

# Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the 1st day of July in the year 2025 (In words, indicate day, month and year.)

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

Clackamas Community College an Oregon municipal corporation 19600 Molalla Ave. Oregon City, OR 97045

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

Opsis Architecture LLC 975 SE Main Street Portland, OR 97214

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

Natural Resource Center of Excellence 19600 Molalla Ave. Oregon City, OR 97045

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

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### ARTICLE 1 INITIAL INFORMATION

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

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

### § 1.1.1 The Owner's program for the Project:

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

Develop a center of excellence for horticulture, farming, arboriculture, welding and wildlife fire departments along with a placement of the Oregon State University's Clackamas County Extension Service.

# § 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.)

The building will be sited on the east side of the Oregon City CCC campus and is estimated to be 35,000sf to 40,000sf.

§ 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.)

The total projected project budget is \$50,000,000, inclusive of design, construction and non-construction costs.

- § 1.1.4 The Owner's anticipated design and construction milestone dates:
  - .1 Design phase milestone dates, if any:

**User Notes:** 

Start of design: July 2025, Completion of Construction Documents September 2026. Early material orders and sitework packages should be anticipated.

.2 Construction commencement date:

Sitework package July 2026]

Substantial Completion date or dates:

November 2027.

Other milestone dates:

N/A.

§ 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.)

The Owner anticipates that it will utilize the Construction Manager/General Contractor delivery method for this Project.

§ 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.

# § 1.1.6.1 [INTENTIONALLY OMITTED.]

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

Ron Prince, Dean of Campus Services Clackamas Community College 19600 Molalla Avenue Oregon City, OR 97045 (503) 594-6787

§ 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.)

NA

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

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

.1 Survey:

> James B. Brown, President Centerline Concepts Land Surveying, Inc. 19376 Molalla Avenue, Suite 120 Oregon City, OR 97045 503-650-0188

Geotechnical Engineer:

Shawn M. Dimke, PE, GE Columbia West Engineering, Inc. 8880 SW Nimbus Avenue, Suite 1 Beaverton, OR 97008 971-384-1666

.3 Other, if any:

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

Arborist - To be added in subsequent amendment.

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

John Shorb, Principal Opsis Architecture LLC 975 SE Main Street Portland, OR 97214 503-525-9511

§ 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:
  - Structural Engineer:

Catena Consulting Engineers, Inc. 1500 NE Irving Street, Suite 412, Portland, OR 97232 John S. McDonald, T: 503-467-4980; E: john@catenaengineers.com

Valar Consulting Engineering LLC 8759 SE Margie Way, Happy Valley, OR 97086 Bassam Bazz T: 503 250 4581, E: bassam.bazzi@valarengineering.com

Mechanical, Plumbing, Electrical Engineer:

Mazzetti, Inc

220 Montgomery Street, Suite 640 San Francisco, CA 94104

Tuan Tran, E: ttran@mazzetti.com, T: 503-601-5962

§ 1.1.11.2 Consultants retained under Supplemental Services:

(1364150327)

**User Notes:** 

Vega Civil Engineering, LLC, 1300 SE Stark St., #201, Portland, OR 97214 Martha Williamson, 503-349-1381, martha@vegacivil.com

Walker Macy (Landscape Architect) 419 SW 11th Ave # 200, Portland, OR 97205 Michael Zilis, mzilis@walkermacy.com, (503) 228-3122

Winterbrook Planning (Land Use) 610 SW Alder St., Suite 810, Portland, OR, 97205 Ben Schonberger, E: ben@winterbrookplanning.com, T: 503.827.4422 ext. 105

Alderberg Consulting Group (Cost Estimating) Eagle Mountain Construction, Inc, DBA Adlerberg Consulting Group 123 Ross Street, Molalla, OR 97038 Chip Hogle, 971-400-6941, ChipH@adlerberg.com

- § 1.1.12 Other Initial Information on which the Agreement is based:
- § 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, when appropriate, adjust the terms of this Agreement accordingly. The adjustments may address the Architect's services, schedule for the Architect's services, the Architect's compensation, 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 written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

(Paragraph deleted)

§ 1.4 The services covered by this Agreement are subject to an Owner-approved budget. Absent an express provision to the contrary in this Agreement, the Architect shall perform the services in a manner that will result in a Cost of the Work (as defined in Article 6 below) not exceeding the most current Owner-approved budget.

#### 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 "Standard of Care"). 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. The Architect shall secure the Owner's written consent prior to replacing the Architect's representative or another member of the team Architect proposed to work on 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.

