

 **AIA** 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** Nexus' client identified as the Owner:  
(Name, legal status, address and other information)

Centennial School District  
4707 North Road  
Circle Pines, Minnesota 55014

and Nexus:  
(Name, legal status, address and other information)

Nexus Solutions, LLC  
6885 Sycamore Lane N., Suite 200  
Maple Grove, Minnesota 55369

for the following Project:

November 3<sup>rd</sup>, 2026, Referendum: \$108,889,000.00

**WHEREAS**, the Owner has decided to hire Nexus for Program Management services including, architectural, engineering, Construction Management, and commissioning for the Project; and

**WHEREAS**, Nexus shall be entitled to use subconsultant architects, engineers and other design professionals to perform or assist in performing any of Nexus services under this Agreement ("Nexus' Subconsultants"). The Parties intend to use AIA documents as the basis for the Contract Documents, including Nexus' contracts with Nexus' Subconsultants. The Parties expressly recognize that the architect or engineers of record on the Project may be either employees of or subconsultants to Nexus and Nexus in no manner represents or implies that Nexus itself intends to perform architectural or engineering services for which it is not appropriately licensed; and

**WHEREAS**, nothing contained in the Agreement shall create a contractual relationship

**ADDITIONS AND DELETIONS:**  
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

with or a cause of action in favor of a third party against either the Owner or Nexus; and

**WHEREAS**, the parties understand and agree that a significant number of improvements and additions have been made at the Site over time, the parties understand and agree that Nexus does not represent or warrant the quality or acceptability of the previous work and Nexus shall be entitled to negotiate additional compensation arising from unforeseen and/or concealed conditions arising from the previous work; and

**WHEREAS**, the parties understand and agree Nexus and Nexus' Subconsultants will provide design, engineering, construction management, and commissioning services for the following improvements.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows



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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.)*

The Parties agree that Owner intends to hold a bond referendum in November 2026. If the referendum fails, this Agreement is void.

See Exhibit A

§ 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.)*

N/A

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1, plus all other hard and soft costs for the Project:

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

See Exhibit A,

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

- .1 Design phase milestone dates, if any:

See Exhibit B: Preliminary Project Schedule

**.2 Construction commencement date:**

See Exhibit B: Preliminary Project Schedule

**.3 Substantial Completion date or dates:**

See Exhibit B: Preliminary Project Schedule

**.4 Other milestone dates:**

See Exhibit B: Preliminary Project Schedule

**§ 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.)*

Construction Manager as Advisor with the Architect acting as the Construction Manager

**§ 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.)*

N/A

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

Patrick Chaffey  
Executive Director of Business Services  
763-792-6001  
District Office  
4707 North Road  
Circle Pines, Minnesota 55014

The above is subject to School Board approval to the extent required by law.

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

N/A

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

**.1 Geotechnical Engineer:**

TBD

**.2 Civil Engineer:**

None

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

Asbestos Consultant

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

Michael J. David  
President  
(612) 747-1003  
6885 Sycamore Lane N., Suite 200  
Maple Grove, Minnesota 55369

§ 1.1.11 Nexus 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 Architect:  
Name  
Street  
City, State Zip

.2 Civil Engineer:  
Name  
Street  
City, State Zip

.3 Electrical Engineer:  
Name  
Street  
City, State Zip

.4 Technology Consultant:  
Name  
Street  
City, State Zip

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

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

N/A

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

**ARTICLE 2 NEXUS' RESPONSIBILITIES**

§ 2.1 Nexus shall provide professional services as set forth in this Agreement. Nexus 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 Nexus 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. Nexus shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

§ 2.5 Nexus shall maintain the following insurance until termination of this Agreement.

| COVERAGES   | LIMITS OF LIABILITY                            |
|---|--|
| Workmen's Compensation, including Employer's Liability Insurance              | Statutory                                      |
| Commercial General Bodily Injury Liability Insurance, including Contractual   | \$1,000,000                                    |
| Commercial General Property Damage Liability Insurance, including Contractual | \$1,000,000 Per Claim<br>\$2,000,000 Aggregate |
| Commercial Automobile Injury Liability Insurance                              | \$500,000 Aggregate                            |
| Commercial Automobile Property Damage Liability Insurance                     | \$500,000                                      |
| Professional Liability Insurance  | \$1,000,000 Per Claim<br>\$3,000,000 Aggregate |

