and

2.1.2.1.8 reviewing alternative approaches to design and construction of the Project with Owner;

2.1.2.2 At the time of the submittal for the deliverables under Subparagraph 2.1.2, Archistructor and Owner will meet to approve and confer about the submittal, with Archistructor identifying, among other things, the evolution of the design and any significant changes or deviations that have taken place from the Project Scope Definition delivered during the Project Analysis Phase, as well as any changes to the Project budget or Preliminary Project Schedule. Minutes of the meeting will be maintained by Archistructor and provided to all attendees for review and comment. As the design progresses each approved submittal package will replace the prior approved submittal package and will become part of the Contract Documents.

### 2.1.3 Design Development Phase

2.1.3.1 Based on the approved Schematic Design Documents, Archistructor will prepare for Owner review and approval design development documents, consisting of Drawings and other documents required to fix and to describe the size, quality and character of the Project ("Design Development Documents"). The Design Development Documents will include:

2.1.3.1.1 architectural components including, without limitation, wall and roof systems, interior features and finishes, vertical transportation, and special construction;

- and superstructure;
- 2.1.3.1.2 structural systems including foundations
  - 2.1.3.1.3 on-site civil engineering;
  - 2.1.3.1.4 mechanical and plumbing systems;
  - 2.1.3.1.5 electrical systems;
  - 2.1.3.1.6 fire and life safety systems; and,
  - 2.1.3.1.7 landscaping, irrigation and drainage.

2.1.3.2 At the time of the submittal for the deliverables under Subparagraph 2.1.3, Archistructor and Owner will meet to approve and confer about the submittal, with Archistructor identifying, among other things, the evolution of the design and any significant changes or deviations that have taken place from work product delivered during the Schematic Design Phase, as well as any changes to the Project budget or Preliminary Project Schedule. Minutes of the meeting will be maintained by Archistructor and provided to all attendees for review and comment. As the design progresses each approved submittal package will replace the prior approved submittal package and will become part of the Contract Documents.

#### 2.1.4 Zoning and Planning Process Services

Where a zoning or planning approval process for Permits and Approvals has been identified during the Project Analysis Phase, Archistructor will assist Owner in obtaining that approval. Archistructor's services for the zoning and planning approval process will include the following:

- 2.1.4.1 assisting Owner in preparing applications;
- 2.1.4.2 preparing explanatory and presentation materials from Drawings previously prepared by Archistructor during the design services;
- 2.1.4.3 preparing all required landscape and irrigation design plans if landscape design services are included in the Work; and,
- 2.1.4.4 in conjunction with the zoning/planning consultant for the Project, appearing on Owner's behalf at Regulatory Agencies and community meetings and hearings.

#### 2.1.5 Pre-Construction Services

2.1.5.1 Pre-construction services will be performed by qualified professionals, cost estimators, or Subcontractors, with such services being performed concurrently with Archistructor's performance of the design services.

2.1.5.2 A description of the pre-construction services is set forth at **Exhibit B**.

#### 2.1.6 Additional Services.

Possible Additional Services offered by Archistructor are set forth at **Exhibit C** and are not included in the Work. Such Additional Services, and any other services not specifically included in Paragraph 2.1, are optional and will only be provided by Archistructor if requested in writing by Owner and incorporated into the Work by Change Order. Additional Services will not include any items necessary to fulfill Archistructor's obligations to complete the Work in accordance with the Contract Documents.

#### 2.1.7 Archistructor's Proposal Phase

2.1.7.1 At a date agreed upon between Owner and Archistructor, Archistructor will submit an Archistructor's Proposal which will include, unless the parties mutually agree otherwise, the following items. Notwithstanding anything to the contrary in this Agreement, until Archistructor has submitted Archistructor's Proposal and until Owner accepts such Proposal as set forth in Subparagraph 2.1.7.3, Archistructor will have no obligation to proceed with or perform any Work in addition to the Work described in Subparagraphs 2.1.1 through 2.1.6.

2.1.7.1.1 proposed Stipulated Sum Price for Construction and any fees for design and pre-construction services that are in addition to the fee set forth at **Exhibit F**;

2.1.7.1.2 a CSI 16 or 48 Division format breakdown of the Stipulated Sum Price for Construction, prepared in such form and supported by such data to substantiate its accuracy as Owner may reasonably require ("Schedule of Values"), which Schedule of Values will be the basis for reviewing Archistructor's Applications for Payment (defined at Paragraph 6.1);

2.1.7.1.3 list of the Drawings and Specifications, including all addenda, which were used in preparation of Archistructor's Proposal;

2.1.7.1.4 list of Allowances and a list of items for the Work that require further definition or resolution and a statement of their basis ("Open Items List"), which list will be modified from time to time and presented to Owner as items are resolved in the course of the Work;

2.1.7.1.5 list of options and Allowances for mitigation of concrete slab moisture vapor emissions and pH;

2.1.7.1.6 list of assumptions and clarifications made by Archistructor in the preparation of Archistructor's Proposal to supplement the information contained in the Drawings and Specifications;

2.1.7.1.7 Scheduled Substantial Completion Date upon which the proposed Stipulated Sum Price for Construction is based, and the Project Schedule that replaces the Preliminary Project Schedule;

2.1.7.1.8 number of Adverse Weather Days included in the Project Schedule per Paragraph 5.6;

2.1.7.1.9 schedule of applicable alternate prices;

2.1.7.1.10 schedule of applicable unit prices, which unit prices do not include Archistructor's Fee, General Conditions, costs for bonds (if applicable) and insurance, and costs for any Regulatory Agencies;

2.1.7.1.11 list of fees for Archistructor's Fee, General Conditions, design services, and bonds (if applicable) and insurance for Claims and changes in the Work;

2.1.7.1.12 list of all Permits and Approvals required for the construction portion of the Work; and identification of who is responsible for obtaining and paying for them;

2.1.7.1.13 Amendments to the Agreement, if any;  
and,

2.1.7.1.14 time limit for acceptance of Archistructor's Proposal.

2.1.7.2 Upon submittal of Archistructor's Proposal, Archistructor and Owner will meet to review Archistructor's Proposal. If Owner finds any inconsistencies or inaccuracies in the information presented, it will give Notice to Archistructor of such findings, and Archistructor will make appropriate revisions to Archistructor's Proposal. If Owner objects to the terms of Archistructor's Proposal either party may suggest modifications to Archistructor's Proposal that are mutually acceptable to Owner and Archistructor, and Archistructor will make appropriate revisions to Archistructor's Proposal.

2.1.7.3 If Owner accepts Archistructor's Proposal, as may be revised by Archistructor pursuant to Subparagraph 2.1.7.2, Owner will sign such proposal, the date such signing occurs being referred to as the "Proposal Acceptance Date." The Contract Price will then be increased by the Stipulated Sum Price for Construction plus any fees for design and pre-construction services that are in addition to the fee set forth at **Exhibit F**, both set forth in Archistructor's Proposal, and Archistructor's Proposal will be accepted as a Contract

Document. Upon such acceptance by Owner of Archistructor's Proposal, Archistructor will then proceed with the completion of the Construction Documents and the balance of the Work in accordance with the Project Schedule.

2.1.7.4 If Owner does not accept Archistructor's Proposal in writing on or before the date specified in Archistructor's Proposal for such acceptance, Archistructor's Proposal may be withdrawn by Archistructor and this Agreement will be deemed to be terminated by Owner for its convenience in accordance with Paragraph 10.2.

## 2.1.8 Construction Documents Phase

2.1.8.1 Based on the accepted Archistructor's Proposal, Archistructor will prepare, and furnish to Owner, Drawings, Specifications, and other documents and electronic data that will set forth in detail the requirements for the construction portion of the Work ("Construction Documents"). The Construction Documents will:

2.1.8.1.1 be consistent with the intent of those documents identified in Archistructor's Proposal;

2.1.8.1.2 provide information for the use of those in the building trades;

2.1.8.1.3 include documents customarily required for Permits and Approvals for the construction portion of the Work; and,

2.1.8.1.4 comply with all applicable Laws and Regulations.

2.1.8.2 At the time of the submittal for the deliverables under Subparagraph 2.1.8, Archistructor and Owner will meet to approve and confer about the submittal, with Archistructor identifying, among other things, the evolution of the design and any significant changes or deviations that have taken place from the documents identified in Archistructor's Proposal. Minutes of the meeting will be maintained by Archistructor and provided to all attendees for review and comment. As the design progresses each approved submittal package will replace the prior approved submittal package and will become part of the Contract Documents.

## 2.1.9 Construction Services Phase

The following services (collectively known as "Construction Services") will be provided by Architect and Archistructor's Consultants during the construction portion of the Work:

2.1.9.1 assisting in obtaining Permits and Approvals for the construction portion of the Work, including assistance in preparing applications and furnishing copies of previously developed Drawings or data;

2.1.9.2 as a representative of Owner, visiting the Site at intervals appropriate to the stage of construction, or as otherwise agreed by Owner and Archistructor, to: (a) endeavor to guard Owner against defects and deficiencies in the construction; (b) become familiar with the progress of the construction; and, (c) determine in general if the construction is being performed in a manner indicating that the construction, when fully completed, will be in accordance with the Contract Documents;

2.1.9.3 reviewing shop drawings, product data, samples and other submittals;

2.1.9.4 clarifying and interpreting the Construction Documents; and,

2.1.9.5 preparing a set of the Drawings indicating significant changes made during construction ("Record Drawings") for submittal to Owner in both electronic and print format.

## **2.2 General Construction Services.**

### **2.2.1 General Obligations of Archistructor for Construction**

Archistructor will perform its obligations for this Agreement and other Contract Documents as expeditiously as is consistent with reasonable professional skill and care and the orderly progress of the Work. Unless otherwise provided in the Contract Documents, Archistructor will furnish, or cause to be furnished, and will pay for all design services, labor, materials, equipment, tools, construction equipment and machinery, electricity, water, heat, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated, or to be incorporated, in the Work.

### **2.2.2 Taxes**

Archistructor will pay all sales, consumer, use and similar taxes applicable to the Work at the rates that were in effect as of the Proposal Acceptance Date. If, in accordance with Owner's direction, an exemption is claimed for payment by Archistructor of any type of taxes directly applicable to the Work, Owner agrees to indemnify and hold harmless Archistructor from any liability, penalty, interest, fine, tax assessment or other cost incurred by Archistructor as a result of any action taken by Archistructor in accordance with Owner's direction.

### **2.2.3 Permits and Approvals**

Archistructor will obtain, pay, give notices, and comply with all applicable Laws and Regulations, for all Permits and Approvals set forth in Archistructor's Proposal as being Archistructor's responsibility. In accordance with the Schedules (defined at Paragraph 5.1), Professional Standards, and the reasonably known requirements of the applicable Regulatory Agencies, Archistructor will prepare and submit all applications and supporting documents

necessary for obtaining the Permits and Approvals that are Archistructor's responsibility; and Archistructor will cooperate with Owner to comply with the requirements for such applications and supporting documentation for all Permits and Approvals set forth in Archistructor's Proposal as being Owner's responsibility.

#### 2.2.4 Supervision of Work

Archistructor will supervise and direct the Work in accordance with Professional Standards. Archistructor will be solely responsible for, and have sole control over, all construction means, methods, techniques, sequences, procedures, and coordination for the Work.

#### 2.2.5 Safety

2.2.5.1 Archistructor will have overall responsibility for safety precautions and programs in the performance of the Work and for ensuring that the Work is performed in accordance with all applicable Laws and Regulations concerning construction safety.

2.2.5.2 In performing the Work Archistructor will seek to avoid injury, loss or damage to:

2.2.5.2.1 employees and other persons at the Site;

2.2.5.2.2 materials and equipment stored at the Site for use in the Work; and,

2.2.5.2.3 all other property and structures located at the Site and adjacent to the Site, whether or not said property or structures are part of the Work.

2.2.5.3 Archistructor will designate an individual at the Site in the employ of Archistructor who will act as Archistructor's designated safety representative with a duty to prevent accidents, which safety representative will be Archistructor's Project superintendent unless otherwise identified by Archistructor in writing to Owner.

2.2.5.4 Archistructor will immediately notify Owner of any and all accidents, property damage, and injuries occurring at the Site. When Archistructor is required to file an accident report with any Regulatory Agencies, Archistructor will furnish a copy of the report to Owner.

2.2.5.5 If Owner reasonably believes that any part of the Work or Site is unsafe, Owner may, without assuming responsibility for Archistructor's safety program or responsibilities, provide Notice to Archistructor, and Archistructor will take all necessary corrective actions.



#### 2.2.6 Cleaning of Site

During the Work Archistructor will maintain the Site and areas adjacent to the Site in a clean and orderly manner and will regularly remove debris, rubbish and waste materials resulting from the Work. After completing Work in an area of the Site, Archistructor will clean the area and remove all debris, rubbish and waste materials, equipment, tools, machinery, and surplus materials. Archistructor will not be required to clean areas or remove any materials, debris or waste materials left by Owner or Owner's Other Contractors.

#### 2.2.7 Record Documents and Accounts

2.2.7.1 Archistructor will maintain at the Site in good order one record copy of the Drawings, Specifications, product data, samples, shop drawings, submittals, and Change Orders.

2.2.7.2 In accordance with Professional Standards, Archistructor will keep financial records for the Work and preserve all such records for a period of six years after Final Payment.

### 3. ARTICLE 3—OWNER'S RESPONSIBILITIES

#### 3.1 Independent Review.

Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor, or cost estimator under contract to, or employed by, Owner. Such independent review will be undertaken at Owner's expense in a timely manner and will not delay the orderly progress of the Work.