- § 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) for each occurrence and Four Million Dollars (\$ 4,000,000 ) in the aggregate for bodily injury, personal injury and property damage. Coverage shall include person injury, bodily injury (including death), and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Architect's services under this Agreement.
- § 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.
- § 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage 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 and in compliance with ORS 656.017, which requires subject employers to provide Oregon worker's compensation coverage for all subject workers.
- § 2.5.5 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000 ) each accident, One Million Dollars (\$1,000,000) each employee, and Two Million Dollars (\$2,000,000) policy limit.
- § 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000) per claim and Five Million Dollars (\$ 5,000,000) in the aggregate.
- § 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner, its elected officials, agents, employees and volunteers 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 acceptable to the Owner that evidence compliance with the requirements in this Section 2.5. There shall be no cancellation, material change, reduction of limits, or intent not to renew any of the required insurance policies without 30-day prior written notice from the Architect or its insurer(s) to Owner. If any of the required liability insurance is arranged on "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a minimum duration of 24 months. Architect will be responsible for furnishing certification of tail coverage as described or continuous claims made liability coverage for 24 months following Agreement expiration. Continuous claims made coverage will be acceptable in lieu of tail coverage, provided its retroactive date is on or before the effective date of this Agreement. Evidence of suitable coverage will be a condition of official acceptance and payment under the Agreement.
- § 2.6 Architect's Identification. Architect shall furnish to Owner Architect's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Architect's Social Security number.
- § 2.7 Project Information. Architect agrees to promptly share all information related to the services with the Owner and to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the services. Architect shall not provide any information, news, or press releases related to the services to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of Owner's Project Manager.
- § 2.8 Duty to Inform. Architect shall give prompt written notice to Owner's Project Manager if, at any time during the performance of this Agreement, Architect becomes aware of actual or potential problems, faults or defects in the services, any nonconformity with the Agreement, or with any federal, state, or local law, rule, regulation, decree, or

other mandate, or if Architect has any objection to any decision or order made by Owner. Any delay or failure on the part of Owner to provide a written response to Architect shall constitute neither agreement with nor acquiescence in Architect's statement or claim and shall not constitute a waiver of any of Owner's rights.

- § 2.9 Independent Contractor. Architect is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. Architect hereby expressly acknowledges and agrees that as an independent contractor, Architect is not entitled to indemnification by the Owner or the provision of a defense by the Owner under the terms of ORS 30.285. This acknowledgment by Architect shall not affect Architect's independent ability (or the ability of Architect's insurer) to assert that the monetary limitations found at ORS 30.272, the immunities listed at ORS 30.265 or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).
- § 2.10 Architect Warranties and Representations. Architect makes the following representations and warranties to the Owner:
- § 2.10.1 Architect has the power, authority, ability, skills, and capacity to enter into and perform this Agreement, and when executed and delivered this Agreement shall be a valid and binding obligation of Architect enforceable in accordance with its terms.
- § 2.10.2 Architect is validly organized and exists in good standing under the laws of the State of Oregon and the Architect is duly qualified, registered or licensed to do business in good standing in the State of Oregon.
- § 2.10.3 The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary actions and do not and will not (a) require any further consent or approval of the board of directors or any shareholders of the Architect or any other person which has not been obtained or (b) result in a breach of default under the certificate of incorporation or by-laws of the Architect or any indenture or loan or credit agreement or other material agreement or instrument to which the Architect is a party or by which the Architect's properties and assets may be bound or affected. All such consents and approvals are in full force and effect.
- § 2.10.4 Architect is engaged as an independent contractor and will be responsible for any federal, state or local taxes applicable to any payments made under this Agreement.
- § 2.10.5 Architect is not eligible for any federal social security, unemployment insurance, pension, PERS or workers' compensation benefits from compensation or payments paid to Architect under this Agreement.
- § 2.10.6 Architect is not an employee of the Owner, any special district, local government, the federal government or the State of Oregon.
- § 2.10.7 Architect has complied and will continue to comply with all Oregon laws applicable to the performance of Architect's obligations under this Agreement.
- § 2.10.8 Architect and Architect's employees and subcontractors, shall be qualified, professionally competent and duly licensed to perform the work and services at all times during the term of this Agreement
- § 2.10.9 Architect has inspected, or will inspect, the Project site and all of the surrounding locations to the extent necessary to perform the services.
- § 2.10.10 Architect has the skill and knowledge possessed by well-informed members of its industry, trade or profession, will apply that skill and knowledge with care and diligence when performing the services under this Agreement, and will do so in a professional manner and in accordance with standards prevalent in Architect's profession under similar conditions and circumstances.
- § 2.10.11 Architect has read, understands and agrees to be bound by each of the terms and conditions of this Agreement.