**§ 2.5.1-2.5.6 Intentionally Omitted.**

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, Nexus 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 Nexus' 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 Nexus shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.5.9 Owner shall maintain Property Insurance (builder's risk completed value) in sufficient amount for the entire period of the Agreement on a replacement cost basis. Such insurance shall be on an all risk basis including theft and shall protect the interest of the Owner, the Contractor and Subcontractors and shall name Nexus as an

additional insured

### **ARTICLE 3 SCOPE OF NEXUS' BASIC SERVICES**

§ 3.1 Nexus' Basic Services consist of those described in this Article 3 and services reasonably incidental thereto 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 Nexus shall manage Nexus' services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 Nexus shall coordinate its services with those services provided by the Owner and the Owner's consultants. Nexus shall be entitled to reasonably 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. Nexus shall provide prompt written notice to the Owner if Nexus 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, Nexus shall submit for the Owner's approval a schedule for the performance of Nexus' 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 Nexus or Owner. With the Owner's approval, Nexus shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 Nexus 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 Nexus' written approval.

§ 3.1.5 Nexus shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. Nexus shall assure that applicable design requirements imposed by such governmental authorities and entities are addressed in the Contract Documents

§ 3.1.6 Nexus 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 Nexus shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to Nexus' services.

§ 3.2.2 Nexus 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. Nexus 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 Nexus shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. Nexus 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, Nexus and its consultants shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Nexus 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 Nexus shall consider, if requested by the Owner, 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 Nexus 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 Nexus shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3. As the design process progresses through the end of the preparation of the Construction Documents, Nexus shall update and refine the preliminary estimate of the Cost of Work.

§ 3.2.7 Nexus 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, Nexus and its consultants 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 Nexus shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 Nexus 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, Nexus 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 Nexus 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 Nexus shall review in accordance with Section 3.6.4.

§ 3.4.2 Nexus 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, Nexus and its consultants 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). Nexus 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 Nexus shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 Nexus 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**

Nexus shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, Nexus 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** Nexus shall assist the Owner in bidding the Project pursuant to Minnesota Statutes Sections 123B.52 and 471.345 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, Nexus 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** Nexus shall assist the Owner in obtaining proposals where permitted by Minnesota Statutes Section 123B.52 and 471.345 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, Nexus shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

**§3.5.3.4** In the event the lowest bid (or bids) exceeds the budget for the Project, Nexus, in consultation with and at the direction of the Owner, shall provide such modifications in the Contract Documents as necessary to bring the cost of the Project within the budget unless the Owner directs Nexus to bid a project estimated over budget.

## **§ 3.6 Construction Phase Services**

### **§ 3.6.1 General**

**§ 3.6.1.1** Nexus shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction.

**§ 3.6.1.2** Nexus shall advise and consult with the Owner during the Construction Phase Services. Nexus shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. Nexus 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 Nexus be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Nexus shall be responsible for Nexus' negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, Nexus' responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates at the end of the one-year contractor's construction warranty period..

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 Nexus 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. As a part of its construction management services, Nexus will have a full time superintendent on site. However, Nexus 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, Nexus 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 Nexus shall reject Work that does not conform to the Contract Documents. Whenever Nexus considers it necessary or advisable, Nexus 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 Nexus 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 Nexus to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 Nexus shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Nexus' 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 Nexus 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, Nexus 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. Nexus' 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 A232-2019, Nexus 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 Nexus shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. Nexus' certification for payment shall constitute a representation to the Owner, based on Nexus' 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 Nexus' 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 Nexus.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that Nexus 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 Nexus shall maintain a record of the Applications and Certificates for Payment.

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** Nexus shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. Nexus' 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 Nexus' professional judgment, to permit adequate review.

