

ORDER NO. 2022-11

**AN ORDER OF THE COMMISSIONERS COURT OF PANOLA COUNTY, TEXAS: (1) APPROVING THE ISSUANCE OF THE PANOLA COUNTY, TEXAS REQUEST FOR QUALIFICATIONS NO. 2022-01-ABP-ARCH FOR ARCHITECTURAL AND OTHER PROFESSIONAL SERVICES (INCLUDING ENGINEERING SERVICES) FOR THE COUNTY'S AUXILIARY BUILDING PROJECT; AND (2) ESTABLISHING AN EFFECTIVE DATE AND COMPLIANCE WITH THE TEXAS OPEN MEETING ACT.**

**WHEREAS**, Panola County, Texas ("County") is a county of the State of Texas, having been duly created and organized under the constitution and laws of Texas, and further, the Panola County Commissioners Court ("Commissioners Court") is the governing body of the County; and

**WHEREAS**, pursuant to Article V, Section 18 of the Texas Constitution, Chapter 2269 of the Texas Government Code, Chapters 271, 291, and 292 of the Texas Local Government Code, and other authority, the County may acquire, design, construct, reconstruct, use, operate, maintain, remodel, and repair public works and facilities in the public interest, including county auxiliary buildings; and

**WHEREAS**, pursuant to said authority, the County is engaged in a public facility and public works project ("Project") for the acquisition, design, construction, reconstruction, use, operation, maintenance, remodeling, and repair of a County auxiliary public office building on certain real property located in the City of Carthage, Panola County, Texas (said city designated as the county seat) as hereafter described:

- (1) **Property Tract I.** All those certain contiguous tracts or parcels of land with existing improvements, currently owned by the County and containing a total of 0.823 acres, more or less, said tracts being and situated in Panola County, Texas, a part of the George Goodwin Survey therein, located in the City of Carthage, Texas (designated as the county seat) and being all of Lots 1-B, 3, and 4, and part of Lot 2, Block 61 of said city, as described in the plat of said city recorded in Volume 3, Page 396 of the Plat Book Records of Panola, County, Texas, to which reference is made for all purposes, and further, **Property Tract I** is generally located at 309 West Panola Street, Carthage, Texas 75633; or in the alternative,
- (2) **Property Tract II.** All those certain contiguous tracts or parcels of land with existing improvements, if any, located in said county seat (the specific location of the tracts being currently undetermined by the

County), to be acquired in the future by the County as authorized by law for Project purposes if said property is later determined by the County to be more acceptable for Project purposes than **Tract 1**; and

- (3) **Property Tracts I and II** are collectively referred to as the “Property” in this order unless otherwise designated; and

**WHEREAS**, the County requires for the Project the professional services of an architect (and other professional services, including engineering services) with (a) demonstrated competence and experience with the acquisition, design, construction, reconstruction, use, operation, remodeling, maintenance, and repair of public office buildings in Texas, and (b) familiarity regarding the relevant and applicable laws, standards, and regulations pertaining to those types of buildings, and further, the selected architect shall be requested to timely perform certain services for the Project, as described in **RFQ No. 2022-01-ABP-ARCH, the Panola County, Texas Request for Qualifications for Architectural and Other Professional Services Regarding the County’s Auxiliary Building Project (“RFQ”)**, attached as **Exhibit 1** to this order; and

**WHEREAS**, the Commissioners Court finds and determines the following matters regarding the Project:

- (1) the County’s auxiliary public office building on the Project Property is necessary and desired because, upon its completion and operation, the building will serve as a needed and additional location (i) for conducting the public business of the County and the housing of County and/or district offices; and (ii) at which public services will be provided to the people; and
- (2) the Project is a necessary, desired, and authorized public works project of the County, to be implemented and completed by the Commissioners Court in the public interest pursuant to the lawful authority, discretion, and best business judgment of the Commissioners Court; and
- (3) the successful completion and implementation of the Project, as herein described, will accomplish and substantially achieve all public purposes described in this order and the RFQ; and

**WHEREAS**, the Commissioners Court by this order desires to approve the issuance, implementation, and related procedure of the RFQ for the Project, in the form and scope described in the attached **Exhibit 1**;

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the Commissioners Court of Panola County, Texas, for and on behalf of said County and in the public interest, as follows:

- (1) Unless otherwise designated, the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.
- (2) All statements made in the caption and preliminary recitals of this order, and all attached documents, are incorporated by reference.
- (3) The Commissioners Court approves the issuance, implementation, and related procedure of **RFQ No. 2022-01-ABP-ARCH, the Panola County, Texas Request for Qualifications for Architectural and Other Professional Services Regarding the County's Auxiliary Building Project**, in the form and scope described in the attached **Exhibit 1**, including without limitation the newspaper publication requirements, other public notice requirements, public meeting requirements, RFQ response procedure and documents, and architect selection procedure relating to the RFQ, for the County's acquisition of necessary and desired architectural and other professional services (including engineering services) for the Project on the Property, as described in the RFQ and required by law.
- (4) This order shall take effect immediately from and after its passage.
- (5) This order was considered and approved at a public meeting of the Commissioners Court held in compliance with Chapter 551 of the Texas Government Code, the Texas Open Meetings Act.

**ORDERED, APPROVED, AND ADOPTED** on the 19<sup>th</sup> day of July, 2022.

**THE COMMISSIONERS COURT OF  
PANOLA COUNTY, TEXAS**



County Judge  
Panola County, Texas



County Commissioner, Precinct 1  
Panola County, Texas



County Commissioner, Precinct 2  
Panola County, Texas

Absent

County Commissioner, Precinct 3  
Panola County, Texas

Dale LaGrone

County Commissioner, Precinct 4  
Panola County, Texas

**ATTEST:**

Beverly A. ...

County Clerk  
Panola County, Texas





**EXHIBIT 1**  
**(Panola County, Texas RFQ No. 2022-01-ABP-ARCH)**

**PANOLA COUNTY, TEXAS REQUEST FOR QUALIFICATIONS  
FOR ARCHITECTURAL AND OTHER PROFESSIONAL SERVICES  
REGARDING COUNTY AUXILIARY BUILDING PROJECT**

**RFQ No. 2022-01-ABP-ARCH**

**Issuance Date: July 19, 2022**

**1. Introduction to Request for Qualifications.**

Panola County, Texas, a duly organized and operating county of the State of Texas, by and through its governing body, the Commissioners Court of Panola County, Texas, hereby issues its **RFQ No. 2022-01-ABP-ARCH, the Panola County, Texas Request for Qualifications for Architectural and Other Professional Services Regarding the County's Auxiliary Building Project**, for the procurement of architectural and other professional services (including engineering services) for the acquisition, design, construction, reconstruction, use, operation, remodeling, maintenance, and repair of a County auxiliary public office building on certain real property located in the City of Carthage, Panola County, Texas, as hereafter described. The County shall give public notice of and actions regarding this RFQ as required by law.

**2. Definitions and Interpretation.**

Unless otherwise designated:

- (a) **"AIA"** shall mean the American Institute of Architects;
- (b) **"Architect"** shall mean an architect or architectural firm submitting a Response to this RFQ;
- (c) **"Architect Contract"** shall mean the contract awarded to an Architect for the Project as a result of the process described in this RFQ. The Architect Contract shall be drafted in compliance with this RFQ using the **AIA Document B101-2017**, as hereafter described.
- (d) **"Commissioners Court"** shall mean the Commissioners Court of Panola County, Texas, the County's governing body;
- (e) **"County"** shall mean Panola County, Texas, acting by and through its Commissioners Court;
- (f) **"County Seat"** shall mean the City of Carthage, Panola County, Texas, being designated by law as the county seat of said county.
- (g) **"County Judge"** shall mean the Hon. David L. Anderson, the County Judge of Panola County, Texas, or his successor;

- (h) **“Project”** shall mean the County’s Auxiliary Building Project described in paragraph 3 of this RFQ;
- (i) **“Property”** shall have the meaning described in paragraph 3 of this RFQ;
- (j) **“Request”** or **“RFQ”** are synonymous and shall mean this **RFQ No. 2022-01-ABP-ARCH**;
- (k) **“Respondent”** shall mean an Architect submitting a Response to this RFQ;
- (l) **“Response”** shall mean a response submitted by a Respondent to this RFQ; and
- (m) the past, present, or future tense shall each include the other, the masculine, feminine, or neuter gender shall each include the other, and the singular and plural number shall each include the other, where necessary for a correct meaning in this RFQ.

All documents attached to this RFQ are incorporated by reference.