- § 2.10.12 Architect prepared its proposal for these services independently from all other proposers, and without collusion, fraud or other dishonesty
- § 2.10.13 Any Goods / Items / Equipment / Components / Hardware / Software / Intellectual Property Rights, etc. delivered to or granted to the Owner under this Agreement, and Architect's services rendered in the performance of Architect's obligations under this Agreement, are provided to the Owner free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and are free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.
- § 2.10.14 Upon Owner's request, Architect shall provide Owner with evidence reasonably satisfactory to confirming the foregoing representations and warranties. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and warranties that Architect provides.

### § 2.11 Indemnity.

- § 2.11.1 Unless otherwise limited by ORS 30.140, Architect shall indemnify and hold the Owner, its elected officials, officers, agents, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney's fees (collectively, "Claims"), arising out of, or resulting directly or indirectly from, the professional negligent acts, errors or omissions of Architect or its subcontractors, suppliers, agents or employees in performance of professional services under this Agreement. Where limited by ORS 30.140, Architect's duty to defend the Owner against a claim for professional negligence and relating to the professional services provided by Architect shall not arise until Architect's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and such obligation shall not exceed the proportionate fault of Architect. For the purpose of this agreement, agents are defined as a person or entity authorized by the Owner through employment or contract.
- § 2.11.2 Architect shall indemnify, defend, and hold the Owner, its elected officials, officers, agents, volunteers, and employees harmless from and against any and all Claims to the extent they arise out of, or result directly or indirectly from, all other acts or omissions of the Architect, or any of its subcontractors, suppliers, agents or employees arising in connection with the performance of this Agreement that are not otherwise identified in 2.11.2.
- § 2.11.3 The obligations of the indemnifications extended by the Architect to the Owner shall survive the termination or expiration of this Agreement.
- § 2.11.4 Except to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Architect or Architect's agents, representatives, or subcontractors, the indemnities in 2.11.1 and 2.11.2 do not require Architect or Architect's surety (if any) or insurer to indemnify the Owner, its elected officials, officers, agents, volunteers, or employees for damage arising out of the death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the Owner.
- § 2.12 Errors. Architect shall perform such additional services as may be necessary to correct errors in the services required under this Agreement without undue delays and without additional cost.
- § 2.13 Subcontracting. The Architect is solely and exclusively responsible to the Owner for the performance of the services, notwithstanding any subcontracts that it enters into for the performance of the services. Architect shall provide a list of all subcontractors with which Architect intends to utilize in providing services. This list shall include such information on their relevant qualifications as may be requested by Owner. Owner reserves the right to review and reject the Architect's use of subcontractors where Owner has a reasonable objection. Consultant shall obtain Owner's written consent prior to entering into any subcontracts for any of the Services required by the Agreement.

#### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

- § 3.1 The Architect's Basic Services consist of those described in this Article 3 and Architect's proposal, and include usual and customary professional services for each phase of work. Services not set forth in this Article 3 or Architect's proposal 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 may 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, unless the Architect has actual knowledge of, or through the course of its review identifies, any inaccuracies or incomplete aspects of the Owner-furnished services and information. 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.
- § 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, but such approval shall not be unreasonably denied.
- § 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 and shall prepare designs and documents accordingly.
- § 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.
- § 3.2.4 Based on the Owner's Project requirements, 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, if requested by Owner, 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.
- § 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, such that the Construction Documents comply with applicable laws, ordinance and regulations and are sufficient to secure permits necessary to complete construction.
- § 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,

- 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:
  - 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;
  - 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, in consultation with the Owner's designated representative, shall provide administration of the Contract between the Owner and the Contractor as set forth below and in accordance with General Conditions for the Contract for Construction to the extent that they do not conflict with this Agreement.
- § 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.
- § 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction.

# § 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 shall reject Work that does not conform to the Contract Documents, subject to the Owner's prior written approval, which shall not be unreasonably withheld. 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, subject to the Owner's prior written approval, which shall not be unreasonably withheld. 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. However, nothing in this section, this Agreement, or in the General Conditions makes a decision of the Architect concerning matters of performance under the Contract Documents or their requirements binding on Owner in the absence of Owner's written approval of that decision.
- § 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. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and Owner approved of the decision in writing.
- § 3.6.2.5 The Architect shall not be the Initial Decision Maker, as that term is defined in AIA Document A201-2017, unless the Architect agrees to do so as to a particular Claim. If Architect agrees to render an initial decision on a Claim between the Owner and Contractor, such service shall be an Additional Service.

