



AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 1st day of June in the year two thousand twenty-four.
(In words, indicate day, month and year.)

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

City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

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

Wendel Architecture, P.C.
204 E. Grand Avenue, Suite 200
Eau Claire, WI 54701

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

Sheboygan Fire Station No. 2

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

Phase I and II Design Services for remodel and additions or a new Fire Station No. 2.

Phase I will include Existing Condition Assessment, Programming, conceptual/master planning, multiple options for remodel/additions or new construction, and development of the selected option continuing into Phase II.

Phase II includes but is not limited to site planning, alternative development, programming, schematic design, design development, construction documents, bidding assistance and construction administration of the selected options in Phase I.

§ 1.1.2 The Project's physical characteristics:

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

See 1.1.1.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

TBD

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

.1 Design phase milestone dates, if any:

Conceptual Design Complete: July 2024
Schematic Design Complete: September 2024
Design Development Complete: December 2024
Construction Documents Complete: March 2025
Project Bidding: March 2025

.2 Construction commencement date:

April 2025

.3 Substantial Completion date or dates:

August 2026

.4 Other milestone dates:

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

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

Competitive Bid as provided under Wisconsin State Statutes.

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

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

Not Applicable

(Paragraph deleted)

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

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

Casey Bradley, City Administrator
City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

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

Not Applicable

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

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

.1 Geotechnical Engineer:

TBD, by Owner. RFP Assistance by Architect.

(Paragraphs deleted)

.2 Land Surveyor:

TBD, by Owner. RFP Assistance by Architect.

.3 Other, if any:

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

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

Robert Krzyzanowski
Wendel Architecture, P.C.
204 E. Grand Avenue, Suite 200
Eau Claire, WI 54701

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Northland Consulting Engineers
101 S. 21st Ave. W#1
Duluth, MN 55806
Telephone Number: 218-727-5995

.2 Mechanical & Electrical Engineer:

Wendel Architecture, P.C.
204 E. Grand Avenue, Suite 200
Eau Claire, WI 54701
Telephone Number: 715-832-4848

.3 Electrical Engineer:

JSD Professional Services
161 Horizon Drive #101
Verona, WI 53593
Telephone Number: 608-848-5060

§ 1.1.11.2 Consultants retained under Supplemental Services:

Not Applicable

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

Not Applicable

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust

the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.4 Owner represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to perform its obligations under this Agreement and under the Contract Documents. The Architect may demand assurance in writing of the Owner's ability to satisfy the foregoing obligation, such as a certified statement of an accounting professional. The Owner's failure to provide such reasonable assurances shall be grounds for termination of this Agreement by the Architect.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located, and that the services required by this Agreement shall be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Notwithstanding any clause in the Agreement documents to the contrary, Architect expressly disclaims all express or implied warranties, guarantees or fiduciary obligations with respect to the performance of professional services.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and four million dollars (\$ 4,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage

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than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than five million dollars (\$ 5,000,000) per claim and five million dollars (\$ 5,000,000) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

(Paragraphs deleted)

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

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

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

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

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

§ 3.4 Construction Documents Phase Services

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

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

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

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

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

§ 3.4.6 The Owner and Architect acknowledge that the Construction Documents prepared by the Architect will generally describe the intended scope of work for the Project, and that the Contractor (engaged by the Owner to construct the Project) shall be required to provide only those services that are expressly required by the Contract Documents or are reasonably inferable from such documents as being necessary to produce the intended results. Consequently, the need may arise during the course of construction to adjust the Contract for Construction to reflect the cost of items that are not consistent with or reasonably inferable from the Contract Documents. In accordance with paragraphs 5.2 and 6.3, the Owner shall maintain a reasonable amount of contingency monies to pay for change orders to the Contract for Construction and other contingencies which impact the Project cost including, but not limited to, unforeseen conditions, and such items as changes to the program or scope of the Project, items of additional value that are not included in or may not be reasonably inferable from the Contract Documents, and adjustments to allowance cost items carried in the Project budget or the Contractor's bid amount. If any required item or component of the Project is omitted from the Construction Documents, the Architect shall not be responsible for the cost of adding such item or component to the extent that such item or component would have been otherwise necessary to the Project or adds betterment or value to the Project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement to the Project.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

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

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

(Paragraphs deleted)

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and

Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Observations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s observation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an

observation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. The Architect's certification on the Certificate for Payment shall be that the percentages of Work shown on the application are completed, to the best of the Architect's knowledge, information and belief. No judgment is made by the Architect as to the value of the Work or the value of uncompleted Work.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 Submittals

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

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect.