#### 3.2 Permits and Approvals.

Owner will obtain, pay, give notices, and comply with all applicable Laws and Regulations, for all Permits and Approvals set forth in Archistructor's Proposal as being Owner's responsibility. In accordance with the Schedules and the reasonably known requirements of the applicable Regulatory Agencies, Owner will prepare and submit all applications and supporting documents necessary for obtaining the Permits and Approvals that are Owner's responsibility; and Owner will cooperate with Archistructor to comply with the requirements for such applications and supporting documentation for all Permits and Approvals set forth in Archistructor's Proposal as being Archistructor's responsibility.

#### 3.3 Furnishing of Services and Information.

3.3.1 Owner will furnish for the Work the services set forth below ("Owner's Services") with reasonable promptness in accordance with the Schedules, utilizing consultants under direct contract with Owner ("Owner's Consultants") and at Owner's expense. Except to the extent Archistructor knows of any inaccuracy, Archistructor will be entitled to rely upon the accuracy of Owner's Services and Owner will indemnify and hold Archistructor

harmless from any cost, liability or damage arising from any inaccuracy in Owner's Services. If Archistructor knows of any inaccuracy in Owner's Services, Archistructor will give prompt Notice to Owner.

3.3.1.1 Reports, surveys, drawings, and tests concerning the conditions of the Site that are required by Laws or are necessary for the Work.

3.3.1.2 Surveys describing physical characteristics, legal limitations and utility locations for the Site, together with a written legal description of the Site. The surveys and legal information will include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; flood plains; adjacent drainage; right-of-ways, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries; contours of the Site at one foot intervals; locations, dimensions and necessary data pertaining 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 information on the survey will be referenced to a Site benchmark.

3.3.1.3 Geotechnical engineering, including, but not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of Hazardous Material, ground corrosion and resistivity tests, necessary operations for anticipated subsurface conditions, and reports with appropriate professional recommendations and design options ("Geotechnical Report"). Owner will meet with Architect, structural engineer, and Owner's geotechnical engineer to review all design options presented by the geotechnical engineer in the Geotechnical Report, together with the costs and risks for those options; and, based on the recommendations of the geotechnical engineer, Owner will select the options, costs and risks to be included for the Work.

3.3.1.4 Inspections and tests required by the Contract Documents for the Work, except those inspections and tests specifically identified in the Contract Documents to be Archistructor's responsibility, including those required to demonstrate compliance with the Contract Documents for all materials, mix designs, or equipment prior to Archistructor's purchase thereof for incorporation into the Work. Additionally, Archistructor will pay all costs for additional inspections or tests conducted due to replacement of defective Work. Archistructor will be responsible for scheduling all inspections and tests.

3.3.1.5 Chemical, air and water pollution tests; tests for Hazardous Material; and other laboratory and environmental tests, inspections and reports for the Site that are required by Laws for pollution or Hazardous Material.

3.3.1.6 Other services specifically identified in the Contract Documents to be Owner's responsibility.

3.3.2 If the Work or a portion of the Work is within an existing healthcare facility, Owner will furnish to Archistructor the "Infection Control Risk Assessment" ("ICRA") statement for the facility within thirty (30) days after execution of this Agreement and prior to submittal of Archistructor's Proposal to Owner. After furnishing the ICRA to

Archistructor, Owner's Infection Control Officer will meet with Archistructor to review the ICRA and to identify the specific measures / methods to be implemented by Archistructor for the various phases of the construction portion of the Work in order to comply with the requirements of the ICRA. As the construction portion of the Work progresses, Owner's Infection Control Officer will coordinate with Archistructor to ensure those specific measures / methods are implemented as required by the ICRA. If the ICRA is furnished to Archistructor after submittal of Archistructor's Proposal to Owner, or if, after execution of Archistructor's Proposal, the ICRA is revised or if additional measures / methods are identified by Owner's Infection Control Officer, then the Contract Price and/or the Schedules and Scheduled Substantial Completion Date will be Equitably Adjusted. If Owner does not have an ICRA for the healthcare facility, Owner will retain a consultant at Owner's expense to create an ICRA for the facility and to perform the actions of Owner's Infection Control Officer identified above.

3.3.3 To the extent that Owner has knowledge thereof, Owner will furnish and disclose to Archistructor the results and reports of tests, inspections or investigations conducted for the Site prior to the Effective Date that involve: (a) chemical, air and water pollution; (b) Hazardous Material; (c) environmental or geotechnical conditions; or, (d) any other information related to the Site relevant to the Work.

3.3.4 If Owner has knowledge of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner will give prompt Notice to Archistructor.

3.3.5 Owner will, in a timely manner consistent with the orderly progress of the Work and the terms of Paragraph 5.1, furnish the required information and services identified in the Contract Documents and render decisions which are reasonably requested by Archistructor.

### **3.4 Work by Owner or Owner's Other Contractors.**

3.4.1 Owner reserves the right to perform construction work or operations related to the Work, and not included in the Work, either with Owner's own forces or under separate contracts with Owner's Other Contractors provided, however, that Owner agrees such work or operations will be performed under conditions of insurance and waivers of subrogation identical to the provisions of this Agreement including, but not limited to, the requirement that each of Owner's Other Contractors will name Archistructor as an "additional insured" for Owner's Other Contractors' commercial general liability insurance policy prior to entering the Site. Owner's additionally agrees that its contracts with Owner's Other Contractors will contain provisions requiring them to comply with Archistructor's safety protocols, requirements, and directions for the Work; requiring them to attend Archistructor's Site safety meetings; and requiring them to comply with all applicable Laws and Regulations concerning construction safety. If Owner's Other Contractors fail to comply with those requirements, Archistructor may, after reasonable efforts in accordance with the circumstances to gain their compliance and after Notice to Owner, remove them from the Site. If delay or additional cost is involved because of Owner's use of Owner's Other Contractors, Archistructor may assert a Claim.

3.4.2 To the extent practical, Archistructor will afford Owner's Other Contractors reasonable opportunity for introduction and storage of their materials and equipment and for performance of their activities, and Archistructor will coordinate its Work with the work of Owner's Other Contractors. Archistructor will not be required to incur delay caused by Owner's Other Contractors presence at the Site. All Owner's Other Contractors' materials and equipment will be stored at Owner's or Owner's Other Contractors sole risk and Archistructor will not be obligated to protect or care for such items. Archistructor will not be liable in any way for any injury, loss or damage which may occur to any of Owner's or Owner's Other Contractors property or installations at the Site except to the extent caused by the negligence or other misconduct of Archistructor or Subcontractors and except to the extent that such injury, loss or damage is covered by the Builder's Risk Insurance (defined at Article 11). Owner agrees to indemnify and hold harmless Archistructor from all liability, costs, damages, fees, and expenses, arising out of, or connected with, the activities of Owner's Other Contractors at the Site, including damage to Archistructor's and Subcontractor's property or the Work caused by Owner's Other Contractors and impact to Schedules or costs caused by delays or by improperly timed activities or defective construction by Owner's Other Contractors.

3.4.3 Owner, including its employees and invitees, reserves the right to visit the Site provided that such visits are at a time and in a manner so as to not cause any interference with the Work; provided all such visitors comply with Archistructor's safety protocol and requirements for the Work and comply with all direction by Archistructor's personnel; and provided Owner indemnifies and holds harmless Archistructor and Subcontractors from any and all Claims for damages, losses and expenses arising from such visits except to the extent caused by the negligence or other misconduct of Archistructor or Subcontractors.

#### **4. ARTICLE 4—SUBCONTRACTORS**

##### **4.1 Owner's Communication with Subcontractors.**

Archistructor will be responsible for the management, scheduling and coordinating of Subcontractors in the performance of the Work. Except in an emergency event, Owner will instruct or direct Subcontractors only through Archistructor unless Owner and Archistructor agree otherwise.

##### **4.2 Assignment of Subcontracts.**

Archistructor will provide for the assignment of Subcontracts if Owner terminates this Agreement for Archistructor's default. Following such termination, Owner will notify Archistructor of those Subcontracts which it intends to accept assignment, subject to the rights of Archistructor's surety.

#### **5. ARTICLE 5—TIME**

##### **5.1 Schedules and Reporting.**

5.1.1 The Preliminary Project Schedule and the Project Schedule (collectively the “Schedules”) will show the critical path of the Work; the planned date of commencement of the construction portion of the Work and the Scheduled Substantial Completion Date; the dates for the start and completion of the various stages of the construction portion of the Work; the dates for submittal, review, and receipt of Permits and Approvals; and other factors that may affect the Scheduled Substantial Completion Date. Archistructor will update the Schedules from time-to-time as required by the conditions and progress of the Work and the Schedules will be Equitably Adjusted in accordance with this Agreement.

5.1.2 The Schedules will identify the dates on which Owner is required to furnish information, review documents or render decisions (each an “Owner Review Date”) and, when applicable, the period of time that Owner has to provide such information, perform such review or render such decisions (each, an “Owner Review Period”). If a time period for an Owner Review Period is not specified, it will be five (5) business days, unless an emergency situation requires earlier input from Owner. Each Owner Review Period will commence on the business day after the day Archistructor delivers to Owner a written request, including any documents that Owner is to review, for Owner to provide information, review documents, or render a decision. If Archistructor does not deliver a complete request to Owner, or if Owner reasonably requires additional information, Owner Review Period will not commence until Archistructor delivers such request and information to Owner, and the respective Owner Review Date will be extended on a day-for-day basis until Archistructor delivers such request and information to Owner.

5.1.3 Owner and Archistructor will hold regularly scheduled meetings during the design and construction portions of the Work to thoroughly discuss the Schedules, progress of the Work, status of planned Work, and other matters related to the Work.

5.1.4 The term “day” as used in this Agreement will mean calendar day unless otherwise specifically defined. The term “business day” as used in this Agreement will mean any day Monday through Friday that is not a holiday recognized by the federal government, the State of Colorado, the state in which Owner is located, or the state in which the Site is located.

## **5.2 Commencement of Portions of the Work.**

Archistructor’s performance of the services set forth in Subparagraphs 2.1.1 through 2.1.6 will be deemed to have commenced on the latter of the Effective Date or execution of this Agreement by both parties. Work performed prior to the Effective Date, through a limited Notice to proceed, an interim agreement, or through any other arrangement between Owner and Archistructor, will be deemed to have been performed pursuant to this Agreement. Archistructor will not be obligated to commence the construction portion of the Work until applicable Permits and Approvals have been obtained and Owner has signed Archistructor’s Proposal evidencing its acceptance thereof.

## **5.3 Substantial and Final Completion.**

5.3.1 “Substantial Completion” is the stage in the progress of the construction portion of the Work when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Work for its intended purpose; and when the Work, or a designated portion thereof, has received permission from Regulatory Agencies for occupancy (“Certificate of Occupancy”).

5.3.2 Archistructor will achieve Substantial Completion on or before the date identified in Archistructor’s Proposal, as such date may be extended in accordance with this Agreement (“Scheduled Substantial Completion Date”).

5.3.3 “Final Completion” of the Work will occur when Archistructor has completed all Revised Punch List (defined below) items and has submitted to Owner the Operations and Maintenance Manual (defined at Subparagraph 8.2.1) and the Record Drawings. Final Completion will be accomplished as expeditiously as practical after Substantial Completion.

#### **5.4 Punch List and Certificate of Substantial Completion.**

5.4.1 When Archistructor considers that the Work, or a designated portion thereof, has achieved Substantial Completion, Archistructor will provide Notice to Owner and issue for Owner’s signature a certificate of substantial completion (“CSC”) that will include a list of items to be completed or corrected (“Punch List”). Within five (5) business days of Owner’s receipt of the Notice or the CSC, Owner and Archistructor will jointly review the Work and the Punch List. Within five (5) business days after the review, Archistructor will revise the Punch List (“Revised Punch List”) to include any additional items identified during the review. The Punch List and Revised Punch List will include the actual cost to complete or correct each item contained therein. If the actual cost is not known for an item, then Owner and Archistructor will reasonably agree upon the cost to complete or correct the item.

5.4.2 If Owner, on the basis of its review of the Work with Archistructor, concurs that the Work, or designated portion thereof, has achieved Substantial Completion in accordance with the Contract Documents, Owner will sign the CSC. The CSC will fix the date of Substantial Completion and state the time within which Archistructor will complete or correct the items listed on the Revised Punch List attached thereto. As Revised Punch List items are completed or corrected, Archistructor will notify Owner. Owner will inspect those completed or corrected Revised Punch List items and either accept as complete or corrected those Revised Punch List items or state its reason for rejection of completion or correction of those items. This process will continue until all the Revised Punch List items are accepted as complete or corrected by Owner. If items that need to be completed or corrected are discovered after the Revised Punch List is compiled, such items will be considered Defective Work (defined at Paragraph 8.4).

5.4.3 If the Work does not receive a Certificate of Occupancy due to issues beyond the responsibilities of Archistructor, including any equipment procurement or installation not the responsibility of Archistructor, then Archistructor will be deemed to have

achieved Substantial Completion of the Work when the Work is complete in accordance with the Contract Documents so that Owner could otherwise occupy and use the Work for its intended purpose.

5.4.4 If any Regulatory Agencies or other entity has the power and authority to require Archistructor or Owner to post security in the form of a bond, letter of credit, or cash in escrow, for the guaranteed performance of post Final Completion obligations, such security will be posted by Archistructor unless the security is required due to a matter that is the responsibility of Owner. If Archistructor posts such security, then Owner will pay to Archistructor its costs for posting the security.