# § 3.6.3 Certificates for Payment to Contractor

- § 3.6.3.1 The Architect, in consultation with the Owner's representative, 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 and the absence of good cause, no more than fourteen (14) days after the Architect's receipt of the submittal.
- § 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, as necessary to determine their conformance with the requirements for the Work as indicated 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's reliance on such documents shall be subject to the Standard of Care.

- § 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 shall acknowledge the receipt of each request for information within seven (7) days after receiving it. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or, unless good cause exists for otherwise, not later than fourteen (14) days after Architect receives the request. 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 Owner's prior written approval, which shall not be unreasonably withheld. 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
  - .2 coordinate with the Owner to 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,
  - coordinate with the Owner to 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
	(Architect, Owner, or not provided)  Architect
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	To be decided and added via amendment.
§ 4.1.1.7 Development of Building Information Models f post construction use	
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	To be decided and added via amendment.
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	To be decided and added via amendment.
§ 4.1.1.13 On-site project representation	Architect
§ 4.1.1.14 Conformed documents for construction	To be decided and added via amendment.
§ 4.1.1.15 As-designed record drawings	To be decided and added via amendment.
§ 4.1.1.16 As-constructed record drawings	To be decided and added via amendment.
§ 4.1.1.17 Post-occupancy evaluation	To be decided and added via amendment.
§ 4.1.1.18 Facility support services	Owner
§ 4.1.1.19 Tenant-related services	Owner
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	To be decided and added via amendment.
§ 4.1.1.22 Security evaluation and planning	To be decided and added via amendment.
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	n N/A
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	To be decided and added via amendment.
§ 4.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	To be decided and added via amendment.
§ 4.1.1.29 Other services provided by specialty Consultant	To be decided and added via amendment.
§ 4.1.1.30 Other Supplemental Services	To be decided and added via amendment.

Supplemental Services	Responsibility		
	(Architect, Owner, or not provided)		

# § 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.)

For initial agreement, includes Program Level Civil Engineering, Landscape Design, Land Use Application and Cost Estimating.

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

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

Survey, Geotechnical Engineering, Certified Arborist Report

# § 4.1.3 [INTENTIALLY OMITTED.]

### § 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 may be cause for an equitable adjustment in compensation 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:
  - 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;
  - Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
  - 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;
  - Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance wholly on the part of the Owner or the Owner's consultants or contractors;
  - Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients; or

(Paragraphs deleted)

Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.2.2 To avoid delay in the Construction Phase, and if they have not been otherwise agreed to be provided in Architect's proposal, 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. Where the Owner agrees that the services were necessary and impact the compensation to be paid to Architect, 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:
  - To be decided and added via amendment. ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
  - .2 To be decided and added via amendment. ( ) visits to the site by the Architect during construction
  - .3 To be decided and added via amendment. ( ) 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 To be decided and added via amendment. ( ) 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 the initial date of Substantial Completion identified in the agreement between the Owner and Contractor shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. Upon receiving notice that the initial date of Substantial Completion will be extended, Architect shall provide Owner a timely estimate of any additional costs it anticipates that it may incur due to the extended date.

(Paragraph deleted)

#### 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. Owner may change its representative and may modify the scope of the representative's authority upon written notice to Architect.
- § 5.4 Where necessary for the Architect's performance of its services, 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<sup>TM</sup>–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.
- § 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, that are not the responsibility of the Architect, and that were not needed as a result of the Architect's negligence or failure to perform. Such tests, inspection, and reports may include 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, as determined in the Owner's sole discretion.
- § 5.11 The Owner shall provide written notice to the Architect in a reasonable time period after becoming 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 communicate with Architect's subcontractors through the Architect, except as the Architect may otherwise permit.
- § 5.13 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 reasonable access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect reasonable access to the Work wherever it is in preparation or progress.
- § 5.15 Owner will provide Architect with copies of the Contractor's performance and payment bonds, upon request.