### **3. Project and Property Description.**

Pursuant to Article V, Section 18 of the Texas Constitution, Chapters 2254 and 2269 of the Texas Government Code, Chapters 271, 291, and 292 of the Texas Local Government Code, and other authority, the County may acquire, design, construct, reconstruct, use, operate, maintain, remodel, and repair public works and facilities in the public interest, including county auxiliary buildings.

The County currently is engaged in a public facility and public works project (“Project”) for the acquisition, design, construction, reconstruction, use, operation, maintenance, remodeling, and repair of a County auxiliary building, to be used as a public office building, on certain real property located in the City of Carthage, Panola County, Texas (said city designated as the County Seat) as hereafter described:

- (a) **Property Tract I** – All those certain contiguous tracts or parcels of land with existing improvements, currently owned by the County and containing a total of 0.823 acres, more or less, said tracts being and situated in Panola County, Texas, a part of the George Goodwin Survey therein, located in the City of Carthage, Texas (designated as the County Seat) and being all of Lots 1-B, 3, and 4, and part of Lot 2, Block 61 of said city, as described in the plat of said city recorded in Volume 3, Page 396 of the Plat Book Records of Panola, County, Texas, to which reference is made for all purposes, and further, **Property Tract I** is generally located at 309 West Panola Street, Carthage, Texas 75633; or in the alternative,
- (b) **Property Tract II** – All those certain contiguous tracts or parcels of land with existing improvements, if any, located in the County Seat (the specific

location of which is currently undetermined by the County), to be acquired in the future by the County as authorized by law for Project purposes if said property is later determined by the County to be more acceptable for Project purposes than **Tract 1**; and

- (c) **Property Tracts I and II** are collectively referred to as the **“Property”** in this RFQ unless otherwise designated.

In its issuance order regarding this RFQ, the Commissioners Court determined the following matters regarding the Project: (1) the County’s auxiliary public office building on the Project Property is necessary and desired because, upon its completion and operation, the building will serve as a needed and additional location (i) for conducting the public business of the County and the housing of County and/or district offices, and (ii) at which public services will be provided to the people; (2) the Project is a necessary, desired, and authorized public works project of the County, to be implemented and completed by the Commissioners Court in the public interest pursuant to the lawful authority, discretion, and best business judgment of the Commissioners Court; and (3) the successful completion and implementation of the Project will accomplish and substantially achieve all public purposes described in said order and this RFQ.

#### 4. Scope of Services.

The Project has been determined by the Commissioners Court to be a necessary and advisable public works project to be implemented and completed by the County in the public interest. The County requires for the Project the professional services of an Architect (and other professional services, including engineering services) with: (a) demonstrated competence and experience with the acquisition, design, construction, reconstruction, use, operation, remodeling, maintenance, and repair of public office buildings in Texas; and (b) familiarity regarding the relevant and applicable laws, standards, and regulations pertaining to those types of buildings. The selected Architect shall be requested to timely perform the following services for the Project:

- (a) The Architect shall perform the responsibilities and services described in **AIA Document B101-2017** (a blank copy of which is attached as **Exhibit A**), including but not limited to: (i) basic services (including schematic design, design development, construction documents, procurement, and construction); (ii) supplemental services; and (iii) additional services relating to (1) as a preliminary matter, the potential demolition and removal of one or more buildings, structures, or other improvements from the Property, and the overall preliminary site preparation of the Property for the Project, and (2) the design, new construction and/or or remodeling, and post-construction phases of the proposed Project building and its surrounding grounds (including parking areas) on the Property.
- (b) The Architect shall provide analysis and recommendations regarding all issues which may contribute to or affect the safe and efficient use of the Property and buildings, structures, or other improvements now existing or to be constructed and/or remodeled on the Property for the Project.

- (c) The Architect shall provide analysis and recommendations regarding cost estimates for the Project.
- (d) The Architect shall provide construction (and/or remodeling) and completion phase services to the County regarding construction and contract documents, procurement, negotiated proposals for contractors or consultants, evaluation of construction work, and other construction (and/or remodeling) and completion phase services requested by the County for the Project.
- (e) The Architect shall provide all services and make all recommendations to the County in compliance with applicable federal, state, and local laws.

#### **5. Copies of RFQ.**

Copies of this RFQ may be: (a) obtained from the County Judge at his business office address located at the Panola County Courthouse, 110 South Sycamore Street, Room 216-A, Carthage, Texas 75633 (telephone 903-693-0391); and (b) downloaded from the County's internet website at [www.co.panola.tx.us](http://www.co.panola.tx.us).