## **5.5 Partial Occupancy.**

Owner may occupy or use partial portions of the Work at any stage when such portion is designated by separate agreement with Archistructor, provided such use is consented to by insurers and sureties for the Work and authorized by Regulatory Agencies. Such agreement between Owner and Archistructor will include the responsibilities assigned to each of them for payments, security, maintenance, utilities, insurance, and commencement of warranties for the portion of the Work. Immediately prior to such partial occupancy or use, Owner and Archistructor will jointly inspect the area to be occupied or used to determine and record the condition of the Work in that area, including developing a Punch List for the Work in that area. All Owner's furniture, fixtures, and equipment stored or installed within the portion of the Work will be stored or installed at Owner's sole risk and, except to the extent of undisputable negligent acts of Archistructor or Subcontractors, Archistructor will not be liable in any way for any loss or damage which may occur to any of such Owner's furniture, fixtures, and equipment.

## **5.6 Delays in the Work.**

If Archistructor is delayed at any time in the progress of the Work by an act or neglect of Owner, Owner's agents, Owner's Consultants or Owner's Other Contractors; or by changes in the Work ordered by Owner; or, without negligence by Archistructor in accordance with Professional Standards, by delay by any Regulatory Agencies in the Permits and Approvals processes; or by labor disputes, fire, unusual delay in deliveries, acts of God, Adverse Weather Days (defined below) in excess of the number of Adverse Weather Days set forth in Archistructor's Proposal, casualties or other causes beyond Archistructor's control; or by any other causes which Owner and Archistructor agree may justify delay (collectively "Excusable Delays"); then the Contract Price and/or Schedules and Scheduled Substantial Completion Date will be Equitably Adjusted. All Claims for delays will be made in accordance with Article 12. Adverse Weather Days will mean the occurrence of snow, ice, wind, rain, cold or heat which in the reasonable and prudent exercise of Archistructor's professional opinion make it unreasonable and/or unsafe to execute the Work as scheduled for any specific day.

# **6. ARTICLE 6—PAYMENTS**

## **6.1 Progress Payments.**

6.1.1 Archistructor will deliver to Owner, on or before the twentieth (20<sup>th</sup>) day of each month after the Effective Date, an itemized application for payment (“Application for Payment” or “Application”) describing the Work completed in the prior month and the payment amount requested by Archistructor for that Work, which Application for Payment will constitute a certification by Archistructor that, to the best of Archistructor’s knowledge, information and belief, the Work has progressed to the point indicated in the Application, that the quality of the Work covered by the Application is in accordance with the Contract Documents, and that Archistructor is entitled to payment in the amount requested.

6.1.2 Prior to acceptance of Archistructor’s Proposal, Owner will identify to Archistructor any specific data that will be required by Owner or Owner’s lenders for their review of Applications for Payment.

6.1.3 Applications for Payment will reflect retainage as follows:

6.1.3.1 no retainage will be withheld from amounts due Archistructor for design and pre-construction portions of the Work, fees paid to Regulatory Agencies, and Archistructor’s Fee; and,

6.1.3.2 for amounts due for all other Work, “five percent (5%) until Substantial Completion”.

6.1.4 Within twenty (20) days of Owner’s receipt of an Application for Payment, Owner will make payment to Archistructor for that Application. If Owner disputes the amount requested by Archistructor in an Application for Payment, Owner and Archistructor will meet during the ten (10) day period after Owner’s receipt of the Application to resolve the dispute.

6.1.5 Payments made by Owner to Archistructor will not constitute acceptance of Work not in accordance with the Contract Documents.

## **6.2 Substantial Completion Payment.**

At Substantial Completion, Owner will pay Archistructor the unpaid balance of the Contract Price as may be adjusted for Savings, including all retainage, less 150% of the cost of completing the Revised Punch List items, completing the Record Drawings, and completing the Operations and Maintenance Manual. Payment of the withheld sums for those items will be made monthly through Applications for Payment as they are completed.

## **6.3 Final Payment.**

6.3.1 Final payment of the unpaid balance of the Contract Price as may be adjusted for Savings (“Final Payment”) will be due when the Work, including the Revised Punch List items, Record Drawings, and the Operations and Maintenance Manual are completed. Archistructor will submit with its Application for Final Payment the following items:



6.3.1.1 final lien waivers indicating that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be encumbered, have been paid or otherwise satisfied; and,

6.3.1.2 consent of surety, if any, to Final Payment.

6.3.2 Within twenty (20) days of Owner's receipt of an Application for Final Payment, Owner will make Final Payment to Archistructor.

6.3.3 Owner's making of Final Payment will constitute a waiver of all Claims by Owner except those arising from:

6.3.3.1 liens, Claims, security interests, or encumbrances arising out of the Contract Documents and unsettled;

6.3.3.2 failure of the Work to comply with the requirements of the Contract Documents; or,

6.3.3.3 terms of special warranties required by the Contract Documents; or,

6.3.4 Acceptance of Final Payment will constitute a waiver of all Claims by Archistructor except those previously made in writing and unsettled at the time of the Application for Final Payment, and Owner's indemnity and hold harmless obligations expressly stated in this Agreement.

#### **6.4 Payments to Subcontractors and Archistructor's Consultants.**

Within seven (7) business days of receipt of a payment from Owner, Archistructor will pay each Subcontractor and Archistructor's Consultant the amount of that payment they are entitled to in accordance with their Subcontract. Archistructor will, within every Subcontract, require all Subcontractors and Archistructor's Consultants to make payments to their sub-subcontractors or subconsultants in a similar manner. Owner will not have an obligation to make, nor to see to the making of, payments to a Subcontractor or Archistructor's Consultant except as may otherwise be required by Laws.

#### **6.5 Interest Payments.**

Except for payments, or portions of payments, that are disputed in good faith, payments due either Archistructor or Owner pursuant to the terms of this Agreement which are not paid when due will accrue interest from the date due at the rate of one percent (1.0%) per month until paid.

#### **6.6 Title Passage.**

Archistructor warrants that title to all Work covered by an Application for Payment will pass to Owner at the time of payment for such Work. Archistructor further warrants that, upon submittal

of an Application for Payment, all Work for which previous payments have been received from Owner will be free and clear of liens, claims, security interests or encumbrances in favor of Archistructor or any Subcontractor and Archistructor's Consultant.

## **6.7 Liens.**

To the extent Owner makes payments to Archistructor in accordance with this Agreement, Archistructor will indemnify and hold harmless Owner from any and all liens and/or claims of non-payment made by Subcontractors, Archistructor's Consultants, sub-subcontractors and subconsultants, and their employees. If any such lien or claim is filed, Archistructor will cause such lien or claim to be canceled and discharged of record or will place a bond against such lien or claim. If Archistructor fails to take such action Owner may cause such lien or claim to be so canceled or discharged at Archistructor's expense.

## **7. ARTICLE 7—CHANGES**

### **7.1 Changes in the Work.**

7.1.1 Without invalidating this Agreement, changes in the Work may be accomplished after the Effective Date by Change Order, Work Change Directive (defined at Paragraph 7.3), or a minor change in the Work.

7.1.2 If Owner requests a proposal for a material and substantial change in the Work from Archistructor and subsequently elects not to proceed with the change, and if preparing such proposal results in reasonably significant costs for Archistructor, or if a combination of preparing such requests for proposals results in reasonably significant costs for Archistructor, a Change Order will be issued to reimburse Archistructor for the costs of pre-construction, design, and preparation services for the proposal(s).

### **7.2 Change Order.**

A "Change Order" is a written instrument for a change in the Work or for an Equitable Adjustment in the Contract Price and/or the Schedules and Scheduled Substantial Completion Date. A Change Order will be prepared by Archistructor and signed by Owner and Archistructor, stating their agreement upon all of the following:

- 7.2.1 a description of the change in the Work;
- 7.2.2 the adjustment, if any, for the Contract Price; and
- 7.2.3 the adjustment, if any, for the Schedules and Scheduled Substantial Completion Date.

### **7.3 Work Change Directive.**

7.3.1 A “Work Change Directive” is a written order prepared and signed by Owner, directing a change in the Work prior to agreement with Archistructor on the adjustment of the Contract Price and/or the Schedules and Scheduled Substantial Completion Date.

7.3.2 Upon receiving a Work Change Directive, Archistructor will deliver to Owner a good faith estimate of the adjustments to the Contract Price and/or the Schedules and Scheduled Substantial Completion Date for the changed Work. If Owner disagrees with that estimate, Owner and Archistructor will negotiate in good faith for appropriate adjustments to the Contract Price and/or the Schedules and Scheduled Substantial Completion Date and the parties will conclude these negotiations within ten (10) business days after Archistructor delivers the estimate. The determination of costs for an adjustment in the Contract Price will be made in accordance with Paragraph 7.5.

7.3.3 When Owner and Archistructor agree upon the adjustments in the Contract Price and/or the Schedules and Scheduled Substantial Completion Date for a Work Change Directive, such agreement will be recorded immediately by preparation and execution of a Change Order.

7.3.4 If Owner and Archistructor fail to agree on the adjustments to the Contract Price and/or the Schedules and Scheduled Substantial Completion Date for a Work Change Directive within the ten (10) business day negotiation period, either Owner and Archistructor may unilaterally elect to resolve the matter as a Claim. Pending resolution of such Claim, as the Work identified in the Work Change Directive is completed, Archistructor will be entitled to include in its Applications for Payment costs for that completed Work with an aggregate amount of such costs equal to fifty percent (50%) of Archistructor’s good faith estimate of the cost to perform the Work. Owner agrees to pay such amount pending resolution of the Claim with the express understanding that: (a) such payment by Owner does not prejudice Owner’s right to argue that it has no responsibility to pay for such Work; and, (b) receipt of such payment by Archistructor does not prejudice Archistructor’s right to recover full payment, including interest, for the Work.

#### **7.4 Minor Changes in the Work.**

7.4.1 Archistructor may make minor changes in the design and construction portions of the Work consistent with the intent of the Contract Documents so long as such changes do not: (a) involve adjustments in the Contract Price and/or the Schedules and Scheduled Substantial Completion Date; or, (b) materially and adversely affect the design of the Project; the quality of any of the materials or equipment specified in the Contract Documents; the performance or longevity of any materials, equipment or systems specified in the Contract Documents; or the quality of workmanship required by the Contract Documents.

7.4.2 Archistructor will promptly inform Owner in writing of any minor changes and will record such changes on the Record Drawings.

#### **7.5 Determination of Costs.**

7.5.1 The adjustment for an increase or decrease in the Contract Price for a change in the Work or for an Equitable Adjustment in the Contract Price will be determined by one or more of the following methods:

7.5.1.1 a mutually agreed upon stipulated sum amount;

7.5.1.2 the actual Cost of the Work for the change in the Work, plus the actual cost of the associated design and pre-construction services, both utilizing the hourly billing rates set forth at **Exhibit F** for Archistructor's personnel and the fees stated in Archistructor's Proposal, and all documented by Archistructor's itemized accounting of the costs; or,

7.5.1.3 another manner agreed upon by the parties.

7.5.2 If the adjustment in the Contract Price for a change in the Work or for an Equitable Adjustment in the Contract Price is determined by any method above other than a stipulated sum amount, then:

7.5.2.1 If the adjustment is a decrease in the Contract Price, the total adjustment will not include a decrease in Archistructor's Fee, but will include a decrease in Archistructor's Warranty Fee calculated in accordance with Article 6, a decrease in the cost for General Conditions calculated in accordance with Archistructor's Proposal to the extent there are any actual savings for General Conditions, and a decrease in the fee for premiums for bonds (if applicable) and insurance calculated in accordance with Archistructor's Proposal.

7.5.2.2 If the adjustment is an increase in the Contract Price, the total adjustment will include an increase calculated in accordance with Article 6 for Archistructor's Fee an increase in the cost for General Conditions calculated in accordance with Archistructor's Proposal to the extent there are any actual savings for General Conditions, and an increase in the fee for premiums for bonds (if applicable) and insurance calculated in accordance with Archistructor's Proposal.

## **7.6 Differing Site Conditions.**

If Archistructor encounters conditions at the Site which are: (a) subsurface or otherwise concealed physical conditions differing materially from those indicated in the Contract Documents or the Geotechnical Report; or, (b) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents; then Archistructor will give Notice to Owner of such conditions and the Contract Price and/or the Schedules and Scheduled Substantial Completion Date will be Equitably Adjusted.

## **7.7 Changes in Taxes, Laws or Regulations.**

The Contract Price and/or the Schedules and Scheduled Substantial Completion Date will be Equitably Adjusted in the event the Work is materially and adversely affected by the enactment, adoption, promulgation, modification, reinterpretation, or repeal, of any taxes or Laws or Regulations after the Proposal Acceptance Date, but only if such taxes are applicable to the Work itself.

## **7.8 Changes in Commodity Prices.**

The Contract Price will be Equitably Adjusted upward or downward if the Contract Price is adversely or beneficially affected by an increase or decrease in cost for any individual commodity, material, or labor required for the Work that is in excess of ten percent (10%) provided such adverse effect on the Contract Price was realized by Archistructor. Requests for such adjustments to the Contract Price pursuant to this Paragraph will be made in accordance with Article 12 and will not include an adjustment in Archistructor's Fee.