The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall notify the Owner and the Contractor of any inconsistencies discovered by the review. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|---|--|
| § 4.1.1.1 Programming | Architect, Included in Basic Services |
| § 4.1.1.2 Multiple preliminary designs | Architect, Included in Basic Services |
| § 4.1.1.3 Measured drawings | Not Provided |
| § 4.1.1.4 Existing facilities surveys | Architect, Included in Basic Services |

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|--|--|
| § 4.1.1.5 Site evaluation and planning | Architect, Included in Basic Services |
| § 4.1.1.6 Building Information Model management responsibilities | Not Provided |
| § 4.1.1.7 Development of Building Information Models for post construction use | Not Provided |
| § 4.1.1.8 Civil engineering | Architect, Included in Basic Services |
| § 4.1.1.9 Landscape design | Architect, Included in Basic Services |
| § 4.1.1.10 Architectural interior design | Architect, Included in Basic Services |
| § 4.1.1.11 Value analysis | Architect, Included in Basic Services |
| § 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3 | Architect, Included in Basic Services |
| § 4.1.1.13 On-site project representation | Not Provided |
| § 4.1.1.14 Conformed documents for construction | Not Provided |
| § 4.1.1.15 As-designed record drawings | Not Provided |
| § 4.1.1.16 As-constructed record drawings | Not Provided |
| § 4.1.1.17 Post-occupancy evaluation | Architect, Included in Basic Services |
| § 4.1.1.18 Facility support services | Not Provided |
| § 4.1.1.19 Tenant-related services | Not Provided |
| § 4.1.1.20 Architect's coordination of the Owner's consultants | Architect, Included in Basic Services |
| § 4.1.1.21 Telecommunications/data design | Architect, Included in Basic Services |
| § 4.1.1.22 Security evaluation and planning | Architect, Included in Basic Services for coordination with Owner's System Providers |
| § 4.1.1.23 Commissioning | Not Provided |
| § 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3 | Not Provided |
| § 4.1.1.25 Fast-track design services | Not Provided |
| § 4.1.1.26 Multiple bid packages | Not Provided |
| § 4.1.1.27 Historic preservation | Not Provided |
| § 4.1.1.28 Furniture, furnishings, and equipment design | Architect, Included in Basic Services for coordination with Owner's System Providers |
| § 4.1.1.29 Other services provided by specialty Consultants | Not Provided |
| § 4.1.1.30 Other Supplemental Services | Not Provided |
| § 4.1.1.31 City/Town approval process | Refer to Section 4.1.2.2. |

§ 4.1.2 Description of Supplemental Services

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

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

The Architect will provide a maximum of 5 meetings to support approval processes for the City. This work could include, but not limited to, Planning Board, Zoning Board, City council meetings, workshop meetings and/or neighborhood association meetings.

The Owner shall compensate the Architect on an hourly basis for all additional work beyond the 5 meetings. Any additional services will be approved prior to such meetings and/or requests by the Owner's designated representative.

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

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

(Paragraph deleted)

§ 4.2 Architect's Additional Services

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

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,

- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.
- .6 The Owner agrees to include a provision in the Contract(s) for Construction that the Contractor(s) will review any requests for information (RFIs) submitted by subcontractors prior to submission to the Architect to ensure such RFIs are not already clearly and unambiguously answered in the Contract Documents. The Owner shall look to the Contractor for reimbursement for the Architect's time and expenses in reviewing RFIs which are already clearly answered or inferable from the Contract Documents in accordance with the Architect's standard rates. In the event of a disagreement over such compensation, the judgment of the Owner's representative shall prevail.

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

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Twenty (20) visits to the site by the Architect during construction
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within thirty-six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall include a clause in all Owner contracts with project construction contractors, construction managers and consultants requiring each to maintain insurance, including professional liability insurance, as appropriate to the services or work being performed, and to indemnify and hold harmless the Owner, Architect and their respective shareholders, directors, officers, employees, and agents, from any and all (i) claims resulting from their negligence in the performance of their Work or (ii) claims by their employees and the employees of their subconsultants and subcontractors. Owner, Architect and their respective shareholders, partners, officers, employees, and agents shall be named as additional insured on their CGL, Auto and Umbrella insurance policies.

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

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

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

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

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

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

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

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

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

§ 8.1.4 Unless otherwise agreed in writing, Architect shall continue to perform its Services during any dispute mitigation or resolution proceeding. If Architect continues to perform, Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien

arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by a mutually agreed upon mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Not Used

(Paragraphs deleted)

§ 8.3.4 Not Used

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

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

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

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

Not Applicable

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Not Applicable

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement. All certifications made by the Architect shall be based on 'the best of their knowledge, information, and belief' whether or not so stated in the certification.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, it is understood and agreed that Architect is not, and has no responsibility as, a handler, generator, operator, treater, storer, transporter, or arranger for transport or disposal of hazardous materials or toxic substances found or identified at the site, and that Architect shall not be responsible to undertake or arrange for the handling, removal, treatment, storage, transportation, or disposal of hazardous materials or toxic substances or constituents found or identified at the site. A hazardous material or toxic substance is any material or substance identified now or in the future as hazardous or toxic under any federal, state or local law or regulation, or any other material or substance that may be considered hazardous, toxic or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or cleanup. For purposes of this agreement, the term hazardous material shall include asbestos, polychlorinated biphenyl (PCB), mold, mildew, fungi or other similar microbial conditions.

§ 10.6.1 To the fullest extent permitted by law, Owner agrees to indemnify, defend and save harmless the Architect from and against any and all liabilities, demands, claims, penalties, damages, forfeitures, suits, and the costs and expenses arising from hazardous or toxic substances or conditions (including costs of defense, settlement and reasonable attorneys and expert fees and expenses), except to the extent the hazardous or toxic conditions result from the sole negligence or willful misconduct of the Architect.