**§ 3.6.4.2** Nexus 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. Nexus' review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. Nexus' 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, Nexus shall specify the appropriate performance and design criteria that such services must satisfy. Nexus 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 Nexus. Nexus' review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Nexus 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, Nexus shall review and respond to requests for information about the Contract Documents. Nexus 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. Nexus' response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, Nexus shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** Nexus 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** Nexus 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, Nexus 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** Nexus shall maintain records relative to changes in the Work.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** Nexus 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 Nexus' knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** Nexus' 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, Nexus 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 Nexus 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, Nexus shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**§ 3.6.7 COMMISSIONING SERVICES**

§ 3.6.7.1 Nexus, with the Owner’s assistance, shall oversee the close-out of the Project, as well as the commencement and final reporting and response action determined by the commissioning services for each Project where commissioning is required pursuant to applicable law.

§ 3.6.7.2 Nexus shall coordinate and complete all testing and reporting required by applicable law. Nexus shall consult with Owner on post-construction issues until the Project is turned over to Owner.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

§ 4.1.1 Except as provided for in the table below, the services listed below are not included in Basic Services but may be required for the Project. Nexus shall provide the items listed in the table below as “Nexus Included in Basic Services” as part of its Basic Services in Article 3, and the Owner shall compensate Nexus as provided in Section 11.1. Nexus shall provide the listed Supplemental Services only if specifically designated in the table below as Nexus’ responsibility, and the Owner shall compensate Nexus as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor Nexus is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate Nexus’ Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether Nexus 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.)*

| <b>Supplemental Services</b>   | <b>Responsibility</b><br><i>(Nexus, Owner, or not provided)</i> |
|--|---|
| § 4.1.1.1 Measured drawings  | Not Provided  |
| § 4.1.1.2 Existing facilities surveys  | Owner   |
| § 4.1.1.3 Site evaluation and planning   | Not Provided  |
| § 4.1.1.4 Building Information Model management responsibilities               | Not Provided  |
| § 4.1.1.5 Development of Building Information Models for post construction use | Nexus as a Supplemental service                                 |
| § 4.1.1.6 Civil engineering  | Nexus Included in Basic Services                                |
| § 4.1.1.7 Landscape design   | Nexus Included in Basic Services                                |
| § 4.1.1.8 Architectural interior design  | Nexus included in Basic Services                                |
| § 4.1.1.9 On-site project representation                                       | Nexus per Construction Management Agreement                     |
| § 4.1.1.10 As-designed record drawings   | Nexus as a Supplemental Service                                 |
| § 4.1.1.11 As-constructed record drawings                                      | Nexus as a Supplemental Service                                 |
| § 4.1.1.12 Telecommunications/data design                                      | Nexus as a Supplemental Services                                |
| § 4.1.1.13 Security evaluation and planning                                    | Owner   |
| § 4.1.1.14 Commissioning   | Nexus included in Basic Services                                |
| § 4.1.1.15 Furniture, furnishings, and equipment design                        | Nexus as a Supplemental Service                                 |
| § 4.1.1.16 Project Development   | Nexus included in Basic Services                                |

|            |                    |                                  |
|------------|--------------------|----------------------------------|
| § 4.1.1.17 | Design Services    | Nexus Included in Basic Services |
| § 4.1.1.18 | Commissioning Fees | Nexus Included in Basic 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 Nexus' responsibility is provided below.

*(Describe in detail Nexus' 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 Nexus' Services documents that can be included as an exhibit to describe Nexus' Supplemental Services.)*

N/A

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

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

N/A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, Nexus shall provide, as a Supplemental Service, the Sustainability Services agreed upon in writing between the Owner and Architect. The Owner shall compensate Nexus as provided in Section 11.2.

**§ 4.2 Nexus' Additional Services**

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

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, Nexus shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. Nexus shall not proceed to provide the following Additional Services until Nexus receives the Owner's written authorization and shall not be entitled to payment for said Additional Services if prior written authorization is not given by the Owner:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 [intentionally omitted]
- .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 If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or Record Drawings provided by the Owner or (2) unknown physical conditions of an unusual nature, which

differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents;

- .12 If additional planning services are required;
- .13 Providing services to verify the accuracy of drawings or other information furnished by the Owner; or
- .14 Providing services of necessary consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of this Agreement.