## **8. ARTICLE 8—CORRECTION OF WORK AND WARRANTY**

### **8.1 Rework.**

8.1.1 Prior to Substantial Completion, Archistructor will correct Work properly rejected by Owner in accordance with the Contract Documents or known by Archistructor to not be in accordance with the Contract Documents. If Archistructor fails to make such correction with diligence and promptness or if Archistructor fails to make such correction within seven (7) business days after receipt of Notice from Owner to do so (or if such correction cannot be reasonably made within such seven (7) business day period, if Archistructor fails to commence and diligently proceed with correction within the seven (7) business day period), Owner may:

8.1.1.1 correct such deficiencies with Archistructor paying to Owner all reasonable costs therefore; or,

8.1.1.2 order Archistructor to stop the Work, or any portion thereof, until the correction has been made, however, Owner's right to stop the Work will not give rise to a duty on the part of Owner to exercise the right for benefit of Archistructor or other persons or entities.

### **8.2 Maintenance and Training.**

8.2.1 Upon Substantial Completion, Archistructor will provide Owner with an electronic copy (and one (1) hard copy if requested by Owner) of an operations and maintenance manual for the Work, which will include: (a) specific warranties required by the Contract Documents from equipment and/or material suppliers, with the benefits of such warranties hereby assigned to Owner; (b) written maintenance requirements for all relevant equipment, systems, components, and materials included in the Work; (c) operational instructions from the manufacturers of all relevant equipment and systems, included in the Work, including, for example, the heating, ventilation, and air conditioning ("HVAC") system; and, (d)

protocols for the warranty process, including information for contacting Subcontractors and for notifying Archistructor of warranty claims ("Operations and Maintenance Manual").

8.2.2 Additionally upon Substantial Completion, Archistructor and appropriate Subcontractors will conduct one (1) meeting at the Site for training Owner's staff on the operation and maintenance of equipment and systems included in the Work. All such training will be conducted in one day, or multiple continuous days if such training cannot be accomplished in one day. Following the meeting and continuing through the Correction Period (defined at Paragraph 8.4), Archistructor and Subcontractors will be reasonably available (such availability may be by telephone) for consultation with Owner's staff regarding operation and maintenance protocol.

### **8.3 Warranty.**

8.3.1 Archistructor warrants that materials and equipment furnished for the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents and the Work will be free from defective workmanship and materials, performed in a good and workmanlike manner, and in accordance with the Contract Documents. This warranty will commence at Substantial Completion, or at any other date established in a written agreement between Owner and Archistructor for partial occupancy or use by Owner of portions of the Work, or at any other date established by terms of an applicable special warranty required by the Contract Documents ("Warranty Commencement Date").

8.3.2 The following are excluded from the warranty provided pursuant to Subparagraph 8.3.1:

8.3.2.1 all equipment furnished by Owner, whether new or existing, and whether relocated or installed by Archistructor;

8.3.2.2 all existing building components if the Work is in an existing building;

8.3.2.3 cracking or movement of patios, pavements, parking lots, curbs, gutters, retaining walls, foundations, sidewalks, on-grade concrete floors, or other building components resulting from soil movement or water conditions, unless the cracking or movement results from Archistructor's failure to complete the Work in accordance with the structural engineer's portion of the Specifications, the geotechnical engineer's design options selected by Owner, or from a defect in Archistructor's workmanship, materials, or design;

8.3.2.4 loss or damage resulting from defective workmanship, defective materials, or defective design, engineering or information; all as performed or supplied by, or on behalf of, any person or entity other than Archistructor, Archistructor's Consultants, or Subcontractors;

8.3.2.5 normal wear and tear and normal deterioration of the Work (normal wear and tear and normal deterioration includes, but is not limited to, minor cracking of caulking and grout, and “hairline” cracking of drywall);

8.3.2.6 loss or damage resulting from acts of God;

8.3.2.7 loss or damage resulting from use of the Work for a purpose for which the Work was not intended;

8.3.2.8 loss or damage resulting from negligence, abuse, improper or insufficient maintenance (including, but not limited to, failure of Owner to purchase a maintenance service agreement for two (2) years following Substantial Completion from the elevator Subcontractor and the HVAC Subcontractor, or HVAC and elevator service providers that are fully certified by the manufacturers of, respectively, the HVAC and elevator system components), failure to comply with the warranty requirements of manufacturers or suppliers of portions of the Work, or improper operation of portions of the Work by anyone other than Archistructor, Archistructor’s Consultants, or Subcontractors. For clarification purposes only, maintenance required to be performed by Owner includes, but is not limited to, adjustment of door hardware; maintenance of caulking and grout, maintenance and cleaning of kitchen equipment (if such equipment is included in the Work); cleaning and adjustment of plumbing components; cleaning, adjustment, and replacement of belts and filters for HVAC equipment; and keeping current the HVAC maintenance log (provided in the Operations and Maintenance Manual).

8.3.2.9 loss or damage resulting from modifications, alterations, or additions to the Work, or changes in the grading of the ground around the Work, by anyone other than Archistructor, Archistructor’s Consultants, or Subcontractors;

8.3.2.10 loss or damage caused by seepage of water unless such loss is the direct result of a defect in Archistructor’s workmanship, materials, or design;

8.3.2.11 loss or damage directly or indirectly arising out of, caused by, contributed to, resulting from or relating to; mold, mildew, fungus, spores, wet or dry rot, microbial volatile organic compounds, or other micro-organisms of any type, nature or description, or their scent or by-products or any materials containing them, whether airborne or surface, unless such loss or damage is the result of a defect in Archistructor’s workmanship, materials, or design;

8.3.2.12 any damage that Owner has not taken reasonably timely action to minimize; and,

8.3.2.13 any defect not reported to Archistructor by Owner within two (2) months after the defect is discovered, or in the exercise of reasonable diligence should have been discovered, by Owner.

8.3.3 THE WARRANTY PROVIDED IN THIS ARTICLE IS ARCHISTRUCTOR'S SOLE WARRANTY WITH RESPECT TO THE WORK. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN SPECIFIC WARRANTIES REQUIRED BY THE CONTRACT DOCUMENTS FROM EQUIPMENT AND/OR MATERIAL SUPPLIERS, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY AND ALL WARRANTIES UNDER THE UNIFORM COMMERCIAL CODE, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

#### **8.4 Correction Period.**

8.4.1 If, within two (2) years (one (1) year for any appliances and all landscaping and irrigation system components) after the Warranty Commencement Date ("Correction Period"), any of the Work is found to be not in accordance with the requirements of the Contract Documents and the warranty stated at Paragraph 8.3 ("Defective Work"), Archistructor will correct it promptly after receipt of Notice from Owner to do so. If within the Correction Period Owner discovers Defective Work and does not promptly notify Archistructor pursuant to the limitations of Paragraph 8.3 or give Archistructor an opportunity to test and/or correct such Defective Work as reasonably requested by Archistructor, Owner waives the right to require correction of such Defective Work by Archistructor as well as Owner's right to make a Claim for a breach of the warranty with respect to such Defective Work. Correction of any Defective Work will not extend the Correction Period for that Work. If during the Correction Period Owner requests that Archistructor perform a Site visit and/or work to examine a portion of the Work that is ultimately determined to not be Defective Work, then Owner will pay all costs incurred by Archistructor for such Site visit and/or work, including all labor costs for Archistructor's employees utilizing the hourly billing rates set forth at **Exhibit F**, all travel costs, and all costs for Subcontractors, Archistructor's Consultants or third party experts ("Additional Warranty Costs").

8.4.2 During the Correction Period, Archistructor will assign a qualified and experienced representative to work directly with Owner to correct Defective Work. Prior to the expiration of the Correction Period, Archistructor will schedule and attend with Owner an inspection of the Work to determine whether any Defective Work exists and will prepare a list of such Defective Work. Such Defective Work will be corrected as expeditiously as practical.

8.4.3 Nothing contained in this Paragraph will be construed to establish a period of limitation with respect to other obligations Archistructor has under the Contract Documents. Establishment of the Correction Period has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to limit Owner's rights under Laws for the correction of latent defects in the Work.

### **9. ARTICLE 9—DOCUMENTS AND ADVERTISING**

#### **9.1 Ownership and Use of Documents.**



All Drawings, Specifications and other documents, including those in electronic form, prepared pursuant to this Agreement by Archistructor, Subcontractors, or Archistructor's Consultants are instruments of service through which the construction portion of the Work is described ("Design Documents"). Archistructor will retain all common law, statutory and other reserved rights, including copyright, in the Design Documents. The Design Documents become the property of Owner for the purpose of information and reference in connection with Owner's use, occupancy, and future expansion of the Project when this Agreement is fully performed, including the construction portion of the Work, and full payment for the Design Documents due in accordance with this Agreement has been received by Archistructor. If this Agreement is terminated by either Owner or Archistructor for default or convenience pursuant to Article 10, the Design Documents become the property of Owner for the purpose of information and future construction of the Work when payment for the Design Documents due in accordance with this Agreement has been received by Archistructor provided, however, if Owner elects to proceed with the construction portion of the Work utilizing another contractor, Owner will: (a) have the Design Documents completed, if they are not completed at the time of the termination, and stamped by another licensed design professional, with Archistructor paying all costs therefore solely if this Agreement was terminated for Archistructor default; and, (b) indemnify and hold harmless Archistructor, Subcontractors, and Archistructor's Consultants, and directors, officers, and agents of any of them, from any Claims for damages, losses and expenses arising out of the use of the Design Documents by Owner. If Owner desires to use Design Documents to build a substantially identical project at another site, it must obtain Archistructor's permission, which permission will not be unreasonably withheld. Owner agrees to indemnify and hold harmless Archistructor, Subcontractors, and Archistructor's Consultants against Claims for damages, losses and expenses arising out of: (a) any unauthorized reuse or distribution of the Design Documents; or, (b) any alterations, modifications, or additions to the Design Documents made by anyone other than Archistructor.

## **9.2 Advertising.**

Archistructor will have the right to include photographic or artistic representations of the completed construction portion of the Work in Archistructor's promotional and professional materials. Owner will give Archistructor reasonable access to the completed construction portion of the Work to make such representations. Notwithstanding the foregoing, Archistructor's materials will not include, without Owner's prior permission, the following: (a) Owner's confidential or proprietary information if Owner has previously advised Archistructor in writing of the specific information considered by Owner to be confidential or proprietary; and, (b) images of or other personally identifiable information concerning Owner's staff, clients, or visitors.

## **10. ARTICLE 10—SUSPENSION AND TERMINATION**

### **10.1 Owner's Right to Suspend the Work.**

Owner may suspend performance of all or a portion of the Work for such period of time as Owner may determine, subject to Paragraph 10.5, without cause and either before or after the construction portion of the Work commences, by Notice to Archistructor stating the effective

date of such suspension. When Owner notifies Archistructor to resume the Work, the Contract Price and the Schedules and Scheduled Substantial Completion Date will be Equitably Adjusted, and such adjustment will include the reasonable costs of shut-down, delay and remobilization.

## **10.2 Termination by Owner for its Convenience.**

10.2.1 Owner may terminate all or a portion of the Work for its convenience, without cause and either before or after the construction portion of the Work commences, by Notice to Archistructor stating the extent and effective date of such termination. Upon receipt of such Notice, Archistructor will, to the extent of the terminated portion of the Work:

10.2.1.1 stop all Work and place no further Subcontracts;

10.2.1.2 terminate outstanding Subcontracts;

10.2.1.3 deliver to Owner Design Documents that have been completed, subject to the conditions stated at Paragraph 9.1;

10.2.1.4 if the termination occurs after Archistructor has commenced the construction portion of the Work, take reasonable actions to preserve and protect Work completed and in progress and to protect materials at the Site, stored off-Site, or in transit; and,

10.2.1.5 take any other reasonable action which Owner directs for the termination.

10.2.2 If Owner terminates this Agreement for its convenience, Owner will, to the extent of the terminated portion of the Work, pay Archistructor:

10.2.2.1 the costs stated at **Exhibit F** and in the Schedule of Values for all Work performed as of the effective date of such termination;

10.2.2.2 all reasonable costs incurred by Archistructor in order to complete the actions identified at Subparagraph 10.2.1;

10.2.2.3 all reasonable costs (including cancellation fees) incurred by Archistructor in order to terminate Subcontracts;

10.2.2.4 if the termination occurs after Archistructor has commenced the construction portion of the Work, all reasonable costs to withdraw and demobilize from the Site;

10.2.2.5 Archistructor's Fee on the sums set forth in Subparagraphs 10.2.2.1 to 10.2.2.4; and,

10.2.2.6 solely if the termination occurs after Archistructor has commenced the construction portion of the Work, a termination fee equal to five percent (5%) of the unpaid balance of the Stipulated Sum Price for Construction for the terminated portion of the Work as of the date of termination.

10.2.3 Any amount due to Archistructor pursuant to this Paragraph will be paid within thirty (30) days following Owner's receipt of an Application for Payment for such amount together with the accompanying supporting documentation.

### **10.3 Termination by Owner for Archistructor's Default.**

10.3.1 If Archistructor fails in any of the following manners, then Owner may give Notice to Archistructor and Archistructor's surety, if any, that it intends to terminate this Agreement unless the failure is cured within seven (7) business days of Archistructor's receipt of the Notice (or if such failure cannot be reasonably cured within such seven (7) business day period, if Archistructor does not commence and diligently proceed with a cure for the failure within the seven (7) business day period). If Archistructor does not so cure the failure (or, if applicable, does not so commence and diligently proceed with a cure), Owner may then declare this Agreement terminated for Archistructor's default by providing Notice of termination to Archistructor. Upon providing such Notice of termination, Owner will have the right to proceed in accordance with Subparagraph 10.3.3 and Archistructor will not have a right to further payment until the remainder of the Work is completed.

10.3.1.1 Archistructor fails to utilize proper materials and/or qualified workers.

10.3.1.2 Archistructor fails to make payments due and owing to Subcontractors and Archistructor's Consultants in accordance with their Subcontracts.