#### **6. Evaluation Criteria and Selection Process.**

The procurement of the professional services of an Architect (and other professional services, including engineering services) for the Project will be conducted pursuant to the ranking and contract negotiation procedure described by Chapters 2254 and 2269 of the Texas Government Code and other authority regarding architect and engineer procurement by a Texas county for a public works project. The Response submitted by a Respondent for the Project will provide all information necessary for evaluation and ranking by the Commissioners Court, as required by this RFQ. Please note the following:

- (a) Pursuant to section 2254.003 of the Texas Government Code, the County will select an Architect for the Project on the basis of demonstrated competence and qualifications to perform the requested services for the Project, pursuant to the evaluation criteria described in this RFQ and for a fair and reasonable price.
- (b) Respondents to this RFQ will be ranked in order by the Commissioners Court pursuant to the procedure described in section 2254.004 of the Texas Government Code, according to the evaluation criteria described in this RFQ. Following the ranking, contract negotiations will begin with the highest ranked Respondent as required by law. Should negotiations with the highest ranked Respondent fail to yield a contract award, or if that Respondent is unable to execute a contract, negotiations will formally end, and thereafter negotiations will commence with the second highest ranked Respondent in the manner required by law.

- (c) Should negotiations with the second highest ranked Respondent fail to yield a contract award, or if that Respondent is unable to execute a contract, negotiations will formally end, and thereafter the County will continue the process described in section 2254.004 of the Texas Government Code to select and negotiate with the sequentially ranked Respondents until a contract, if possible, results between the contract parties.
- (d) After the submission and opening of the Responses, and prior to the initial ranking of Respondents: (i) the Commissioners Court, at its sole discretion, may request one or more Respondents to provide additional information; and (ii) any Respondent determined eligible for further evaluation based on qualifications submitted in a Response may be given (but is not required to be given), at the sole discretion of the Commissioners Court, an opportunity to make a presentation and interview with the Commissioners Court at a public meeting. However, the Commissioners Court, using its lawful authority, discretion, and best business judgment, may choose to forego the interview procedure and open negotiations with the highest ranked Respondent.

#### **7. Waiver of Formalities; No Reimbursement for Costs.**

Pursuant to Texas Law, the County may: (a) reschedule, amend, extend, reject, or cancel this RFQ at any time; (b) reject any or all Responses; (c) waive any formality or irregularity in connection with the requirements of a Response; and (d) consider a Response not made in compliance with this Request -- although the County will have no obligation to consider a noncompliant Response. The County will not reimburse a Respondent for any costs incurred as a result of the issuance of this Request, a submitted Response, or the award or non-award of a contract.

#### **8. Licensure and Registration.**

All Respondents (and any proposed consultants, including engineering consultants, described in a Response) must have legally required and active Texas licensure and registration so that all services required from them may be delivered in accordance with applicable law. Proof of licensure and registration is required as a part of the Response to this RFQ. Respondents shall submit photocopies of current licensure and registration documents of all Respondent personnel who are anticipated to perform work on the Project.

#### **9. Written Questions.**

The County will try to answer written questions concerning this RFQ, but will not be obligated to do so. Answers may be delivered by the County by email; therefore, written questions must contain the name and e-mail address of the person to whom the County reply should be made. The foregoing shall not limit the County's right to issue addenda to the RFQ prior to opening of Responses, or to delay the date and time of said opening in order to ensure that all potential Respondents have had sufficient time to consider the addenda.



Written questions regarding this RFQ must be delivered (by mail, courier, e-mail or hand-delivery) on or before August 2, 2022 at 3:00 p.m. County local time to the County Judge at: (a) [for courier, mail, or hand-delivery] his business office address described in paragraph 5 of this RFQ; or (b) [for e-mail delivery] at david.anderson@co.panola.tx.us. The County's answers (if any) to written questions submitted regarding this RFQ will be posted on the County's internet website at www.co.panola.tx.us. The general public and potential Respondents are encouraged to check the County's internet website for information regarding this RFQ.

#### 10. Public Information.

Regarding this RFQ and any submitted Response, the County is subject to compliance with Chapter 551 (the Texas Open Meetings Act) and Chapter 552 (the Texas Public Information Act) of the Texas Government Code. Any information submitted by a Respondent to the County regarding this matter is presumed to be public information and available to the public. Any information submitted to the County that a Respondent considers confidential must be marked as "CONFIDENTIAL."