§ 4.2.2 To avoid delay in the Construction Phase, Nexus shall provide the following Additional Services, notify the Owner in writing as soon as possible, but in any event within five days, and explain the facts and circumstances giving rise to the need. If written notice is not provided in accordance with this Section 4.2.2, Nexus shall not be entitled to compensation for said service. If, upon receipt of Nexus' notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to Nexus of the Owner's determination. The Owner shall compensate Nexus for the services provided prior to Nexus' receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by Nexus;
- .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 Nexus shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, Nexus shall notify the Owner:

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Three (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
- .3 Three (3) inspections for any portion of the Work to determine final completion.

§ 4.2.4 If the services covered by this Agreement have not been completed December 31, 2030, through no fault of Nexus, extension of Nexus'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. The Owner shall not significantly increase or decrease the Owner's budget for the Cost of the Work without the agreement of Nexus to a corresponding change in the Project 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 Nexus' submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Nexus' services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to

existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

§ 5.7 The Owner shall provide Nexus all Record Drawings, as-built drawings, or construction drawings of the existing facility within the Owner's possession custody and control.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by Nexus. Upon Nexus' 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 Nexus in this Agreement, or authorize Nexus to furnish them as an Additional Service, when Nexus 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. However, nothing in this Section requires the owner to provide legal services to Nexus in conjunction with Nexus's wrongful or negligent acts.

§ 5.11 The Owner shall provide prompt written notice to Nexus if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in Nexus' Instruments of Service. However, the Owner's failure to provide written notice does not relieve Nexus from its obligations under this Agreement.

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

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate Nexus' duties and responsibilities set forth in the Contract for Construction with Nexus' services set forth in this Agreement. The Owner shall provide Nexus a copies of the executed agreement between the Owner and the Prime Contractors.

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

§ 5.15 The Owner shall provide Nexus all Record Drawings, as-built drawings, or construction drawings of the existing facilities within the Owner's possession, custody or control. Nexus shall be entitled to rely on the accuracy of all such information. In the event Nexus encounters any differing or changed field conditions or any concealed Site conditions that are different than reasonably anticipated or different than depicted in information provided by the Owner ("Changed Condition"), Nexus shall be compensated for additional services as a result of such Changed Condition.

## ARTICLE 6 COST OF THE WORK

§ 6.1 Notwithstanding any other agreement between Nexus and the Owner, for purposes of this Agreement, the Cost of the Work shall be the total estimated cost to the Owner to construct all elements of the Project designed or specified by Nexus 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. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work. If there is a construction manager, the Cost of Work shall also include the costs of management or supervision of construction or installation provided by the construction manager.

The Cost of Work does not include the compensation of Nexus under this Agreement, but does include Nexus' compensation under the Construction Management Agreement. The Cost of the Work also does not include the costs of the land, rights-of-way or financing.

For the purpose of calculating Program Management fees, the Cost of Work shall include the entire project budget, which includes but is not limited to, the Cost of Work as described above, plus compensation for architectural, engineering, commissioning, and construction management services, plus 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 Nexus, represent Nexus' judgment as a design professional. It is recognized, however, that neither Nexus 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, Nexus 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 Nexus.

**§ 6.3** In preparing estimates of the Cost of Work, Nexus 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. Nexus' 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, Nexus shall provide such an estimate, if identified as Nexus' responsibility in Section 4.1.1, as a Supplemental Service.