10.3.1.3 Archistructor substantially fails to perform in accordance with the Schedules or is thirty (30) days behind the critical path of the Project Schedule.

10.3.1.4 Archistructor fails to achieve Substantial Completion of the Work within sixty (60) days after the Scheduled Substantial Completion Date as it may be extended by Change Order.

10.3.1.5 Archistructor materially fails to abide by applicable Laws and Regulations.

10.3.1.6 Archistructor otherwise materially breaches provisions of this Agreement.

10.3.2 If Archistructor files a petition under the Bankruptcy Code, this Agreement will terminate for Archistructor's default if Archistructor or Archistructor's

trustee rejects this Agreement or if Archistructor is unable to give adequate assurance that Archistructor will continue to perform the Work as required by this Agreement.

10.3.3 If this Agreement is terminated for Archistructor's default, Owner will have the right to:

10.3.3.1 take possession of the Site and of all materials and equipment to be incorporated into the Work thereon;

10.3.3.2 pursuant to Paragraph 4.2, provide Notice to Archistructor of those Subcontracts which it intends to accept assignment, subject to the rights of Archistructor's surety;

10.3.3.3 exercise its rights to use the Design Documents pursuant to Paragraph 9.1; and,

10.3.3.4 complete the Work by whatever reasonable method Owner may deem appropriate.

10.3.4 Owner will maintain detailed accounting of the actual costs and expenses incurred by Owner for the termination, including reasonable attorney fees, and in completing the Work, including Owner's management costs; and Owner will provide a copy of the detailed accounting to Archistructor when the Work is complete. If such costs and expenses incurred by Owner exceed the unpaid balance of the Contract Price, Archistructor will pay the difference to Owner within thirty (30) days of Owner's written demand. If such costs and expenses incurred by Owner are less than the unpaid balance of the Contract Price, Owner will pay the difference to Archistructor within thirty (30) days of Archistructor's written demand.

10.3.5 If Owner wrongfully terminates this Agreement for Archistructor's default, Owner will pay Archistructor the compensation Owner would owe if Owner had terminated the Work for its convenience. Archistructor's remedy hereunder will be exclusive.

#### **10.4 Archistructor's Right to Stop the Work.**

10.4.1 If either of the following events occur, then Archistructor may stop performing the Work if the event is not resolved within seven (7) days after Archistructor provides Notice to Owner of the event:

10.4.1.1 Archistructor provides Notice to Owner of information that causes Archistructor to form a reasonable belief that Owner may not have sufficient funds available and committed for the entire cost of the Work, including an amount for changes in the Work as may be approved in the course of the Work, or to satisfy the requirements and obligations imposed by the Contract Documents, and Owner fails to provide evidence reasonably satisfactory to Archistructor that such sufficient funds are available and committed. The failure of Archistructor to insist upon Owner providing this evidence at any one

time will not be a waiver of Owner's obligation to make payments pursuant to this Agreement, nor will it be a waiver of Archistructor's right to require that such evidence be provided at a later date.

10.4.1.2 Owner fails to pay Archistructor within seven (7) days after the date a payment is due, except for payments or portions of payments that are disputed, or for which additional supporting documentation is sought in accordance with this Agreement, or for which there is another legal basis for withholding payment.

10.4.2 If Archistructor does stop performing the Work as stated above and the Work is later resumed, the Contract Price and the Schedules and Scheduled Substantial Completion Date will be Equitably Adjusted, and such adjustment will include the reasonable costs of shut-down, delay and remobilization.

## **10.5 Termination by Archistructor for Owner's Default.**

10.5.1 Archistructor may declare this Agreement terminated for Owner's default by providing Notice to Owner if:

10.5.1.1 the Work is suspended by Owner for sixty (60) days;

10.5.1.2 the Work has been stopped for a sixty (60) day period: (a) under court order or order of Regulatory Agencies; or, (b) as a result of the declaration of a national emergency or an act of a Regulatory Agency through no act or fault of Archistructor;

10.5.1.3 the Work has been stopped for a seven (7) day period in accordance with Paragraph 10.4; or,

10.5.1.4 Owner substantially breaches provisions of this Agreement and fails to cure the breaches within seven (7) business days of Owner's receipt of the Notice (or if such failure cannot be reasonably cured within such seven (7) business day period, if Owner does not commence and diligently proceed with a cure for the breaches within the seven (7) business day period).

10.5.2 If Owner files a petition under the Bankruptcy Code, this Agreement will terminate for Owner's default if Owner or Owner's trustee rejects this Agreement or if Owner is unable to give adequate assurance that Owner will continue to perform its obligations as required by this Agreement.

10.5.3 If this Agreement is terminated for Owner's default, Owner will pay Archistructor those amounts set forth in Paragraph 10.2.

10.5.4 Any amount due to Archistructor pursuant to this Paragraph will be paid within thirty (30) days following Owner's receipt of an Application for Payment for such amount together with the accompanying supporting documentation.

## **10.6 Exclusive Remedies.**

The respective rights and remedies specified in this Article will be Owner's and Archistructor's sole recourse for any termination of this Agreement and the parties retain their rights specified in Article 12 for the actions specified in this Article. THE PARTIES REAFFIRM HEREIN THEIR RESPECTIVE WAIVER OF CONSEQUENTIAL AND PUNITIVE DAMAGES SET FORTH IN ARTICLE 12.

## **11. ARTICLE 11—INSURANCE AND INDEMNIFICATION**

### **11.1 Archistructor's Insurance.**

11.1.1 Archistructor will maintain during the term of this Agreement the insurance described below, which insurance will be placed with a company or companies authorized to transact business in the state where the Project will be constructed and with a minimum AM Best rating of A-VII. The insurance will be for the following amounts and coverage:

11.1.1.1 Commercial general liability insurance in Archistructor's name that will include coverage for bodily injury, property damage, personal injury and contractual liability, broad form property damage, and completed operations; with combined single limits of not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate. General Aggregate limits will apply per project. Commercial general liability insurance will be furnished on an occurrence basis.

11.1.1.2 Commercial automobile liability insurance including owned, non-owned and hired vehicle coverage with combined single limit of not less than \$1,000,000 bodily injury and property damage. Commercial automobile liability insurance will be furnished on an occurrence basis.

11.1.1.3 Statutory amounts of workers' compensation with employer's liability with limits of \$1,000,000/\$1,000,000/\$1,000,000.

11.1.1.4 Umbrella/excess liability insurance for coverage identified at Subparagraphs 11.1.1.1 and 11.1.1.2, with a limit of \$8,000,000. Umbrella/excess liability insurance will be furnished on an occurrence basis.

11.1.1.5 Professional liability insurance, with limits of not less than \$2,000,000 per claim and in the aggregate. Professional liability insurance will be furnished on a claims made basis.

11.1.1.6 Property insurance upon the Work (“Builder’s Risk Insurance”) to the full replacement value of the Work, except: Coverage for flood Zones X-500, B, and Shaded X will have a limit of \$3,000,000, coverage for flood Zones C and X will have a limit of \$25,000,000, and coverage for flood Zones A, D, V, and unlisted is excluded. Coverage for earth movement will have a limit of \$25,000,000.

The property insurance will include the interests of Owner, Archistructor and Subcontractors of every tier in the Work. It will be issued on an all risks of direct physical loss or special form policy. Archistructor will bear the cost of the deductible expense for losses that are caused by its negligence or those for whom it is responsible. Otherwise, the cost of the deductible expense will be treated as a Cost of the Work and the Contract Price will be increased by Change Order for the deductible expense. The deductible expenses will be: for flood \$25,000 (\$100,000 for Zones X-500, B, and Shaded X), for surface water \$5,000, for earth movement \$25,000, for property of others \$10,000, and for all other perils \$5,000. To the extent the Work suffers property damage that is not covered by the Builder’s Risk Insurance provided by Archistructor (including damage that is the result of acts of terrorism), any cost of replacing or repairing such property damage will be treated as a Cost of the Work and the Contract Price and/or the Schedules and Scheduled Substantial Completion Date will be Equitably Adjusted.

11.1.1.7 The Builder’s Risk Insurance coverage will be endorsed to provide “lost earnings, rents, and soft cost” coverage to protect Owner, with a limit of fifteen percent (15%) of the Stipulated Sum Price for Construction, subject to a maximum of \$750,000 for wood framed structures and \$5,250,000 for all other construction types. Such coverage typically includes actual loss of earnings, rents, additional construction loan interest and other fees resulting from a delay in occupancy or use, all as is specified in and limited by the Builder’s Risk Insurance policy. The deductible expense for such coverage will be the lost earnings, rents, or soft costs incurred during the first three (3) days following the occurrence of an event covered under the Builder’s Risk Insurance and the deductible expense will be borne by Owner.

11.1.2 Insurance maintained by Archistructor pursuant to Subparagraphs 11.1.1.1 and 11.1.1.2 will, to the extent permitted by Laws, name Owner as an “additional insured,” which additional insured endorsement will not include coverage to the extent of or for Owner’s negligence.

11.1.3 Liability coverage, whether written on an occurrence or claims-made basis, will be maintained without interruption from date of commencement of the Work through the period of all contractual obligations for this Agreement. With respect to Builder’s Risk Insurance coverage, unless earlier ceased by termination pursuant to Article 10, will remain in effect until Substantial Completion, at which time Owner’s permanent property insurance will replace the Builder’s Risk Insurance.

11.1.4 Certificates of Insurance reasonably acceptable to Owner will be delivered to Owner immediately after execution of this Agreement. Those Certificates will contain a provision that coverage afforded under the policies will not be altered, canceled or non-renewed until at least thirty (30) days prior written notice has been given to Owner.

## **11.2 Owner's Insurance.**

Owner will be responsible for purchasing and maintaining Owner's liability insurance, property insurance (including for any existing property owned by Owner contiguous to the Site as well as that required for all Owner's property or installations pursuant to Paragraph 5.5), statutory amounts of workers' compensation insurance with a waiver of subrogation unless excluded by Laws, and employer's liability insurance. Except to the extent of undisputable negligent acts of Archistructor or Subcontractors, Owner waives any Claims against Archistructor for any loss or damage to any existing property, real or personal, owned by Owner contiguous or adjacent to the Site, as well as to Owner's furniture, fixtures, and equipment installed within partially occupied or used portions of the Work pursuant to Paragraph 5.5, and Owner will look solely to its insurance for payment of such loss or damage.

## **11.3 Waiver of Subrogation.**

11.3.1 Owner and Archistructor waive all rights against each other, Archistructor's Consultants, Subcontractors, Owner's Other Contractors, and any of their respective employees or agents, for damages caused by risks covered by insurance provided in this Article to the extent that such damages are covered by that insurance or other property insurance applicable to the Work (including, but not limited, to property insurance obtained after completion of the Work), except: (a) such rights as they may have to the proceeds of such insurance held by Owner or Archistructor; and, (b) the parties' obligations concerning the deductibles as provided in Subparagraph 11.1.1.6.

11.3.2 If the policies of insurance referred to in this Article require an endorsement to provide coverage for the waiver of subrogation, the owners of such policies will cause them to be so endorsed.

## **11.4 Indemnification.**

11.4.1 To the fullest extent permitted by Laws and except to the extent provided in this Agreement, Archistructor will indemnify and hold harmless Owner, including Owner's Other Contractors, and agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' and experts' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of Archistructor, Archistructor's Consultants, Subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation will not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist or be available to an indemnified party, as to any property or person described in this Subparagraph. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of this indemnification obligation, such legal limitations are made a part of the indemnification obligation and will operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such



limitations, and as so modified, the indemnification obligation will continue in full force and effect.

11.4.2 To the fullest extent permitted by Laws and except to the extent provided in this Agreement, Owner will indemnify and hold harmless Archistructor, including Archistructor's Consultants, Subcontractors, and agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' and experts' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of Owner, Owner's Other Contractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation will not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist or be available to an indemnified party, as to any property or person described in this Subparagraph. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of this indemnification obligation, such legal limitations are made a part of the indemnification obligation and will operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation will continue in full force and effect.

11.4.3 During the construction portion of the Work, Archistructor may install posts at the roof of the building for horizontal lifelines to protect its workers from hazards associated with steel erection and roofing installation. Archistructor will leave such posts in place after completion of the Work for Owner's future use unless Owner directs Archistructor in writing to remove the posts. Notwithstanding the foregoing, Archistructor assumes no responsibility for the structural integrity of the posts and specifically disclaims any responsibility for the design, engineering, maintenance, and fitness for any purpose or use by Owner after Substantial Completion of the Work. Owner will indemnify and hold harmless Archistructor, Archistructor's Consultants, Subcontractors, and agents and employees of any of them, from any Claims for damages, losses and expenses arising out of the use of the posts.

11.4.4 In claims against any person or entity indemnified under Subparagraphs 11.4.1, 11.4.2, or 11.4.3 by an employee of Archistructor or Owner, or an employee of anyone engaged by Archistructor or Owner, the indemnification obligation under Subparagraphs 11.4.1, 11.4.2, or 11.4.3 will not be limited by a limitation on amount or type of damages, compensation of benefits payable by or for Archistructor or Owner under Workers Compensation Acts, disability benefit acts or other employee benefit acts.

## **11.5 Special Insurance.**

If Owner requires Archistructor to maintain any other insurance coverage, policy, amendment, or endorsement not described above, Owner will pay the additional cost thereof.