#### 11. Response Submission and Opening.

- (a) A Response shall: (i) be sealed prior to delivery; (ii) be submitted in the form, scope, and content required by this RFQ; (iii) comply with all requirements in this Request; (iv) be typed on 8.5 x 11-inch paper (but oversized drawings, diagrams, or photographs are not prohibited); and (v) contain the original Response (signed by an authorized principal of the Respondent) and seven (7) copies of the executed original Response.
- (b) A Response shall clearly identify and describe the: (i) contact information for Respondent, including Respondent's business name, principal business address, business e-mail address, and business telephone numbers (voice and facsimile); and (ii) name of an employee or representative of Respondent serving as the authorized contact person with regard to all matters pertaining to this Request, including that person's name, title, voice telephone number, facsimile number, and e-mail address.
- (c) A Response shall be clearly printed or marked on the outside of the submission envelope or package as: Response of (*Insert Name of Respondent*) to Panola County, Texas RFQ No. 2022-01-ABP-ARCH.
- (d) **DEADLINE FOR RESPONSE SUBMISSION:** A Response shall be addressed and timely delivered (by mail, courier, or hand-delivery) on or before August 15, 2022 at 3:00 p.m. County local time to the County Judge at his business office address described in paragraph 5 of this RFQ. Responses delivered after that deadline are subject to rejection.

- (e) **RESPONSE OPENING:** Responses shall be opened and read aloud by the Commissioners Court at a public meeting to occur on August 16, 2022 at 1:30 p.m. County local time at the Commissioners' Courtroom in the Panola County Courthouse, 110 South Sycamore Street, Carthage, Texas 75633. Responses will be reviewed, discussed, deliberated, and formally ranked by the Commissioners Court at the aforesaid or a subsequent public meeting date, as allowed by law, pursuant to the procedure described in this RFQ.

## 12. Evaluation Criteria and Methodology.

Based on the following criteria, the County, by and through its Commissioners Court and using its lawful authority, discretion, and best business judgment, shall determine the Respondent best qualified to perform the required services:

- (a) **25 Points** – In the Response, the Respondent shall demonstrate, describe, and provide evidence of its recent experience regarding the: (i) timely preparation and delivery of design and construction plans for a public office building; and (ii) supervision, management, and/or evaluation of a project for the new construction, remodeling, repair, or improvement of a public office building. A descriptive list of no more than five (5) such projects should be submitted.
- (b) **25 Points** -- In the Response, the Respondent shall demonstrate, describe, and provide professional references and evidence regarding: (i) the facts and history of the projects listed in subparagraph (a) above; (ii) Respondent's ability to perform and complete the requested services in a timely manner and in conformance with established contracts and budgets; and (iii) the provision of assistance to an owner of a prior project regarding construction delay, warranty matters, and/or remodeling, repair or finish-out problems.
- (c) **15 Points** -- In the Response, the Respondent shall demonstrate, describe, and provide evidence regarding its: (i) proximity to the Project Property; (ii) ability to have its professional staff on site at the Property when needed for the Project; (iii) understanding of the scope and components of the Project; and (iv) compliance with all requirements of this RFQ.
- (d) **15 Points** -- In the Response, the Respondent shall demonstrate, describe, and provide evidence of its financial capability and financial stability to correctly, timely, and reliably perform the requested services for the Project.
- (e) **20 Points** -- In the Response, the Respondent shall demonstrate, describe, and provide evidence regarding: (i) the general experience and reputation of Respondent in its professional practice area in the State of Texas; (ii) the quality of the Respondent's delivered goods and/or services; (iii) the ability of Respondent to comply with laws and regulations relating to historically

underutilized businesses, the employment of women or minorities, or the use of small or disadvantaged businesses; (iv) the Respondent's safety record; and (v) the identity, number, type, job description, professional practice or work history, and location of proposed Respondent personnel who shall work on the Project, and including all engineers who are or shall be employed or engaged as a consultant by Respondent to provide professional engineering services for the Project.

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**100 Total Points**

By submitting a Response, a Respondent acknowledges and accepts the evaluation process herein described and acknowledges that the determination of the most qualified Architect will require the exercise of subjective judgment by the Commissioners Court.