§ 10.6.2 If Architect or any other party encounters undisclosed hazardous or toxic substances or conditions, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed hazardous or toxic substances or conditions, then Architect may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist professionals or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

§ 10.6.3 Owner and Architect agree that the discovery of undisclosed hazardous or toxic substances or conditions constitutes a changed condition, which may require a renegotiation of the Scope of Services, negotiation of Additional Services, or termination of services. Owner shall rely on Architect's judgment as to the continued adequacy of this Agreement in light of discoveries that were not anticipated or known. If Architect determines that renegotiation is necessary, Architect and Owner shall in good faith enter into renegotiation of this Agreement to permit Architect to continue to meet Owner's needs. If renegotiated terms cannot be agreed to, Owner agrees that Architect has the right to terminate this Agreement. If the Agreement is terminated, Owner shall pay Architect for all services performed and expenses incurred up to and including the date of termination, plus reasonable termination costs.

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

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

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

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

ARTICLE 11 COMPENSATION

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

1. **Phase I – Conceptual Design Services:** Phase I will include a feasibility study with Existing Condition Assessment of the existing facility, Programming, Preliminary Site Design, Preliminary Building Plans and Cost Estimates based on cost per square foot analysis. Options for new replacement construction will also be provided. Cost estimates will be provided for any options, allowing the owner to select an option for Phase II. This analysis shall be completed for a fixed fee of **\$15,500 (Fifteen Thousand, Five Hundred Dollars)**. It is the intent of this phase to define the project to an extent that will allow the City to decide upon a course of action for the remainder of the project and move into Phase II.

2. **Phase II – Project Completion:** To consist of architectural and engineering services to complete Schematic Design through the Construction phases of the project as accepted and approved in the Phase II process and as defined within this proposal, as follows:

If remodel and additions to the existing facility is selected in Phase I, we propose a fee of 8.5% of the cost of work as defined in Article 6.

If a new facility design is selected in Phase I, we propose a fee of 6.5% of the cost of work as defined in Article 6.

(Paragraphs deleted)

Alternate bids, if any, shall be compensated at the percentage fee (as indicated above) of the Cost of the Work as defined in Article 6 and shall be invoiced at 80% of the fee for items designed and bid but not built and at 100% of the fee for items designed, bid and built.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

TBD

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

TBD

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%), or as follows:

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

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

| | | | | |
|------------------------------|-------------|-----------|-----|----|
| Schematic Design Phase | Twenty | percent (| 20 | %) |
| Design Development Phase | Twenty | percent (| 20 | %) |
| Construction Documents Phase | Thirty-Five | percent (| 35 | %) |
| Procurement Phase | Five | percent (| 5 | %) |
| Construction Phase | Twenty | percent (| 20 | %) |
| Total Basic Compensation | one hundred | percent (| 100 | %) |

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

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

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

See Attached Wendel Rate Sheet.

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

Not Applicable

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

(Paragraph deleted)

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

One and five tenths percent(1.5%) per month, cumulative.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§ 12.3 Contingency Fund

§ 12.3.1 The Architect agrees, as a design professional, to provide architectural services in accordance with generally accepted architectural practices and standards. It is acknowledged by the parties that the design process for buildings is not an exact science and that it continues through the Construction Phase. Accordingly, it is understood and agreed that a need for modifications, changes, revisions, interpretations and/or clarifications of the Drawings and Specifications during the Construction Phase are anticipated, as a result of unforeseen conditions, concealed conditions, minor design refinements (other than errors and omissions), and that these changes may result in additional expenses to the Owner through the change order process.

§ 12.3.2 When the need for such changes, revisions, interpretations and/or clarifications becomes known to the Architect, he shall promptly investigate and take appropriate action in the form of drawings, specifications, written description, clarifications, or as otherwise may be necessary to facilitate the modification, change or revision as the case may be. The Architect shall have no liability or responsibility to the Owner or other parties for the costs resulting from such circumstances, except to perform such professional services at the agreed rates under Article 11 of this Agreement when they are due to unforeseen or concealed conditions, and at no additional cost to the Owner when they are a result of minor errors or omissions. The Owner agrees to budget for and provide a contingency fund based on a percent of the Cost of the Work against which these costs will be charged

12.4 Delivery of Electronic Files. (Applicable in absence of E203 2013, G201 2013 and G202 2013)

12.4.1 In accepting and utilizing any Instruments of Service or data in any form of electronic media generated and furnished by the Architect, the Owner and Construction Manager agree that all such electronic files are Instruments of Service of the Architect and the Architect's consultants, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights, except as set forth in Article 7 above.

12.4.2 The Owner agrees not to reuse these electronic files, in whole or in part, for any purposes other than for this Project. Except as permitted under Article 7 above, the Owner, Construction Manager and Contractor(s) agree not to transfer these electronic files to others outside of the Project Team (Owner and Owner's Consultants, Construction Manager, Contractor and appropriate Subcontractor(s)) without the prior written consent of the Architect. The Owner, Construction Manager and Contractor further agree to waive all claims against the Architect and the Architect's consultants resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Architect.

12.4.3 The Owner, Construction Manager and Contractor are aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between electronic files and the signed Construction Documents and hard-copy addendum(s) prepared by the Architect, the signed, sealed or hard-copy Construction Documents and addendum(s) shall govern.