### 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.
- § 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
  - 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 All work produced by Architect under this Agreement is the exclusive property of the Owner. "Work Product" includes but is not limited to, technical drawings, prints, blueprints, schematics, research, reports, computer programs, manuals, drawings, plans, recordings, photographs, artwork and any data or information in any form. Architect and the Owner intend that such Work Product shall be deemed "work made for hire" of which the Owner shall be deemed the author. If for any reason, a Work Product is deemed not to be a "work made for hire," upon payment for the Services, the Architect irrevocably assigns and transfers to the Owner all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Architect shall obtain such interests and execute all documents necessary to fully vest such rights in the Owner. Architect waives all rights relating to Work Product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. Owner's obligation to pay the Architect is conditioned upon Architect obtaining a written assignment of copyrights from its subcontractors in terms substantially similar to those applicable to Architect in this subsection, which Architect, in turn, assigns to Owner. In exchange, Owner grants Architect and its subcontractors a revocable, non-exclusive license to reproduce their respective Work Product for purposes relating directly to the Architect's performance of its obligations under this Agreement, for archival records, and for Architect's reproduction of drawings and photographs in the Architect's marketing materials, if approved in writing by Owner, and where Owner approves the Project-related contents of those materials. If, pursuant to law, Work Product is the property of the Architect or its subcontractors, by execution of this Agreement, Architect grants the Owner an exclusive and irrevocable license to use that Work Product.

- § 7.3 Notwithstanding the above, all pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights of Architect are and will remain the exclusive property of Architect.
- § 7.3.1 When requested by the Owner, all Work Products shall be delivered to the Owner in PDF or full-size, hard copy form. Work Product shall be provided to the Owner at the time of completion of any of the discrete tasks specified in the Agreement. Architect shall maintain copies on file of any such Work Product involved in the Services for three (3) years after Owner makes final payment on this Agreement and all other pending matters are closed, shall make them available for the Owner's use, and shall provide such copies to the Owner upon request at commercial printing or reproduction rates.
- § 7.4 To the extent that liability arises from misuse of the Instruments of Service by Owner or another architect or engineer, the Architect shall not be responsible for that misuse.

(Paragraph deleted)

#### CLAIMS AND DISPUTES ARTICLE 8

### § 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, 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 proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for such damages, except such rights as they may have to the proceeds of such insurance as set forth in the 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.

(Paragraph deleted)

### § 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, unless otherwise agreed to in writing by the parties.
- § 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 in writing, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date a party requests mediation. 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, but shall otherwise bear their own costs and fees, including attorneys' fees. The mediation shall be held in Clackamas County, Oregon, 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
  - [x] 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 a party demands arbitration. 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. The arbitration shall be held in Clackamas County, Oregon, unless another location is mutually agreed upon in writing.
- § 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.
- § 8.3.4.4 If the parties choose arbitration as the method of binding dispute resolution under Section 8.2.4, the Architect shall ensure that any subcontracts it enters into subject Architect and its subcontractors to substantially the same terms and conditions surrounding arbitration as are included in this Section 8.3.
- § 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

#### TERMINATION OR SUSPENSION ARTICLE 9

§ 9.1 If the Owner fails to make undisputed payments to the Architect in accordance with this Agreement within thirty (30) days of the date due, for the Architect may give Owner written notice of its intent to suspend its services under this Agreement. The notice must detail Architect's reasons for its intended suspension, must state why the Architect

believes the Owner is not justified in withholding payment to Architect, and must state with specificity the means by which the Architect believes the Owner may cure the alleged failure. Thereafter, the Owner shall have seven (7) days to either pay Architect or justify its lack of payment in accordance with the terms of the Agreement. If Owner does not pay or if Architect disagrees with Owner's justification for not paying, the Architect may suspend 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 if such suspension of services was warranted. Before resuming services, the Owner shall pay the Architect all undisputed sums due prior to suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted, if necessary.

- § 9.2 If the Owner suspends the Project, the Architect shall be compensated for undisputed services performed prior to notice of such suspension. If the Owner resumes the Project, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted, if necessary.
- § 9.3 Either party may terminate this Agreement 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. Before such termination is permitted, the party seeking to terminate the Agreement shall give the other party written notice of the alleged breach, its intent to terminate, and thirty (30) calendar days for the other party to cure or justify the breach. If the breach is not cured within 30 days, the party seeking termination may terminate the Agreement by giving written notice that the Agreement is terminated. The non-breaching party shall provide the written notice of breach and the subsequent written notice of termination by certified mail. If there is an immediate risk of harm to life or property, the Owner may terminate the Agreement immediately and without regard to the 30-day notice provision.
- § 9.4 Architect shall promptly notify the Owner in writing upon the occurrence of any event that could reasonably be expected to result in a material adverse change in the financial condition, operations, or business prospects of the Architect, including but not limited to insolvency, bankruptcy proceedings (whether voluntary or involuntary), appointment of a receiver, assignment for the benefit of creditors, or the commencement of any proceeding under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors. In the event that the Owner determines, in its sole discretion, that Architect's financial condition has materially deteriorated or that any such adverse event has occurred or is reasonably likely to occur, the Owner shall have the right to terminate this Agreement immediately upon written notice to Architect, without penalty or further obligation.
- § 9.5 The Owner may terminate this Agreement for the Owner's convenience and without cause at any time in its sole discretion. Termination is effective immediately upon notice of termination given by the Owner.
- § 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 and Reimbursable Expenses incurred. Architect waives the right to recover any additional costs or damages resulting from termination, including consequential damages and lost profits.