## **11.6 Payment and Performance Bonds.**

Archistructor will maintain for this Agreement a 100% payment bond for the Stipulated Sum Price for Construction (not including the fees for design and pre-construction services) covering

the payment of all obligations arising thereunder, and a 100% performance bond for the construction portion of the Work covering the faithful performance of this Agreement. The bonds will be on form AIA Document A312, 2010 edition. Archistructor will deliver the required bonds to Owner not later than fourteen (14) days prior to the start of the construction portion of the Work. The premium for all bonds will be included in the Contract Price. The bonds will be written by sureties legally authorized to write such bonds in the State of Colorado, provided such surety companies have a Best's Insurance Guide (latest edition) rating not lower than A+ or have a Best's Financial Rating of at least XV. If at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, Archistructor will, within ten (10) business days thereafter, furnish replacement bonds will written by legally authorized sureties. Notwithstanding the foregoing, the payment and performance bonds will only cover a one (1) year Correction Period if a longer Correction Period is provided pursuant to Article 8. Notwithstanding anything in this Agreement and/or the Contract Documents to the contrary, the surety providing the bonds will not be liable for any costs or damages arising from the design and/or pre-construction services provided pursuant to this Agreement and Owner will not offset or deduct any damages arising from the performance of the design and/or pre-construction services provided pursuant to this Agreement from the Stipulated Sum Price for Construction.

## **12. ARTICLE 12—CLAIMS AND DISPUTE RESOLUTION**

### **12.1 Definition of Claims.**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Price, a change in the Schedules, or other relief with respect to the terms of this Agreement. The term Claim also includes other disputes and matters in question between Owner and Archistructor arising out of or relating to this Agreement.

### **12.2 Notice of Claims**

Claims by either Owner or Archistructor will be initiated by Notice to the other party within a reasonable time after the occurrence giving rise to the Claim or after the party first recognizes the condition giving rise to the Claim. The responsibility to substantiate Claims will rest with the party making the Claim.

### **12.3 Waiver of Claims for Consequential Damages**

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, OWNER OR ARCHISTRUCTOR WILL NOT BE LIABLE TO THE OTHER, AND EACH PARTY HEREBY WAIVES ALL CLAIMS AGAINST THE OTHER, FOR ANY PUNITIVE, CONSEQUENTIAL, LIQUIDATED, SPECIAL, INCIDENTAL, OR INDIRECT LOSSES OR DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE AND LOSS OF PROFITS OR OPPORTUNITY), WHETHER ARISING IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE AND WHETHER ASSERTED DIRECTLY OR BY WAY OF CLAIM FOR CONTRIBUTION OR INDEMNITY, EXCEPT AS SPECIFICALLY PERMITTED OTHERWISE ELSEWHERE

IN THIS AGREEMENT. THIS MUTUAL WAIVER INCLUDES BUT IS NOT LIMITED TO (1) CONSEQUENTIAL DAMAGES INCURRED BY OWNER FOR DELAY, FOR LOSSES OF USE, PROFIT, FINANCING, BUSINESS REPUTATION, AND FOR LOSS OF MANAGEMENT OR EMPLOYEE PRODUCTIVITY OR OF THE SERVICES OF SUCH PERSONS; AND (2) CONSEQUENTIAL DAMAGES INCURRED BY ARCHISTRUCTOR FOR PRINCIPAL OFFICES EXPENSE AND THE COMPENSATION OF PERSONNEL STATIONED THERE (EXCEPT TO THE EXTENT INCLUDED IN THE COST OF THE WORK, IF ANY), FOR LOSSES OF FINANCING, BUSINESS AND REPUTATION, AND FOR LOSS OF PROFIT, EXCEPT ANTICIPATED PROFIT ARISING DIRECTLY FROM THE WORK PURSUANT TO PARAGRAPH 10.2.

#### **12.4 Resolution of Claims and Disputes.**

Any and all Claims, disputes, or other matters in controversies between Owner and Archistructor arising out of or relating to this Agreement or the breach thereof (hereinafter "Dispute") will be resolved in accordance with the following Paragraphs.

#### **12.5 Negotiation.**

12.5.1 If a Dispute arises that Owner's and Archistructor's representatives are unable to resolve, either party may, by Notice to the other party, declare that a Dispute exists.

12.5.2 Within five (5) business days after the other party's receipt of such Notice, each party will nominate a senior officer of its management to meet at a mutually agreed time not later than thirty (30) days following the date of the Notice to attempt to negotiate a settlement of the Dispute ("Direct Negotiation"). To aid the negotiation, each party will prepare and exchange five (5) business days in advance of the meeting a written statement of the issues in dispute and their position for those issues, and the statement and all its contents will constitute settlement materials that are not admissible for any purpose in any subsequent proceedings.

#### **12.6 Mediation.**

If the either party refuses to participate in Direct Negotiation or if the Direct Negotiation does not result in settlement of the Dispute, following Notice of a demand for mediation delivered by one party to the other party, the Dispute will be submitted for non-binding mediation as a condition precedent to binding arbitration or judicial proceedings. The selection of the mediator, as well as the date, time, and location of the mediation will be by mutual agreement of the parties. The parties will share the mediator's fee and any filing fees equally, and each party will pay its own attorney and expert fees. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction.

#### **12.7 Arbitration.**

12.7.1 Any Dispute not resolved within thirty (30) days following completion of mediation will, unless the parties mutually agree otherwise, be settled by binding arbitration following Notice of a demand for arbitration delivered by one party to the other party. This agreement to arbitrate will be specifically enforceable in any court with jurisdiction. The arbitration will be administered by Judicial Arbiter Group in accordance with its then existing rules. The arbitration will be conducted in the capital city in the state where the Project is located, unless agreed otherwise by both parties. If the amount in Dispute is less than \$100,000.00, the arbitration will be conducted by one neutral arbitrator selected jointly by the parties. If the amount in Dispute is greater than \$100,000, or if the parties cannot jointly agree on an arbitrator if the amount is less than \$100,000, or if the parties jointly agree due to the complexity of the Dispute, then the arbitration will be conducted by three arbitrators. Each party will then select an arbitrator and the two designated arbitrators will select the third arbitrator. Unless otherwise agreed in writing, in no event will the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statutes of repose or limitations.

12.7.2 The decision and award of the arbitrator or arbitrators will be final and binding upon the parties, and judgement may be entered upon it in accordance with applicable Laws by any court having jurisdiction.

## **12.8 Judicial Proceedings.**

Notwithstanding the provisions of Paragraph 12.7, either party may elect to have the Dispute resolved by litigation in a court of competent jurisdiction in lieu of arbitration if: (a) a party seeks a preliminary injunction or other preliminary judicial relief if, in its reasonable judgment, such action is necessary to avoid irreparable damage; or, (b) an asserted Claim or counter Claim involves an amount exceeding five hundred thousand dollars (\$500,000). The parties agree that any such judicial process will consist of a bench trial and not a trial by jury, and each party hereby waives its right to a jury trial in connection with any such litigation.

## **12.9 Prevailing Party.**

The prevailing party in any proceeding brought under Paragraph 12.7 or Paragraph 12.8 will be entitled to reimbursement from the other party all costs, expenses, and reasonable attorney and expert fees and costs incurred by such prevailing party in connection with any such proceeding. The prevailing party will be determined by comparing the amount awarded in the proceeding against the last settlement position of the respective parties in mediation. Offers or demands prior to the last settlement position will not be considered.

## **12.10 Disputes Relating to Mechanic's Liens.**

If a Dispute relates to or is the subject of a mechanic's lien, Archistructor may proceed in accordance with applicable Laws to comply with any statutory lien notice and filing deadlines prior to engaging in negotiation, mediation, arbitration or judicial proceedings as may be required under this Article.

### **12.11 Continuing Performance.**

Pending final resolution of a Dispute, except as otherwise agreed in writing or as provided in Article 10, Archistructor will proceed diligently with performance of the Work and Owner will continue to make payments in accordance with this Agreement.

## **13. ARTICLE 13 – MISCELLANEOUS PROVISIONS**

### **13.1 Hazardous Material.**

13.1.1 Notwithstanding anything to the contrary in this Agreement, the obligations of Archistructor and Owner to each other with respect to Hazardous Material will be as set forth in this Paragraph. The terms of this Paragraph will survive completion of the Work and/or any termination of this Agreement.

13.1.2 Owner represents that, to the best of its knowledge and having performed reasonable inspections to form such belief, all areas where the construction portion of the Work is to be performed do not contain any Hazardous Material.

13.1.3 Archistructor will not be obligated to commence the construction portion of the Work until all Hazardous Material existing at the Site prior to the scheduled date for the start of the construction portion of the Work has been removed, rendered harmless, or determined to be harmless by Owner as certified by an independent testing laboratory and any Regulatory Agencies with jurisdiction.

13.1.4 If, after the commencement of the construction portion of the Work, Hazardous Material is discovered at the Site, or if Archistructor reasonably believes Hazardous Material exists at the Site, Archistructor will be entitled to immediately stop Work in the affected area. Archistructor will report the condition to Owner and, if required, Regulatory Agencies with jurisdiction. Archistructor will not be required to perform any Work relating to, or in the area of, the Hazardous Material without its consent. Owner will be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures and actions will be the sole responsibility of Owner and will be performed in a manner minimizing any adverse effects upon the other areas of Work. Archistructor will resume Work in the area affected by the Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of Regulatory Agencies with jurisdiction. The obligations of Owner herein will not apply to Hazardous Material first brought to the Site by Archistructor, Subcontractors, or anyone else for whom Archistructor is responsible.

13.1.5 If Archistructor incurs additional costs and/or is delayed due to the presence or remediation of Hazardous Material, Archistructor will be entitled to an Equitable Adjustment in the Contract Price and the Schedules and Scheduled Substantial Completion Date unless the additional costs or delay result from Hazardous Material first

brought to the Site by Archistructor, Subcontractors, or anyone else for whom Archistructor is responsible.

13.1.6 To the extent not caused by the negligent acts or omissions of Archistructor, Archistructor's Consultants, Subcontractors, or anyone for whom they are responsible, Owner will indemnify and hold harmless Archistructor, Archistructor's Consultants, and Subcontractors, and the agents and employees of each of them, from and against any and all claims for damages, losses and expenses, including but not limited to reasonable attorney and expert fees, costs and expenses incurred in connection with the claim, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by Laws, such indemnification will apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of Owner. The obligations of Owner herein will not apply to Hazardous Material first brought to the Site by Archistructor, Subcontractors, or anyone else for whom Archistructor is responsible.

13.1.7 Safety Data Sheets ("SDS") as required by Laws and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Archistructor, Subcontractors, Owner or Owner's Other Contractors, will be maintained at the Site by Archistructor and made available to Owner.

13.1.8 During Archistructor's performance of the construction portion of the Work, Archistructor will, in accordance with all applicable Laws and Regulations, properly label, handle, use, store, and dispose of all Hazardous Materials or environmental pollutants brought to the Site by Archistructor or Subcontractors; and Owner will, in accordance with all applicable Laws and Regulations, ensure proper labeling, handling, use, storage, and disposal of all Hazardous Materials or environmental pollutants brought to the Site by Owner or Owner's Other Contractors. Prior to any storage of hazardous materials at the Project site by Owner or Owner's Other Contractors, Owner or Owner's Other Contractors will secure NEENAN's approval of the location of such storage.

13.1.9 Archistructor is responsible for any and all spills, releases, discharges, or leaks of environmental pollutants or Hazardous Materials or substances ("Spills") brought to the Site by Archistructor or Subcontractors, provided such Spills are not the result of acts or negligence of Owner or Owner's Other Contractors. In the event of an occurrence of such Spills, Archistructor will immediately initiate containment procedures and will immediately notify Owner, with such written notice to include a description of items released, quantity of items released, exact time and location of release, and containment procedures initiated. Archistructor agrees to promptly remediate such Spills to satisfaction of Owner and all governmental agencies with jurisdiction in a manner that complies with all Laws and Regulations. Cleanup of such Spills will be at no cost to Owner and Archistructor will be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of Spills.

## **13.2 Unmanned Aerial Systems.**

13.2.1 Owner and Archistructor will provide Notice to the other party, and receive written permission from the other party, prior to operating any unmanned aerial system (“UAS” or “Drone”) during the construction portion of the Work; or hiring such operations through a third party; or permitting such operations by any of its agents, employees or anyone for whom it is responsible. If Owner or Archistructor receives such permission and then so operates, by itself or a third party, agent, or employee, any UAS, the permitted party will provide and maintain liability insurance for operations of the UAS. This liability insurance will be provided by either a separate aviation policy or as an endorsement to its general liability policy, provided that the limit of liability will be no less than \$1,000,000 per occurrence.

13.2.2 Owner and Archistructor further acknowledge and agree that the permitted party is solely responsible for the airworthiness of any such UAS. The permitted party also warrants, that at a minimum, all such UAS will be registered, maintained and operated in accordance with: (a) all applicable Laws; (b) all applicable manuals including, but not limited to, the manufacturer’s maintenance and operations manuals; (c) Federal Aviation Regulations, Mandatory Advisory Circulars or other Airworthiness Directives issued by the FAA; (d) the manufacturer’s airworthiness limitations; (e) manufacturer or FAA mandated inspection schedules, overhaul schedules, and calendar retirement dates; and (f) service bulletins.

13.2.3 For purposes of this Paragraph, UAS includes all elements required for flight, including, but not limited to, ground control stations, data links, dashboards, applications, survey equipment and the unmanned aerial vehicle (“UAV”) of the subject unmanned system. UAS, UAV and Drone are used interchangeably in this Agreement.