12.4.4 In addition, the User (Owner, Construction Manager, Contractor(s), and/or Consultant) agree, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from User's modifications to the files not authorized by the Architect, or the User's unlicensed use of such files. Nothing in this section shall obligate one party to indemnify another party against that party's own negligence or intentional wrongdoing.

12.4.5 Under no circumstances shall delivery of electronic files for use by the Owner or others be deemed a sale by the Architect. In no event shall the Architect be liable for indirect or consequential damages as a result of the Owner's or others' use or reuse of the electronic files.

12.4.6 The Owner shall include this provision in its contract(s) with the Construction Manager, Contractor(s) and its Consultants.

§12.5 Construction Documents Omissions. If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project. The Owner will not be responsible for redesign fees due to the Architect omission. The Architect will absorb the cost of redesign. Should there be an omission by the Architect the Owner will pay the cost of "betterment" at the time of bid. The architect will absorb the upcharge costs associated with a change order limited to no more than 10% of the item cost.

§12.5 Laboratory Testing. If the Architect is requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner, the Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§12.6 Design By Others.

§12.6.1 Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the design services of any other design professional, design-build contractor, contractor, vendor or manufacturer rendering design, engineering or related services and not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants, contractors or design-build contractors shall be to coordinate Owner's consultants', contractors' or design-build contractor's portion of the Instruments of Service. Owner shall

require consultants, contractors or design-build contractor retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§12.6.2 Unless specifically otherwise indicated in the Contract Documents, any design services provided by Owner's consultants shall be performed by licensed professional consultants, who shall affix their seals on the appropriate documents prepared by them. The contracts between the Owner and Owner's consultants shall require the consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflict. The Architect shall have no responsibility for the components of the Project designed by the Owner's consultants. Review by the Architect of Owner consultants' drawings and other instruments of service is solely for consistency with the Architect's design concept for the Project. The Architect shall be entitled to rely upon the technical sufficiency and timely delivery of documents and services furnished by Owner consultants, as well as on the computations performed by those consultants in connection with such documents and services. The Architect shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations, or certify completion or payment for the Work designed by the Owner's consultant. The Owner shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the services performed by the other consultants of the Owner.

§12.7 Indemnification

§12.7.1 To the fullest extent permitted by law, the Architect will indemnify and hold the Owner and its director, officers and employees harmless from that part of claims, costs, losses or damages, including reasonable attorney fees, but only to the extent caused by the negligent acts, errors or omissions of the Architect or the negligent acts, errors or omissions of the Architect's officers, directors, employees, and sub consultants or any other entity or person for whom Architect would be legally liable for. The Architect's obligation under this Section 12.7.1 does not include a duty to defend and the obligation to indemnify shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§12.7.2 To the fullest extent permitted by law the Owner will indemnify and hold the Architect and its directors, officers, and employees harmless from any and all claims, costs, losses, or damages, including reasonable attorney fees, but only to extent caused by the negligent acts, error or omissions of the Owner or the negligent acts, errors or omissions of the Owner's officers, directors, employees, and subconsultants or any other entity or person for whom the Owner would be legal liable for.

§ 12.8 Cap on Damages. In recognition of the relative risks, rewards and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees that, to the fullest extent permitted by law, the Architect's total liability to the Owner for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any causes, shall not exceed the Architect's available proceeds of insurance policies required under this agreement.

§12.9 Force Majeure. The Owner agrees that the Architect is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 12.10 Exclusive Remedy. It is the intent of the parties to this Agreement that the Architect's services in connection with the Project shall not subject the Architect's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Architect and not against any of the Architect's employees, officers or directors.

§ 12.11 179D Energy Tax Deduction. The Owner shall designate the Architect as the sole beneficiary of the Internal

Revenue Code Section 179D Energy Tax Deduction if available. (Applicable to public contracts only.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

(Paragraphs deleted)

- .2 Other documents:

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

Wendel Rate Sheet

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

OWNER (Signature)

ARCHITECT (Signature)

(Printed name and title)

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

Additions and Deletions Report for AIA® Document B101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:56:27 ET on 06/28/2024.

PAGE 1

AGREEMENT made as of the 1st day of June in the year two thousand twenty-four.

...

City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

...

Wendel Architecture, P.C.
204 E. Grand Avenue, Suite 200
Eau Claire, WI 54701

...

Sheboygan Fire Station No. 2

PAGE 2

Phase I and II Design Services for remodel and additions or a new Fire Station No. 2.

Phase I will include Existing Condition Assessment, Programming, conceptual/master planning, multiple options for remodel/additions or new construction, and development of the selected option continuing into Phase II.

Phase II includes but is not limited to site planning, alternative development, programming, schematic design, design development, construction documents, bidding assistance and construction administration of the selected options in Phase I.

...

See 1.1.1.

PAGE 3

TBD

...

Conceptual Design Complete: July 2024
Schematic Design Complete: September 2024
Design Development Complete: December 2024
Construction Documents Complete: March 2025
Project Bidding: March 2025

...

April 2025

...

August 2026

...

Competitive Bid as provided under Wisconsin State Statutes.

...