**§ 6.4** If, through no fault of Nexus, the Procurement Phase has not commenced within 90 days after Nexus 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 Nexus' estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, Nexus 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 Nexus 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 Nexus, 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, Nexus 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 Nexus 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 Nexus could not reasonably anticipate, the Owner shall compensate Nexus for the modifications as an Additional Service pursuant to Section 11.3; otherwise Nexus' services for modifying the Construction Documents shall be without additional compensation. In any event, Nexus' modification of the Construction Documents shall be the limit of Nexus' responsibility under this Article 6.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

§ 7.1 Nexus 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. If the Owner and Nexus intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

§ 7.3 Nexus grants to the Owner a nonexclusive license to use Nexus' 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. Nexus shall obtain similar nonexclusive licenses from Nexus' 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 Nexus 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 Nexus and Nexus' 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 Nexus 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, except to the extent the claim or cause of action relates to Nexus's alleged negligent or wrongful acts. 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 Nexus. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to Nexus and Nexus' 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 Nexus 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 the applicable law.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Nexus 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 A232-2019, General Conditions of the Contract for Construction. The Owner or Nexus, 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 Nexus and Owner shall not waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement.

**§ 8.1.4** To the extent permitted by law, Nexus and the Owner each agree to indemnify the other party and its respective officers, agents, directors and employees from third party claims, demands, actions, liabilities, expenses or suits for bodily injury, including death or tangible property damage to the extent resulting from the intentional misconduct or any negligent act by its employees or agents. Owner expressly agrees Nexus shall be responsible only for such injury or damage to the extent it is caused by the intentional misconduct or negligent act or omission of Nexus' employees or agents and Nexus shall not be responsible for any injury or damage to the extent caused, or contributed to, in any manner by Owner or any third party.

#### **§8.1.4 HAZARDOUS MATERIALS**

**§8.1.4.1 Asbestos Containing Materials** – Neither Party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials (“ACM”). Consistent with applicable laws, Owner shall supply Nexus with any information in its possession relating to the presence of ACM in areas where Nexus undertakes any work that may result in the disturbance of ACM. It is Nexus' policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and Owner shall provide such certification for buildings it owns, or aid Nexus in receiving such certification from facility owners in the case of buildings that it does not own, if Nexus will undertake any work in the facility that would disturb ACM. If either Owner or Nexus becomes aware of or suspects the presence of ACM that may be disturbed by Nexus' work, it shall immediately stop the work in the affected area and notify the other contacts. If ACM is identified in the information provided by the Owner to Nexus, and the Program work will disturb or require abatement of any ACM, the Owner shall be responsible at its sole expense for addressing abatement of such ACM. Except where Nexus provides environmental services pursuant to this Agreement, Nexus shall have no obligation to monitor, verify or otherwise warrant that such abatement work has been completed.

**§8.1.4.2 Other Hazardous Materials** – Notwithstanding any other agreement between the parties, Nexus shall have no obligations relating to the identification, abatement, cleanup, control, removal or disposal of mold, except to the extent the mold is caused, created, or expanded by Nexus. Nexus shall be solely responsible for the costs of cleanup, removal, and remediation of any areas affected by mold caused, created, or negligently expanded by Nexus or Nexus's Sub-contractors and Nexus shall be responsible for removing or disposing of any Hazardous Materials that it uses in providing any work (“Nexus Hazardous Material”) and for the remediation of any areas impacted by the release of Nexus Hazardous Materials. For other Hazardous Materials that may be otherwise present at its facilities (“Non-Nexus Hazardous Materials”), Owner shall supply Nexus with any information in its possession relating to the presence of such materials if their presence may affect Nexus' performance of any work. If either Owner or Nexus becomes aware of or suspects the presence of Non-Nexus Hazardous Materials that may interfere with Nexus' work, it shall immediately stop the work in the affected area and notify the other's contacts. As between Owner and Nexus, Owner shall be responsible for removing and disposing of mold and Non-Nexus Hazardous Materials from its facilities and the remediation of any areas impacted by mold or the release of the Non-Nexus Hazardous Materials.

**§8.1.4.3 Environmental Indemnity** – To the fullest extent permitted by Law, Owner shall indemnify and hold harmless Nexus and Nexus' subcontractors, and their respective directors, officers, employees, agents, representatives, shareholders, affiliates, and assigns and successors, from and against any and all losses, costs, damages, expenses (including reasonable legal fees and defense costs), claims, causes of action or liability, directly or indirectly, relating to or arising from the Owner's use, or the storage, release, discharge, handling or preexisting presence of ACM, mold (actual or alleged and regardless of the cause of such condition) or Non-Nexus Hazardous Materials on, under or about the facilities, or Owner's failure to comply with this Section 10.