### **13.3 Alcohol, Tobacco, Drugs, and Fraternization.**

Archistructor will ensure that its employees, agents, and Subcontractors comply with all Laws and all Owner’s policies, regulations, and/or procedures prohibiting the use, possession, sale, or distribution of alcohol, drugs or tobacco on any site or property owned by Owner. Archistructor will keep its employees and those of its Subcontractors from socializing upon the Site after normal working hours and from fraternizing at any time with Owner’s staff, clients, and other persons who are at Owner’s building or the Site.

### **13.4 Royalties and Patents.**

Archistructor will pay royalties and license fees for patented, trademarked, or copyrighted designs, processes or products incorporated into the Work, and further agrees to indemnify and hold harmless Owner from all suits or claims for infringement of any patent rights, trademarks, or copyrights (collectively “Rights”) arising there from. Notwithstanding the foregoing, if a particular design, process or product for which Rights exist is specifically required by Owner for the Work, Owner will pay all associated royalties and license fees and will indemnify and hold harmless Archistructor, Subcontractors, and Archistructor’s Consultants from any suits or claims of infringement of any Rights arising out of the use of such design, process or product. If Archistructor has reason to believe the use of an Owner required design, process or product is an infringement of a Right, Archistructor will promptly provide Notice to Owner.

### **13.5 Successors and Assigns.**

Owner and Archistructor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Agreement. Neither Owner nor Archistructor will assign this Agreement or the benefits therein without the written consent of the other. Such consent will not be unreasonably withheld. However, Owner may assign this Agreement to any institutional lender providing construction financing or any entity controlling, controlled by, or under common control of Owner, and Archistructor agrees to execute all consents reasonably required to facilitate such an assignment, but will not be required to assume obligations that expand its existing obligations pursuant to this Agreement nor to accept a reduction of the existing obligations of Owner pursuant to this Agreement. If either party makes such an assignment, that party will nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other party.

### **13.6 Choice of Law.**

This Agreement will be governed by the Laws of the State of Colorado, exclusive of its choice of law provisions.

### **13.7 Notices.**

All notices, demands or other communications required or permitted to be given under this Agreement ("Notice") will be in writing and deemed to have been duly delivered: (a) upon personal delivery to the proper party set forth below; or, (b) as of the third business day after mailing by United States Mail, certified, return receipt requested, postage prepaid, addressed to the proper party at the appropriate address set forth below; or, (c) as of 12:00 p.m. on the business day immediately after the day it is deposited with and accepted by Federal Express, or a similar overnight courier service, for next day delivery to the proper party at the appropriate address set forth below; or, (d) two hours after facsimile transmission between the hours of 8:00 a.m. and 3:00 p.m. (prevailing local time at the address of the recipient) on any business day to the proper party at the appropriate fax number set forth below, provided that delivery of such facsimile is confirmed by the sender's fax machine; or, (e) two hours after e-mail transmission between the hours of 8:00 A.M. and 3:00 P.M. (prevailing local time at the address of the recipient) on any business day to the proper party at the appropriate e-mail address set forth below.

If to Owner:

City of Salida  
Attention: Doug Bess, Fire Chief  
124 E. Street  
Salida, Colorado 81201  
Phone: 719-539-2212  
Fax: 719-539-9086  
E-mail: [doug.bess@cityofsalida.com](mailto:doug.bess@cityofsalida.com)



with copy to:

City of Salida  
Attention: Drew Nelson, City Administrator  
448 E. First Street, Suite 112  
Salida, Colorado 81201  
Phone: 719-539-4555  
Fax: 719-539-5271  
E-mail: [drew.nelson@cityofsalida.com](mailto:drew.nelson@cityofsalida.com)

If to Neenan:

The Neenan Company LLLP  
Attention: Mark C. Schneider  
3325 South Timberline Road, Suite 100  
Fort Collins, CO 80525  
Phone: 970-493-8747  
Fax: 970-493-5869  
E-mail: [mark.schneider@neenan.com](mailto:mark.schneider@neenan.com)

### **13.8 Relationship of Parties.**

Nothing contained in this Agreement nor any acts of the parties hereto will be deemed or construed by any party hereto, or by any other person, to create the relationship of principal agent, or of limited or general partner, or of joint venture of any association between or among the parties hereto, except that of Owner and independent contractor.

### **13.9 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which will be considered an original, and all of which, when taken together, will constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or e-mail transmission will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or e-mail will be deemed to be their original signatures for all purposes.

### **13.10 Entire Agreement.**

This Agreement represents the entire and integrated agreement between Owner and Archistructor and supersedes all prior negotiations, representations or agreements, whether written or oral, between Owner and Archistructor related to the Project or the Work. Nothing in this Agreement will create a contractual relationship between Owner and any person or entity other than Archistructor.

### **13.11 Severability and Waiver.**

If any provision of this Agreement conflicts with any applicable Laws and is held to be invalid or unenforceable, such invalidity or unenforceability will not affect any other provision of this Agreement. Furthermore, if the application of any provision of this Agreement to particular circumstances conflicts with any Laws and is held to be invalid or unenforceable as so applied, such invalidity or unenforceability will not affect the application of such provision to other circumstances for which it is valid and enforceable. To these ends, the provisions of this Agreement are severable. Where the effect of such severability would deprive a party of a material benefit of its bargain under this Agreement, the invalid or unenforceable provision will not be severed, and such party may instead terminate this Agreement. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, will not be construed as a waiver or relinquishment of such term, covenant, condition or rights in connection with that occurrence or with respect to future or further performance.

### **13.12 Exhibits.**

The following Exhibits are attached hereto, or will be attached hereto, and are incorporated herein by this reference:

- Exhibit A: Preliminary Project Schedule
- Exhibit B: Pre-Construction Services
- Exhibit C: Additional Services
- Exhibit D: Interior Design Services
- Exhibit E: Landscape Design Services
- Exhibit F: Design and Pre-Construction Fees and Schedule of Rates
- Exhibit G: Options for Moisture Sensitive Flooring
- Exhibit H: Options for Expansive Soils
- Exhibit I: Options for Floor Vibration

*[Remainder of this Page Intentionally Left Blank; Signature Page Follows]*

THIS AGREEMENT is entered into as of the Effective Date.

**ARCHISTRUCTOR:**

The Neenan Company LLLP  
a Colorado limited liability limited partnership  
By: Neenan Management Company  
a Colorado corporation  
Its: General Partner

**OWNER:**

The City Of Salida, Colorado

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

Name: Ryan C. Dellos

Its: Treasurer

Date: \_\_\_\_\_

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

Name: Dan Shore

Title: Mayor, City of Salida

Date: \_\_\_\_\_

**EXHIBIT A - PRELIMINARY PROJECT SCHEDULE**

See the attached Preliminary Project Schedule, dated May 6, 2022

# EXHIBIT A

## Salida Fire Station Preliminary design schedule 5-6-2022

ID	Task Name	Task Mode	Duration	Start	Finish	2022 Qtr 4	2023 Qtr 1	2023 Qtr 2	2023 Qtr 3	2023 Qtr 4	2024 Qtr 1
1	<b>RFP Process</b>		<b>26 days</b>	<b>Fri 2/25/22</b>	<b>Fri 4/1/22</b>						
7	Notice of Award		1 day	Tue 5/17/22	Tue 5/17/22						
8	Execute Design contract		5 days	Wed 5/18/22	Tue 5/24/22						
9	<b>Design</b>		<b>172 days</b>	<b>Wed 6/15/22</b>	<b>Thu 2/9/23</b>						
10	CDP (Collaborative Design Process) - Design Charette Meeting		1 day	Wed 6/15/22	Wed 6/15/22						
11	Financing Package		30 days	Thu 6/16/22	Wed 7/27/22						
12	Schematic Design		35 days	Wed 6/22/22	Tue 8/9/22						
13	Drawing Review		1 day	Wed 8/10/22	Wed 8/10/22						
14	Design Development		30 days	Wed 8/17/22	Tue 9/27/22						
15	Drawing Review		1 day	Wed 9/28/22	Wed 9/28/22						
16	CDOT Coordination Meetings		4 days	Thu 9/29/22	Tue 10/4/22						
17	Construction Documents		85 days	Thu 10/6/22	Wed 2/1/23						
18	Drawing Review		1 day	Thu 2/2/23	Thu 2/2/23						
19	Execute Construction Contract (AP)		5 days	Fri 2/3/23	Thu 2/9/23						
20	<b>Permitting</b>		<b>120 days</b>	<b>Thu 10/6/22</b>	<b>Wed 3/22/23</b>						
22	Construction Start TBD - Dependent on Design Builder's Proposal Execution and Permit issuance.		44 wks	Thu 3/23/23	Wed 1/24/24						



Project: 3178 - Salida AA Sched  
Date: Fri 5/6/22

## **EXHIBIT B - PRE-CONSTRUCTION SERVICES**

The following pre-construction services are concurrent and interactive with the design services described in this Agreement and **Exhibit F**, and generally include estimating, scheduling, value engineering and the incorporation of construction knowledge and expertise into the design process.

1. Attendance at meetings with Owner and Architect, Archistructor's Consultants, and Subcontractors.
2. Evaluation of Owner's objectives and limitations, and schedule and budget requirements for the Work.
3. Review of the Site and Site-related data, including Site conditions; land survey and geotechnical investigation furnished by Owner; adequacy of Site utilities; and the need for off-Site improvements.
4. Review of Design Documents at the conclusion of the phases identified in Article 2 and at other appropriate times during the design portion of the Work.
5. Recommendations on Site utilization and improvements, construction feasibility and methods, and building systems and materials.
6. Preparation of construction cost estimates at the conclusion of the phases identified in Article 2 and at other appropriate times during the design portion of the Work. Estimates will be appropriate to the level of available design information and will include alternative systems and materials, where appropriate.
7. Preparation of a final construction estimate for Archistructor's Proposal that provides detail for the Schedule of Values.
8. Preparation of Preliminary Project Schedules at appropriate times during the design portion of the Work, and of the Project Schedule for Archistructor's Proposal.
9. Identification of actions designed to minimize adverse effects of labor shortages, material shortages, and long-lead items, including the need for expedited design and procurement.
10. Identification of pre-qualified Subcontractors, including those required to furnish materials or equipment fabricated to a special design.

## **EXHIBIT C - ADDITIONAL SERVICES**

The following services are Additional Services not included within the Contract Price, unless specifically included as a service elsewhere within this Agreement or within Archistructor's Proposal, and are identified herein not by way of limitation, but by way of example of some of the services that Owner may elect to have Archistructor perform under this Agreement. If Owner desires Archistructor to furnish or perform any of the Additional Services set forth below, or any other service not included within the Work, Owner will follow the process for changes in the Work.

1. Securing, preparing and submitting documents for securing, and all fees associated with, all permits, approvals, and licenses issued by Regulatory Agencies which are required for facility certification, accreditation, or licensure; and researching regulations applicable to Owner's business plan. Notwithstanding the foregoing, Archistructor will furnish documentary evidence as is reasonably necessary to demonstrate compliance of the Work with applicable Laws and Regulations in order for Owner to secure facility certification, accreditation, or licensure.
2. Detailed investigation of conditions in existing facilities.
3. Site development services, including site analysis and selection, comparative studies and evaluations of prospective sites, site development planning, detailed site utilization studies, and master planning services.
4. Design, selection, coordination, procurement or installation of furnishings, furniture, or artwork unless such services are specifically included at **Exhibit D**.
5. Programming, listing, design, planning, selection, coordination, procurement, installation, or certification of Owner's or Owner's tenant's equipment, except architectural, mechanical, electrical, plumbing and fire protection coordination utilizing Owner furnished equipment cut sheets provided to Archistructor during the Project Analysis Phase.
6. Graphic design, renderings, animation, model construction, and still photography, unless specifically included as a service elsewhere within this Agreement.
7. Design or construction to achieve LEED certification, or in compliance with LEED standards.
8. Architectural, interior design, or engineering services other than those set forth in the Contract Documents, Article 2, and **Exhibit D** of this Agreement, including, but not limited to, such services for acoustics, security, communications, and audio/visual that are not required by applicable code.
9. Preparing in excess of three (3) iterations (sets) of Schematic Design Documents for review and approval by Owner.
10. Revisions to the approved Schematic Design Documents, Design Development Documents or Construction Documents, or any other work product provided by or through Archistructor

due to causes not within the control of Archistructor, including Owner-requested changes or adjustments for the Project Scope Definition, Project budget or Schedules.

11. Providing consultation concerning replacement of Work damaged by fire or other cause during the construction portion of the Work, and furnishing services required in connection with replacement of such Work.



## **EXHIBIT D – INTERIOR DESIGN SERVICES**

The following interior design services are concurrent and interactive with the design services described in this Agreement, and the associated fees are included within the fee shown at **Exhibit F** unless specifically excluded as a service elsewhere within this Agreement or within Archistructor's Proposal.

### **Schematic Design Phase:**

1. Preliminary selection of interior finishes.
2. Coordination with Architect for programming and space planning.
3. Coordination with Owner and Architect for preliminary lighting, casework and furniture layout.
4. Research of finish materials and their application.
5. Confirmation of budget allowances for finishes.

### **Design Development Phase:**

1. Selection and specification of interior finishes.
2. Coordination of interior finishes with other design services.
3. Coordination and specification of casework and millwork design.
4. Coordination and specification of interior feature lighting and ceiling finishes.
5. Generic layout and coordination of furniture locations in order to verify electrical and data needs with the appropriate Subcontractors.

### **Construction Documents Phase:**

1. Production of interior finish plan and interior signage plan.
2. Production of schedules and legends.
3. Production of casework and millwork elevations and details.
4. Production of interior specialty wall sections as required.
5. Production of presentation boards for Owner's use and construction boards for Owner's maintenance manuals.