**13. Architect Contract for Project.**

A Respondent shall be selected by the Commissioners Court, and the Architect Contract awarded by the County for the Project, on the basis of demonstrated competence and qualifications to perform the requested services for a fair and reasonable price as herein described. After the Architect is selected by the County, the Parties will endeavor to enter into a contract for the Project in the manner provided by law.

The Architect Contract awarded by the County for the Project shall: (a) define and describe the scope of services, the agreed-upon and reasonable fees for such services, and any reimbursable expenses, prior to any services being performed under the contract; (b) be drafted using the **AIA Document B101-2017** (a standard form agreement between owner and Architect, a copy of which is attached as **Exhibit A**) as a guide -- but said form may be completed through revisions, if necessary, resulting in a form and scope acceptable to the contract parties for approval and execution; and (c) recite a fair and reasonable price for the services to be provided for the Project, however, the professional fees under the contract may not exceed any maximum provided by law.

**14. General Requirements.**

A Response shall contain all information required by this RFQ and shall be submitted to the County in a timely manner and correct form as herein described. The County may require additional information from one or more Respondents in order to complete the Architect selection process. If the County notifies a Respondent that it has been selected to provide additional information or participate in an interview, the County may provide Respondent with additional instructions. If requested, a Respondent promptly must provide the County with any additional information reasonably required to assist in the County in the review of the Respondent's qualifications.

**15. Statements of Interest, Availability, and Commitment.**

The Response must contain statements of the Respondent's: (a) interest regarding this RFQ, including a narrative describing its unique qualifications, if any, pertaining to the scope of services

described for the Project; and (b) availability and commitment of the Respondent, including its principals, and assigned professionals and staff, to undertake Project services.

**16. Description of Work Experience.**

The Response must contain a description of the work experience and professional licensure and registration information for professional team members to be assigned for work on the Project.

**17. Recent Project Descriptions.**

The Response must contain a description of the: (a) experience of the Respondent on at least three (3) projects within the last five (5) years where one or more of the services performed were within the scope of services described for this Project, and that are responsive to the selection criteria described for the Project; and (b) type of services provided on each stated project (e.g., preliminary feasibility study or survey, design, new construction, remodeling, repair, or project management), and a detailed description of the type of project involved.

**18. Financial Information; Certificate of Insurance**

The Response must contain: (a) copies of Respondent's financial statements for the preceding three (3) years; (b) if available, copies of Respondent's financial rating and any supporting rating documentation; or (c) any other information sufficient to demonstrate Respondent's financial ability and stability to provide the scope of services herein described for the Project. The Response also must contain a specimen Certificate of Insurance showing the amount and types of insurance coverage currently maintained by Respondent for the project type described in this RFQ.

**19. Litigation/Investigation Inquiry.**

The Response must include an answer to the following question: Has Respondent, any principal or professional thereof, or any other person associated with Respondent for the purpose of providing professional services, been involved in a dispute involving (a) mediation, arbitration, or litigation, or (b) an investigation by a professional board, or state or federal agency, relating to a professional services contract or professional services performed? If the answer to all or part of the above question is "Yes," Respondent shall provide a detailed explanation of those matters.

**20. Service Provider List.**

The Response must contain a list of Respondent's employees, staff, and consultants who perform services in connection with professional service projects, including, but not limited to architects, engineers, technical personnel, and compliance personnel.

**21. Conflict Disclosure.**

A Response shall contain statements and documents sufficient to show that Respondent timely complied with all applicable conflict disclosure statements, certificates of interested parties, or other documents or certifications required by: (a) Chapter 176 of the Texas Local Government

Code; (b) Chapter 2271 of the Texas Government Code (prohibiting conduct which boycotts Israel); and (c) section 2252.908 of the Texas Government Code and related authority regarding Form 1295/Texas Ethics Commission/Certificate of Interested Parties disclosure.

**[END OF RFQ]**

**EXHIBIT A:**  
**(AIA Document B101-2017)**



 **AIA**<sup>®</sup> Document B101<sup>™</sup> – 2017  
**Standard Form of Agreement Between Owner and Architect**

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
*(In words, indicate day, month and year.)*

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

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

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

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

The Owner and Architect agree as follows.

Init.