Not Applicable

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

...

Casey Bradley, City Administrator
City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

...

Not Applicable

PAGE 4

TBD, by Owner. RFP Assistance by Architect.

~~2~~ Civil Engineer: 2 Land Surveyor:

TBD, by Owner. RFP Assistance by Architect.

...

Robert Krzyzanowski
Wendel Architecture, P.C.
204 E. Grand Avenue, Suite 200
Eau Claire, WI 54701

...

Northland Consulting Engineers

101 S. 21st Ave. W#1
Duluth, MN 55806
Telephone Number: 218-727-5995

.2 Mechanical & Electrical Engineer:

Wendel Architecture, P.C.
204 E. Grand Avenue, Suite 200
Eau Claire, WI 54701
Telephone Number: 715-832-4848

...

JSD Professional Services
161 Horizon Drive #101
Verona, WI 53593
Telephone Number: 608-848-5060

...

Not Applicable

...

Not Applicable

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§ 1.3 The parties shall agree upon ~~written~~ protocols governing the transmission and use of, ~~and reliance on, of~~ Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to ~~written~~ protocols governing the use of, and reliance on, the information contained in the model ~~and without having those~~ protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.4 Owner represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to perform its obligations under this Agreement and under the Contract Documents. The Architect may demand assurance in writing of the Owner's ability to satisfy the foregoing obligation, such as a certified statement of an accounting professional. The Owner's failure to provide such reasonable assurances shall be grounds for termination of this Agreement by the Architect.

...

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is ~~located to provide located, and that~~ the services required by this Agreement, ~~or shall cause such services to~~ Agreement shall be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Notwithstanding any clause in the Agreement documents to the contrary, Architect expressly disclaims all

express or implied warranties, guarantees or fiduciary obligations with respect to the performance of professional services.

...

§ 2.5.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and four million dollars (\$ 4,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than five million dollars (\$ 5,000,000) per claim and five million dollars (\$ 5,000,000) in the aggregate.

PAGE 7

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

~~§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.~~

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§ 3.4.6 The Owner and Architect acknowledge that the Construction Documents prepared by the Architect will generally describe the intended scope of work for the Project, and that the Contractor (engaged by the Owner to construct the Project) shall be required to provide only those services that are expressly required by the Contract Documents or are reasonably inferable from such documents as being necessary to produce the intended results. Consequently, the need may arise during the course of construction to adjust the Contract for Construction to reflect the cost of items that are not consistent with or reasonably inferable from the Contract Documents. In accordance with paragraphs 5.2 and 6.3, the Owner shall maintain a reasonable amount of contingency monies to pay for change orders to the Contract for Construction and other contingencies which impact the Project cost including, but not limited to, unforeseen conditions, and such items as changes to the program or scope of the Project, items of additional value that are not included in or may not be reasonably inferable from the Contract Documents, and adjustments to allowance cost items carried in the Project budget or the Contractor's bid amount. If any required item or component of the Project is omitted from the Construction Documents, the Architect shall not be responsible for the cost of adding such item or component to the extent that such item or component would have been otherwise necessary to the Project or adds betterment or value to the Project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement to the Project.

...

§ 3.5.3 Negotiated Proposals

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

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

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

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

...

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document ~~A201™-2017, A201™-2007~~, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document ~~A201-2017, A201-2007~~, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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§ 3.6.2 ~~Evaluations~~ Observations of the Work

...

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document ~~A201-2017, A201-2007~~, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

...

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's ~~evaluation-observation~~ of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an ~~evaluation-observation~~ of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect. The Architect's certification on the Certificate for Payment shall be that the percentages of Work shown on the application are completed, to the best of the Architect's knowledge, information and belief. No judgment is made by the Architect as to the value of the Work or the value of uncompleted Work.

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§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review ~~and take appropriate action on~~ Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect.

The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall notify the Owner and the Contractor of any inconsistencies discovered by the review. The Architect shall be entitled to rely upon, and shall not be responsible for,

the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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| | | |
|------------|--|---|
| § 4.1.1.1 | Programming | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.2 | Multiple preliminary designs | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.3 | Measured drawings | <u>Not Provided</u> |
| § 4.1.1.4 | Existing facilities surveys | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.5 | Site evaluation and planning | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.6 | Building Information Model management responsibilities | <u>Not Provided</u> |
| § 4.1.1.7 | Development of Building Information Models for post construction use | <u>Not Provided</u> |
| § 4.1.1.8 | Civil engineering | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.9 | Landscape design | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.10 | Architectural interior design | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.11 | Value analysis | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.12 | Detailed cost estimating beyond that required in Section 6.3 | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.13 | On-site project representation | <u>Not Provided</u> |
| § 4.1.1.14 | Conformed documents for construction | <u>Not Provided</u> |
| § 4.1.1.15 | As-designed record drawings | <u>Not Provided</u> |
| § 4.1.1.16 | As-constructed record drawings | <u>Not Provided</u> |
| § 4.1.1.17 | Post-occupancy evaluation | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.18 | Facility support services | <u>Not Provided</u> |
| § 4.1.1.19 | Tenant-related services | <u>Not Provided</u> |
| § 4.1.1.20 | Architect's coordination of the Owner's consultants | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.21 | Telecommunications/data design | <u>Architect, Included in Basic Services</u> |
| § 4.1.1.22 | Security evaluation and planning | <u>Architect, Included in Basic Services for coordination with Owner's System Providers</u> |
| § 4.1.1.23 | Commissioning | <u>Not Provided</u> |
| § 4.1.1.24 | Sustainable Project Services pursuant to Section 4.1.3 | <u>Not Provided</u> |
| § 4.1.1.25 | Fast-track design services | <u>Not Provided</u> |
| § 4.1.1.26 | Multiple bid packages | <u>Not Provided</u> |
| § 4.1.1.27 | Historic preservation | <u>Not Provided</u> |
| § 4.1.1.28 | Furniture, furnishings, and equipment design | <u>Architect, Included in Basic Services for coordination with Owner's System Providers</u> |
| § 4.1.1.29 | Other services provided by specialty Consultants | <u>Not Provided</u> |
| § 4.1.1.30 | Other Supplemental Services | <u>Not Provided</u> |
| § 4.1.1.31 | City/Town approval process | <u>Refer to Section 4.1.2.2.</u> |