### **Construction Services Phase:**

1. Review of shop drawings for casework, millwork and finishes.
2. Participation in Owner and Archistructor meetings and walk-throughs as required.
3. Site inspections of the Work for quality control.

### **Signage:**

1. Selection of interior facility identification signage as required by applicable code.
2. Define the services for tenant signage as determined by Owner (above and beyond signage required by code), including way-finding within a suite and specialty room designation signs.
3. Design and develop the specialty tenant finish interior signage package.

4. Assist in coordination of installation of the signage.

**Exclusions:**

Except as such items are specifically included in the Work elsewhere in this Agreement or the Contract Documents, the following services are excluded:

1. Costs for purchase and installation of the following products: appliances, furniture, accessories, art, plants, specialty window treatments, specialty equipment and appliances.
2. Coordination of any existing equipment (e.g. refrigerators, vending machines and copiers).
3. Move coordination and all moving costs.

## **EXHIBIT E – LANDSCAPE DESIGN SERVICES**

The following landscape design services are concurrent and interactive with the design services described in this Agreement, and the associated fees are included within the fee shown at **Exhibit F** unless the services are specifically excluded elsewhere in this Agreement.

### **Schematic Design Phase:**

1. Preliminary selection of plant materials and hardscape materials.
2. Coordination of landscape design with Site planning, including with the Site lighting and the sidewalk layout.
3. Research of local landscape requirements and Subcontractors.
4. Establish budget for landscape and irrigation.
5. One meeting with Owner to review the landscape Schematic Design Documents.

### **Design Development Phase:**

1. Selection and specification of plant materials and hardscape.
2. Coordination of landscape Drawings with civil and architectural Drawings.
3. Confirm budget with input from local landscape Subcontractors.
4. Coordination of landscape design with design of Site lighting by electrical Subcontractor.
5. Layout and specification of Site furnishings (e.g. benches, trash receptacles and bike racks) for coordination with Owner and/or local municipal requirements.
6. One meeting with Owner to review the landscape Design Development Documents.

### **Construction Documents Phase:**

1. Production of the landscape and irrigation plan, including schedules, legends, details and Specifications.

### **Construction Services Phase:**

1. Review landscape and irrigation submittals.
2. Site inspections for quality control as required.
3. Production of a record set of Drawings.
4. Participation in the commissioning of the landscape and irrigation system.
5. Ensure information is provided for inclusion in the Operations and Maintenance Manuals.

### **Exclusions:**

1. Water feature design.
2. Costs for Site furnishings and Site lighting unless they are included in Architector's Proposal.

**EXHIBIT F – DESIGN AND PRE-CONSTRUCTION FEES**  
**AND SCHEDULE OF HOURLY RATES**

Owner agrees to pay Archistructor the following fees for the design and pre-construction services portion of the Work:

Total Fee for Design Services: \$751,000.00

Schematic Design Phase:	\$ 87,550.00
Design Development Phase:	\$122,570.00
Construction Documents Phase:	\$ 87,550.00
Construction Services Phase:	\$ 52,530.00
Interior Design Services:	\$ 95,000.00
Landscape Design Services:	\$ 11,000.00
Structural Engineering:	\$ 55,600.00
Civil Engineering (On-Site):	\$ 72,000.00
Planning:	\$ 14,000.00
HVAC Engineering:	\$ 57,200.00
Plumbing Engineering:	\$ 35,200.00
Electrical Engineering:	\$ 48,600.00
Fire Protection Engineering:	\$ 12,500.00

Insurance for Design and Pre-Construction Services: \$ 11,645.00

**TOTAL FEE FOR DESIGN AND PRE-CONSTRUCTION SERVICES: \$762,945.00**

The above fee includes all normal reimbursable expenses, except that the fee does not include any fees paid for Permits and Approvals as those fees will be included in the Stipulated Sum Price for Construction.

The above fee is based on the Project Site and Program description stated at Paragraph “A” of the Background section of this Agreement. A change for the Project Site and Program will be a change in the Work, and for any such change the unit price for the adjustment of the fee for design and pre-construction services will be eight percent (8%) of the anticipated approximate construction cost of the change for the Project Site and Program.

Monthly billings for the above fee will be based on the proportion of services performed within each phase and category of service, except for Additional Services, if any, which will be based on actual services rendered.

Pre-Construction for the Work is being provided on a design/build basis, and design fees from the respective Subcontractors for these components will be included in the Stipulated Sum Price for Construction. If the Project is not constructed, or Owner terminates or suspends the Work within ninety (90) days from Archistructor’s completion of the Construction Documents, Owner will pay Archistructor those design fees. This amount will not exceed \$110,000.

The following hourly billing rates will be used for Archistructor's personnel and equipment in determining the Cost of the Work for Article 6 and for changes in the Work for Article 7. The rates for personnel do not include the cost of any vehicle used by the personnel.

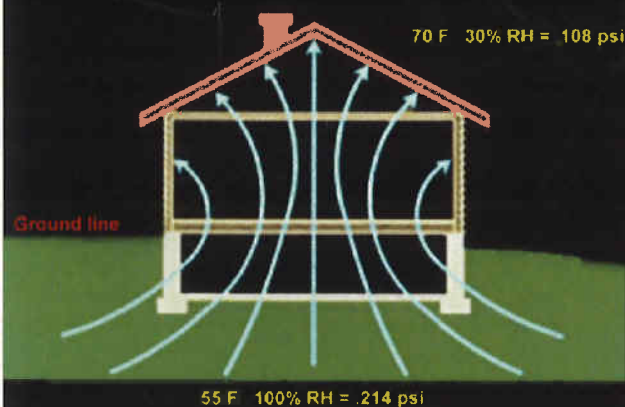
Principal Architect	\$200.00	Director of Operations	\$205.00
Senior Architect	\$175.00	Project Executive	\$145.00
Sr. Healthcare Designer	\$140.00	Risk Manager	\$140.00
Design Manager	\$130.00	Sr. Project Manager	\$135.00
Job Captain	\$105.00	Project Manager	\$115.00
Drafter	\$ 85.00	Asst. Project Manager	\$100.00
Animation Manager	\$145.00	Project Engineer	\$ 85.00
Animation Drafter	\$105.00	Field Engineer	\$ 85.00
Sr. Interior Designer	\$115.00	Project Coordinator	\$ 70.00
Interior Designer	\$ 95.00	Sr. Pre-Construction Mgr.	\$140.00
Landscape Architect	\$115.00	Pre-Construction Manager	\$110.00
Accounting Manager	\$130.00	Assistant Pre-Con Manager	\$ 85.00
Accountant	\$ 80.00	Safety Manager	\$110.00
IT Manager	\$125.00	Quality Control Manager	\$110.00
IT Technician	\$115.00	General Superintendent	\$140.00
Structural Coordinator	\$105.00	Sr. Superintendent	\$135.00
LEED Coordinator	\$105.00	Superintendent	\$115.00
Finishes Coordinator	\$105.00	Asst. Superintendent	\$105.00
Site Coordinator	\$105.00	Carpenter Foreman	\$ 95.00
MEP Coordinator	\$105.00	Carpenter	\$ 80.00
Vehicle	\$ 13.00	Laborer	\$ 65.00

**EXHIBIT G - OPTIONS FOR MOISTURE SENSITIVE FLOORING**

# Moisture Sensitive Flooring

The insurance industry is currently processing over one billion dollars in claims involving defective floor covering performance due to moisture.

Water can be found somewhere beneath most building sites. Through capillary action it rises as moisture vapor upward through the soil to the underside of concrete slabs. That moisture, together with the water contained in the concrete, reaches the surface of the slab as moisture vapor through the process of diffusion.



With the advent of laws eliminating asbestos as a flooring ingredient and eliminating solvents from adhesive and coating systems, the moisture vapor, if not controlled or mitigated, can result in devastating damage to building environments and modern floor coverings, adhesives, and coatings collectively known as "moisture sensitive flooring."

As a partner with building owners, The Neenan Company takes this issue very seriously and wants to help owners make educated risk/reward decisions concerning moisture sensitive flooring.

## EXHIBIT G



### What are the risks?

- Floor covering damage
- Mold growth under floor coverings
- Loss of production due to rework
- Financial costs of replacement

### Moisture issues affect all industries

Commercial office, medical, education, warehouse, high-tech,



### What can an owner do?

- **Investigate the issues**  
The Neenan Company will investigate your site to help determine which issues could affect your building.
- **Educate yourself**  
We'll provide you with information on the issues, explain the potential problems on your site, and how the issues could affect your warranty. As an owner, you need to be confident that you understand the information. If something is unclear, ask questions!
- **Understand your options**  
Once you understand the issues, understand the options and associated warranties as well. Neenan will provide you with a list of options to address the conditions at your site. It is important that you understand how the options will affect your warranty, budget, and schedule, as well as the facility's aesthetics and longevity.
- **Make a decision**  
The decision you make will affect your project for years to come. With a clear understanding of the issues and potential solutions, you can make an educated, considered choice. It is important that you consider all of the factors and weigh the costs and benefits carefully so that you will be confident in your decision.
- **Maintain your investment**  
The Neenan Company will provide you with information on how to maintain your facility. Diligent attention to maintenance concerns over the life of your building will protect your investment.



## **EXHIBIT H - OPTIONS FOR EXPANSIVE SOILS**



*What you should know about*

# Expansive Soils

**Expansive soil and rock ("Expansive Soils") is an issue of concern for some building projects, but not all. Soil types vary from region to region, site to site, and may often vary across a single piece of property. Expansive Soils are common along the Front Range of Colorado.**

Expansive Soils contain, or are substantially composed of, clay. When the undisturbed clay soils are exposed to water, they expand. This expansion, or swell, can be significant in volume and force, and can result in heaving and movement of structures.

The information provided by your Geotechnical Engineer in his report ("Soils Report") is the key to understanding the soils at your building site. Your Engineer will test and study the soil from sample borings across your site. The tests will provide information about the soil composition, the bearing pressure, how much the soil will swell when water is introduced, and where stable bedrock exists below the surface.

Based on this data, the Soils Report will provide you with recommendations for building systems. It will provide options for the design of foundations and slabs, and any special considerations for the building design due to the soil conditions. The Soils Report will also provide the amount of building movement that may be expected for each design option.

The options have varying schedule and cost implications for your project. The Neenan Company, with your Geotechnical Engineer, will help you understand the options and their associated costs in order that you may make an informed decision.



## What are the risks?

- Structural damage
- Loss of floor levelness
- Cosmetic damage to finishes
- Equipment not functioning properly
- Loss of production if remediation is required

## Expansive soils issues affect all industries

Commercial office, medical, education, warehouse, high-tech, manufacturing, retail

## What can an owner do?

### Investigate the issues

The Neenan Company will work with you to identify any potential expansive soils issues for you to consider in the design of your building.

### Educate yourself

We'll provide you with information on the issue, explain the potential problems for your building, and help you understand how this issue may affect you and your new facility.

### Understand your options

Once you understand the issues, understand the options as well. Neenan will provide you with a list of options to address possible soils concerns on your site. It is important that you understand how the options will affect your warranty, budget, and schedule, as well as the facility's performance and longevity.

### Make a decision

The decision you make will affect your project for years to come. With a clear understanding of the issues and potential solutions, you can make an educated choice. It is important that you consider all of the factors and weigh the costs and benefits carefully so that you will be confident in your decision.



## **EXHIBIT I - OPTIONS FOR FLOOR VIBRATION**



*What you should know about*

# Floor Vibration

**Trends toward using more sophisticated equipment and flexible, electronic-intensive office environments increase the potential for floor vibration issues in new facilities.**

Most often occurring in facilities constructed with structural slabs on decks, the amount of floor vibration experienced is a function of the structural system used and the loading of that system. Movable office systems furniture and electronic office environments that result in lighter floor loads than in the past cause more floor movement (vibration).

Floor vibration is not only annoying to building occupants but potentially damaging to sensitive equipment. While no reasonably affordable structural system can guarantee the complete elimination of vibration, building owners have many options available for minimizing the effects.

The first step in addressing potential floor vibration issues is to understand the specific situation. In 1997 the American Institute of Steel Construction (AISC) published "Design Guide 11, Floor Vibrations Due to Human Activities," to address the issue.

Identifying the optimal structural solution begins with the owner's assessment of three key issues: 1) sensitivity of their equipment, 2) type of office furniture to be used, and 3) vibration tolerance of the building's users or occupants. This information, in conjunction with the AISC guidelines, will help designers and contractors develop information on structural options and associated costs that will allow building owners to make educated decisions concerning floor vibration in their facilities.



## EXHIBIT I



*Lighter floor loads coupled with slab-on-deck construction create the potential for floor vibration issues in new construction.*

### What are the risks?

- Equipment not functioning properly
- Adverse effects on employees
- Loss of production if remediation is required
- Loss of future flexibility of your investment

### Floor vibration issues affect all industries

Commercial office, medical, education, warehouse, high-tech, manufacturing, retail



### What can an owner do?

#### Investigate the issues

The Neenan Company will work with you to identify any potential floor vibration issues for you to consider in the design of your building.

#### Educate yourself

We'll provide you with information on the issue, explain the potential problems for your building, and help you understand how this issue may affect you and your new facility.

#### Understand your options

Once you understand the issues, understand the options as well. Neenan will provide you with a list of options to address possible vibration concerns in your building. It is important that you understand how the options will affect your warranty, budget, and schedule, as well as the facility's performance and longevity.

#### Make a decision

The decision you make will affect your project for years to come. With a clear understanding of the issues and potential solutions, you can make an educated choice. It is important that you consider all of the factors and weigh the costs and benefits carefully so that you will be confident in your decision.