**§8.1.5 FORCE MAJEURE** – Neither party shall be responsible to the other for damages, loss, injury or delay caused by conditions beyond its reasonable control, and without the intentional misconduct or negligence of that Party (“Uncontrollable Events”). Uncontrollable Events include, but are not limited to: (a) acts of God; (b) acts of Government agencies; (c) strikes and/or labor disputes; (d) fire; (e) explosions or other casualties; (f) thefts; (g) vandalism; (h) terrorism, riots or war; (i) unavailability of parts, materials or supplies; (j) change in law, including the promulgation, modification or repeal of any law or the imposition of any material condition on the issuance or renewal of any permit which (A) occurs after the Effective Date (B) establishes new laws or requires any new or existing permits, or modifies any law or permit requirement for the Program existing as of the Effective Date, or (C) materially and adversely affects the cost or expense of the Work to Nexus; or (k) lawsuits from parties seeking to enjoin the Owner, Nexus or both from performing in accordance with the Agreement.

**§8.1.6 DELAYS** – If either party is delayed in the commencement or completion of these services by causes beyond its control and without its fault or negligence, including but not limited to Uncontrollable Events, or by failure of the other Party to perform its obligations under this Agreement and Schedules or failure by the other Party to cooperate in the timely completion of the services, then the delayed Party shall provide written notice to the other Party of the existence, extent of, and reason for such delays. An equitable adjustment in completion dates shall be made as a result.

## **§ 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 Nexus' services, Nexus 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 Nexus 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 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 Nexus 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** 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 Nexus in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Nexus' option, cause for suspension of performance of services under this Agreement. If Nexus elects to suspend services, Nexus shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, Nexus 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 Nexus all sums due prior to suspension and any expenses incurred in the interruption and resumption of Nexus' services. Nexus' fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project after approval of the referendum by voters, Nexus shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Nexus shall be compensated for expenses incurred in the interruption and resumption of Nexus' services. Nexus' 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 Nexus, Nexus 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 - § 9.6 Intentionally Omitted

§ 9.7 If Nexus terminates this Agreement pursuant to Section 9.3, the Owner shall pay to Nexus 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:

All costs incurred by Nexus prior to the date of termination.

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

15% of Remaining fees owed to Nexus on the Project

§ 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 Nexus' Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of State of Minnesota, excluding that jurisdiction's choice of law rules

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2019, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Nexus, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor Nexus 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 Nexus by the Owner prior to the assignment.

§ 10.4 If the Owner requests Nexus to execute certificates, the proposed language of such certificates shall be submitted to Nexus for review at least 14 days prior to the requested dates of execution. If the Owner requests Nexus to execute consents reasonably required to facilitate assignment to a lender, Nexus shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to Nexus for review at least 14 days prior to execution. Nexus 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 Nexus.

§ 10.6 Unless otherwise required in this Agreement, Nexus 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 Nexus shall have the right to include photographic or artistic representations of the design of the Project among Nexus' promotional and professional materials. Nexus shall be given reasonable access to the completed

Project to make such representations. However, Nexus' materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised Nexus in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for Nexus 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 Nexus 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.

**§ 10.10** The Owner and Nexus recognize that the designer under this project may be eligible for a tax deduction for energy efficient commercial buildings under §179D of the Internal Revenue Code. The Owner and Nexus agree and recognize that Nexus will be the designer of this project for the purposes of the §179D deduction. The Owner will cooperate with Nexus in obtaining the paperwork and certification necessary from the Owner to allow Nexus to claim any §179D or any other energy efficient commercial buildings deduction

**§ 10.11** Pursuant to Minnesota Statutes Section 13.05, subdivision 11, Nexus may be performing a government function of the Owner by contracting to perform professional services, including program management, architecture, engineering, construction management, commissioning services pursuant to this Agreement and given its performance of a government function, all data created, collected, received, stored, used, maintained, or disseminated by Nexus shall be subject to the requirements of Minnesota Statutes Chapter 13. Nexus shall include this provision in all of its contracts with contractors, subcontractors, agents, and other entities performing work for Nexus or the Owner pursuant to this Agreement.