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The Architect will provide a maximum of 5 meetings to support approval processes for the City. This work could include, but not limited to, Planning Board, Zoning Board, City council meetings, workshop meetings and/or neighborhood association meetings.

The Owner shall compensate the Architect on an hourly basis for all additional work beyond the 5 meetings. Any additional services will be approved prior to such meetings and/or requests by the Owner's designated representative.

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~~§ 4.1.3~~ If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™ 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

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- .6 The Owner agrees to include a provision in the Contract(s) for Construction that the Contractor(s) will review any requests for information (RFIs) submitted by subcontractors prior to submission to the Architect to ensure such RFIs are not already clearly and unambiguously answered in the Contract Documents. The Owner shall look to the Contractor for reimbursement for the Architect's time and expenses in reviewing RFIs which are already clearly answered or inferable from the Contract Documents in accordance with the Architect's standard rates. In the event of a disagreement over such compensation, the judgment of the Owner's representative shall prevail.

...

- .1 ~~(→) Two (2)~~ reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
.2 ~~(→) Twenty (20)~~ visits to the site by the Architect during construction
.3 ~~(→) One (1)~~ inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
.4 ~~(→) Two (2)~~ inspections for any portion of the Work to determine final completion.

...

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~(→) thirty-six (36)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. ~~The Owner shall require that its consultants and contractors~~ Project. The Owner shall include a clause in all Owner contracts with project construction contractors, construction managers and consultants requiring each to maintain insurance, including professional liability insurance, as appropriate to the services or work provided being performed, and to indemnify and hold harmless the Owner, Architect and their respective shareholders, directors, officers, employees, and agents, from any and all (i) claims resulting from their negligence in the performance of their Work or (ii) claims by their employees and the employees of their subconsultants and subcontractors. Owner, Architect and their respective shareholders, partners, officers, employees, and agents shall be named as additional insured on their CGL, Auto and Umbrella insurance policies.

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§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 To the fullest extent permitted by law, The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable,

without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.4 Unless otherwise agreed in writing, Architect shall continue to perform its Services during any dispute mitigation or resolution proceeding. If Architect continues to perform, Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

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~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement, a mutually agreed upon mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

...

[X] Litigation in a court of competent jurisdiction

...

§ 8.3 Arbitration Not Used

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

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

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

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

§ 8.3.4 Consolidation or Joinder Not Used

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

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

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

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

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Not Applicable

...

Not Applicable

...

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document ~~A201-2017~~, A201-2007, General Conditions of the Contract for Construction.

...

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement. All certifications made by the Architect shall be based on 'the best of their knowledge, information, and belief' whether or not so stated in the certification.

PAGE 20

§ 10.6 Unless otherwise required in this Agreement, ~~the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site; it is understood and agreed that Architect is not, and has no responsibility as, a handler, generator, operator, treater, storer, transporter, or arranger for transport or disposal of hazardous materials or toxic substances found or identified at the site, and that Architect shall not be responsible to undertake or arrange for the handling, removal, treatment, storage, transportation, or disposal of hazardous materials or toxic substances or constituents found or identified at the site. A hazardous material or toxic substance is any material or substance identified now or in the future as hazardous or toxic under any federal, state or local law or regulation, or any other material or substance that may be considered hazardous, toxic or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or cleanup. For purposes of this agreement, the term hazardous material shall include asbestos, polychlorinated biphenyl (PCB), mold, mildew, fungi or other similar microbial conditions.~~

§ 10.6.1 To the fullest extent permitted by law, Owner agrees to indemnify, defend and save harmless the Architect from and against any and all liabilities, demands, claims, penalties, damages, forfeitures, suits, and the costs and expenses arising from hazardous or toxic substances or conditions (including costs of defense, settlement and reasonable attorneys and expert fees and expenses), except to the extent the hazardous or toxic conditions result from the sole negligence or willful misconduct of the Architect.