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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.)*

§ 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.)*

§ 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.)*

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

- .1 Design phase milestone dates, if any:

- .2 Construction commencement date:
  
- .3 Substantial Completion date or dates:
  
- .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.)*

§ 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.)*

§ 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.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
*(List name, address, and other contact information.)*

§ 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.)*

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

- .1 Geotechnical Engineer:



.2 Civil Engineer:

.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.)

§ 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:

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.11.2 Consultants retained under Supplemental Services:

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

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§ 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.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall 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 (\$ ) for each occurrence and (\$ ) 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 (\$ ) 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 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 (\$ ) each accident, (\$ ) each employee, and (\$ ) 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 (\$ ) per claim and (\$ ) in the aggregate.

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**§ 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.

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

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

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

§ 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.

### § 3.5 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.

#### § 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 Construction Phase Services

#### § 3.6.1 General

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

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

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

**§ 3.6.2 Evaluations of the Work**

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

§ 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 A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**§ 3.6.3 Certificates for Payment to Contractor**

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

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

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



### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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

§ 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<br><i>(Architect, Owner, or not provided)</i> |
|--|--|
| § 4.1.1.1 Programming  |  |
| § 4.1.1.2 Multiple preliminary designs   |  |
| § 4.1.1.3 Measured drawings  |  |
| § 4.1.1.4 Existing facilities surveys  |  |
| § 4.1.1.5 Site evaluation and planning   |  |
| § 4.1.1.6 Building Information Model management responsibilities               |  |
| § 4.1.1.7 Development of Building Information Models for post construction use |  |
| § 4.1.1.8 Civil engineering  |  |
| § 4.1.1.9 Landscape design   |  |
| § 4.1.1.10 Architectural interior design                                       |  |
| § 4.1.1.11 Value analysis  |  |
| § 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3        |  |
| § 4.1.1.13 On-site project representation                                      |  |
| § 4.1.1.14 Conformed documents for construction                                |  |
| § 4.1.1.15 As-designed record drawings   |  |
| § 4.1.1.16 As-constructed record drawings                                      |  |
| § 4.1.1.17 Post-occupancy evaluation   |  |
| § 4.1.1.18 Facility support services   |  |
| § 4.1.1.19 Tenant-related services   |  |
| § 4.1.1.20 Architect's coordination of the Owner's consultants                 |  |
| § 4.1.1.21 Telecommunications/data design                                      |  |

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| Supplemental Services   | Responsibility<br>(Architect, Owner, or not provided) |
|---|---|
| § 4.1.1.22 Security evaluation and planning                       |   |
| § 4.1.1.23 Commissioning  |   |
| § 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3 |   |
| § 4.1.1.25 Fast-track design services                             |   |
| § 4.1.1.26 Multiple bid packages                                  |   |
| § 4.1.1.27 Historic preservation                                  |   |
| § 4.1.1.28 Furniture, furnishings, and equipment design           |   |
| § 4.1.1.29 Other services provided by specialty Consultants       |   |
| § 4.1.1.30 Other Supplemental Services                            |   |
|   |   |

#### § 4.1.2 Description of Supplemental Services

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

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

§ 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.)*

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

#### § 4.2 Architect's Additional Services

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

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- .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.

**§ 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 ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ( ) visits to the site by the Architect during construction
- .3 ( ) 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 ( ) 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 ( ) 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 require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

**§ 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.

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## 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

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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 A201-2017, 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** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be 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 the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the

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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 Arbitration**

**§ 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**

**§ 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.

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

§ 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.

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#### 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. 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, General Conditions of the Contract for Construction.

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

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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

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

§ 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 Stipulated Sum  
*(Insert amount)*
  
- .2 Percentage Basis  
*(Insert percentage value)*  
  
( ) % 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)*

§ 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.)*

§ 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.)*

§ 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 percent ( %), 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       | percent (             | )      |
| Design Development Phase     | percent (             | )      |
| Construction Documents Phase | percent (             | )      |
| Procurement Phase            | percent (             | )      |
| Construction Phase           | percent (             | )      |
| <hr/>                        |                       |        |
| 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.)

| Employee or Category | Rate (\$0.00) |
|----------------------|---------------|
|----------------------|---------------|

### § 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and 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 \_\_\_\_\_ percent ( \_\_\_\_\_ %) 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.)

### § 11.10 Payments to the Architect

#### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of (\$ \_\_\_\_\_) 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 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 ( ) 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.)*

%

**§ 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.)*

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this agreement.)*

- .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 Other documents:

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



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)*

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