## **ARTICLE 11 COMPENSATION**

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

**.1 Stipulated Sum:**

Upon passage of the referendum, Nexus' compensation shall be computed as follows:

- 1) Compensation for Program Management computed at 2% of the total Project Budget.
- 2) Plus, compensation for Architectural Services computed at 6.95% of the related Architectural Cost of the Work, and not the total Cost of the Work.
- 3) Plus, compensation for Engineering Services computed at 8.95% of the related Engineering Cost of the Work, and not the total Cost of the Work.
- 4) Plus, compensation for Commissioning Services computed at 2.50% of the related Commissioning Cost of the Work, and not the total Cost of the Work.
- 5) Plus, compensation for Construction Management fee computed at 2.50% of the Cost of the Work.
- 6) All Costs references in 1-5 above shall be budgeted cost. Fee percentages as described above shall be used to calculate compensation as a stipulated sum based off budgeted cost.
- 7) If professional services are required that have not been defined above, or which differ from those defined above, the Parties agree to negotiate reasonable fees based on typical industry rates.

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

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

compensation apply.)

As agreed to in good faith by the parties or on a time and expense basis as applicable.

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate Nexus as follows:  
(Insert amount of, or basis for, compensation.)

As agreed to in good faith by the Parties or on a time and expense basis as applicable.

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

**§ 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       | Fifteen percent (15%)           |
| Design Development Phase     | Twenty-Five percent (25%)       |
| Construction Documents Phase | Forty percent (40%)             |
| Procurement Phase            | Five percent (5%)               |
| Construction Phase           | Fifteen percent (15%)           |
| <hr/>                        |                                 |
| Total Basic Compensation     | one hundred percent ( 100.00 %) |

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

See Exhibit C

**§ 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 Nexus and Nexus' 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 Cost allocation of design and project management software used on this project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Fees paid for securing approval of Authorities having jurisdiction over the Project;
- .7 Bid-Set printing
- .8 Expense of overtime work requiring higher than regular rates, only if authorized in advance by the Owner and not caused by Nexus' delay or scheduling decisions;
- .9 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .10 Expenses related to LEED, Energy Star, or other sustainability-related documentation, including processing of utility rebates;

- .11 Community meetings beyond the number specified herein, unless compensated as a change order to the Agreement;
- .12
- .13 All taxes levied on professional services and on reimbursable expenses;
- .14 Marketing and communications materials, consulting, and research as requested by the Owner;
- .15 Site office expenses; and
- .16 Other similar Project-related expenditures approved by the Owner in writing in advance.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by Nexus and Nexus's consultants plus «ten» percent («10» %) of the expenses incurred.

**§ 11.9 Payments to Nexus**

**§ 11.9.1 Initial Payments**

§ 11.9.1.1 An initial payment of «ten percent» («10%») shall be made upon passage of the referendum and funding of the Project and is the minimum payment under this Agreement if the referendum passes. It shall be credited to the Owner's account in the final invoice.

**§ 11.9.2 Progress Payments**

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

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

At the rate specified in Minnesota Statutes Section 549.09

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

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

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

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

None

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and Nexus 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 Nexus.

§ 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 B144/ARCH-CM—1993 Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides Construction Management Services as an Advisor to the Owner
- .3 Exhibit A: Project Scope of Work
- .4 Exhibit B: Preliminary Schedule
- .5 Exhibit C: Hourly Rates

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

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OWNER *(Signature)*

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BY: Tom Knisely, Board Chairperson

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*(Printed name and title)*

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*(Signature)*

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BY: Michael J. David, President

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

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OWNER *(Signature)*

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BY: Sue Linser, Board Clerk

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*(Printed name and title)*