§ 10.6.2 If Architect or any other party encounters undisclosed hazardous or toxic substances or conditions, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed hazardous or toxic substances or conditions, then Architect may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist professionals or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

§ 10.6.3 Owner and Architect agree that the discovery of undisclosed hazardous or toxic substances or conditions constitutes a changed condition, which may require a renegotiation of the Scope of Services, negotiation of Additional Services, or termination of services. Owner shall rely on Architect's judgment as to the continued adequacy of this Agreement in light of discoveries that were not anticipated or known. If Architect determines that renegotiation is necessary, Architect and Owner shall in good faith enter into renegotiation of this Agreement to permit Architect to continue to meet Owner's needs. If renegotiated terms cannot be agreed to, Owner agrees that Architect has the right to terminate this Agreement. If the Agreement is terminated, Owner shall pay Architect for all services performed and expenses incurred up to and including the date of termination, plus reasonable termination costs.

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.1 — Stipulated Sum. 1 Phase I – Conceptual Design Services: Phase I will include a feasibility study with Existing Condition Assessment of the existing facility, Programming, Preliminary Site Design, Preliminary Building Plans and Cost Estimates based on cost per square foot analysis. Options for new replacement construction will also be provided. Cost estimates will be provided for any options, allowing the owner to select an option for Phase II. This analysis shall be completed for a fixed fee of \$15,500 (Fifteen Thousand, Five Hundred Dollars). It is the intent of this phase to define the project to an extent that will allow the City to decide upon a course of action for the remainder of the project and move into Phase II.

(Insert amount)

.2 Phase II – Project Completion: To consist of architectural and engineering services to complete Schematic Design through the Construction phases of the project as accepted and approved in the Phase II process and as defined within this proposal, as follows:

If remodel and additions to the existing facility is selected in Phase I, we propose a fee of 8.5% of the cost of work as defined in Article 6.

.2 — Percentage Basis

(Insert percentage value) If a new facility design is selected in Phase I, we propose a fee of 6.5% of the cost of work as defined in Article 6.

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 — Other

(Describe the method of compensation)

Alternate bids, if any, shall be compensated at the percentage fee (as indicated above) of the Cost of the Work as defined in Article 6 and shall be invoiced at 80% of the fee for items designed and bid but not built and at 100% of the fee for items designed, bid and built.

...

TBD

...

TBD

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (%), ~~10%~~, or as follows:

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| | | | | |
|------------------------------|--------------------|-----------|-----------|----|
| Schematic Design Phase | <u>Twenty</u> | percent (| <u>20</u> | %) |
| Design Development Phase | <u>Twenty</u> | percent (| <u>20</u> | %) |
| Construction Documents Phase | <u>Thirty-Five</u> | percent (| <u>35</u> | %) |
| Procurement Phase | <u>Five</u> | percent (| <u>5</u> | %) |
| Construction Phase | <u>Twenty</u> | percent (| <u>20</u> | %) |

...

See Attached Wendel Rate Sheet.

Employee or Category

Rate (\$0.00)

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0 %) of the expenses incurred.

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Not Applicable

...

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

~~§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ —) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

...

~~%—One and five tenths percent(1.5%) per month, cumulative.~~

...

§ 12.3 Contingency Fund

§ 12.3.1 The Architect agrees, as a design professional, to provide architectural services in accordance with generally accepted architectural practices and standards. It is acknowledged by the parties that the design process for buildings is not an exact science and that it continues through the Construction Phase. Accordingly, it is understood and agreed that a need for modifications, changes, revisions, interpretations and/or clarifications of the Drawings and Specifications during the Construction Phase are anticipated, as a result of unforeseen conditions, concealed conditions, minor design refinements (other than errors and omissions), and that these changes may result in additional expenses to the Owner through the change order process.

§ 12.3.2 When the need for such changes, revisions, interpretations and/or clarifications becomes known to the Architect, he shall promptly investigate and take appropriate action in the form of drawings, specifications, written

description, clarifications, or as otherwise may be necessary to facilitate the modification, change or revision as the case may be. The Architect shall have no liability or responsibility to the Owner or other parties for the costs resulting from such circumstances, except to perform such professional services at the agreed rates under Article 11 of this Agreement when they are due to unforeseen or concealed conditions, and at no additional cost to the Owner when they are a result of minor errors or omissions. The Owner agrees to budget for and provide a contingency fund based on a percent of the Cost of the Work against which these costs will be charged

12.4 Delivery of Electronic Files. (Applicable in absence of E203 2013, G201 2013 and G202 2013)

12.4.1 In accepting and utilizing any Instruments of Service or data in any form of electronic media generated and furnished by the Architect, the Owner and Construction Manager agree that all such electronic files are Instruments of Service of the Architect and the Architect's consultants, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights, except as set forth in Article 7 above.

12.4.2 The Owner agrees not to reuse these electronic files, in whole or in part, for any purposes other than for this Project. Except as permitted under Article 7 above, the Owner, Construction Manager and Contractor(s) agree not to transfer these electronic files to others outside of the Project Team (Owner and Owner's Consultants, Construction Manager, Contractor and appropriate Subcontractor(s)) without the prior written consent of the Architect. The Owner, Construction Manager and Contractor further agree to waive all claims against the Architect and the Architect's consultants resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Architect.

12.4.3 The Owner, Construction Manager and Contractor are aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between electronic files and the signed Construction Documents and hard-copy addendum(s) prepared by the Architect, the signed, sealed or hard-copy Construction Documents and addendum(s) shall govern.

12.4.4 In addition, the User (Owner, Construction Manager, Contractor(s), and/or Consultant) agree, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from User's modifications to the files not authorized by the Architect, or the User's unlicensed use of such files. Nothing in this section shall obligate one party to indemnify another party against that party's own negligence or intentional wrongdoing.

12.4.5 Under no circumstances shall delivery of electronic files for use by the Owner or others be deemed a sale by the Architect. In no event shall the Architect be liable for indirect or consequential damages as a result of the Owner's or others' use or reuse of the electronic files.

12.4.6 The Owner shall include this provision in its contract(s) with the Construction Manager, Contractor(s) and its Consultants.

§12.5 Construction Documents Omissions. If, due to the Architect's omission, a required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project. The Owner will not be responsible for redesign fees due to the Architect omission. The Architect will absorb the cost of redesign. Should there be an omission by the Architect the Owner will pay the cost of "betterment" at the time of bid. The architect will absorb the upcharge costs associated with a change order limited to no more than 10% of the item cost.

§12.5 Laboratory Testing. If the Architect is requested by the Owner to subcontract certain laboratory testing services on behalf of the Owner, the Architect agrees to do so in reliance upon the Owner's assurance that the Owner will make no claim or bring any action at law or in equity against the Architect as a result of these subcontracted services. The Owner understands that the Architect has not performed any independent evaluation of the testing laboratory's data and the Owner shall not rely upon the Architect to determine the quality or reliability of the testing laboratory's reports. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs.

arising from the services performed by the testing companies and for tests recommended by the Architect and not completed per the Owner's direction, except only those damages, liabilities or costs caused by the negligence or willful misconduct of the Architect.

§12.6 Design By Others.

§12.6.1 Architect is not responsible to Owner or any third-parties for errors, omissions or other deficiencies in the design services of any other design professional, design-build contractor, contractor, vendor or manufacturer rendering design, engineering or related services and not employed by Architect. Architect's sole liability in connection with the services of Owner's consultants, contractors or design-build contractors shall be to coordinate Owner's consultants', contractors' or design-build contractor's portion of the Instruments of Service. Owner shall require consultants, contractors or design-build contractor retained by Owner to coordinate their services and documents with those of Architect and Architect's consultants.

§12.6.2 Unless specifically otherwise indicated in the Contract Documents, any design services provided by Owner's consultants shall be performed by licensed professional consultants, who shall affix their seals on the appropriate documents prepared by them. The contracts between the Owner and Owner's consultants shall require the consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflict. The Architect shall have no responsibility for the components of the Project designed by the Owner's consultants. Review by the Architect of Owner consultants' drawings and other instruments of service is solely for consistency with the Architect's design concept for the Project. The Architect shall be entitled to rely upon the technical sufficiency and timely delivery of documents and services furnished by Owner consultants, as well as on the computations performed by those consultants in connection with such documents and services. The Architect shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations, or certify completion or payment for the Work designed by the Owner's consultant. The Owner shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the services performed by the other consultants of the Owner.

§12.7 Indemnification

§12.7.1 To the fullest extent permitted by law, the Architect will indemnify and hold the Owner and its director, officers and employees harmless from that part of claims, costs, losses or damages, including reasonable attorney fees, but only to the extent caused by the negligent acts, errors or omissions of the Architect or the negligent acts, errors or omissions of the Architect's officers, directors, employees, and sub consultants or any other entity or person for whom Architect would be legally liable for. The Architect's obligation under this Section 12.7.1 does not include a duty to defend and the obligation to indemnify shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§12.7.2 To the fullest extent permitted by law the Owner will indemnify and hold the Architect and its directors, officers, and employees harmless from any and all claims, costs, losses, or damages, including reasonable attorney fees, but only to extent caused by the negligent acts, error or omissions of the Owner or the negligent acts, errors or omissions of the Owner's officers, directors, employees, and subconsultants or any other entity or person for whom the Owner would be legal liable for.

§ 12.8 Cap on Damages. In recognition of the relative risks, rewards and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees that, to the fullest extent permitted by law, the Architect's total liability to the Owner for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any causes, shall not exceed the Architect's available proceeds of insurance policies required under this agreement.

§12.9 Force Majeure. The Owner agrees that the Architect is not responsible for damages arising directly or indirectly from any delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions other natural disasters; fires, riots, acts of terrorism, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or

time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to an equitable adjustment in schedule or compensation.

§ 12.10 Exclusive Remedy. It is the intent of the parties to this Agreement that the Architect's services in connection with the Project shall not subject the Architect's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Architect and not against any of the Architect's employees, officers or directors.

§ 12.11 179D Energy Tax Deduction. The Owner shall designate the Architect as the sole beneficiary of the Internal Revenue Code Section 179D Energy Tax Deduction if available. **(Applicable to public contracts only.)**

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~~2~~ Building Information Modeling Exhibit, if completed:

~~3~~ Exhibits:

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

☐ AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204 2017 incorporated into this agreement.)

☐ Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

~~4~~ 2 Other documents:

...

Wendel Rate Sheet

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:56:27 ET on 06/28/2024 under Order No. 4104246501 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)