# § 9.7

(Paragraphs deleted)

- . If the Owner terminates pursuant to Section 9.3 or 9.4, the Owner is entitled to all remedies available at law or equity. In addition, the Architect shall pay the Owner all damages, costs, and sums incurred by Owner as a result of the breach. If the Owner's termination pursuant to Section 9.3 or 9.4 was wrongful, the termination shall automatically be converted to one for convenience under Section 9.5, and Architect shall be compensated as if the Agreement was terminated under Section 9.5.
- § 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

### (Paragraph deleted)

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Oregon, without reference to its conflicts of laws provisions that would otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Agreement that are to be resolved by litigation shall be brought in the appropriate court of Clackamas County, Oregon.

- § 10.2 Defined terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, and this Agreement shall be construed in harmony with the final Contract Documents for the Work.
- § 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. If the Architect becomes aware of the presence of hazardous materials or toxic substances on the Project Site, it shall immediately report that presence to the Owner in writing.
- § 10.7 Conflict of Interest. Architect hereby certifies that it is not a official or employee of Owner or a business with which an official or employee of Owner is associated, and that to the best of its knowledge, Architect, its employee(s), officer(s) or its director(s) is not an official employee of Owner or a relative of any official or employee of Owner who: (1) has responsibility in making decisions or ability to influence decision-making on the Agreement or Project to which this Agreement pertains; (2) has or will participate in evaluation or management of the Agreement; or (3) has or will have financial benefits in the Agreement. Architect understands that should it elect to employ any former official or employee of Owner during the term of the Agreement, then that former official or employee of Owner must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and any provisions of the Owner's Charter, Code, ordinances, or administrative rules.
- § 10.8 Public Records, Audits and Confidentiality.
- § 10.8.1 Public Records Requests. Architect acknowledges that the Owner is subject to the Oregon Public Records Act and federal law. Third persons may claim that the Architect Confidential Information (as defined below) that Architect submitted to the Owner hereunder may be, by virtue of its possession by the Owner, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The Owner's commitments to maintain certain information confidentially under this Agreement are all subject to the constraints of Oregon and federal laws. All information submitted by Architect to the Owner is a public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Architect requests and meets an exemption from disclosure consistent with federal or Oregon law, in accordance with the process set forth below. Within the limits and discretion allowed by those laws, the Owner will make a good faith effort to maintain the confidentiality of information.
- § 10.8.2 Public Records Retention and Audits.
- § 10.8.2.1 Owner Records Retention. Owner will retain one (1) copy of any public records for the express purposes of complying with State of Oregon public records and archiving laws.
- § 10.8.2.2 Architect Records Retention. Architect shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Architect agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Agreement during the term of this Agreement and for a minimum of six (6) years after the expiration or termination date of this Agreement, for a minimum of six (6) years after all other pending matters in connection with this Agreement are closed, whichever is longer.

§ 10.8.2.3 City Audits. The Owner, either directly or through a designated representative, may conduct financial and performance audits of the billings and services at any time in the course of the Agreement and during the records retention period listed above. Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.

§ 10.8.2.4 Access to Records. The Owner may examine, audit and copy Architect's books, documents, papers, and records relating to this Agreement at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request. Access to said documents shall be granted within seven (7) days written notice, or such other earlier time as is reasonable under the circumstances.

# § 10.8.3 Confidentiality.

§ 10.8.3.1 Architect's Confidential Information. During the term of this Agreement, Architect may disclose to the Owner certain Architect confidential information pertaining to Architect's business ("Architect Confidential Information"). Architect shall be required to mark Architect Confidential Information CONFIDENTIAL with a restrictive legend or similar marking, together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request under Oregon public records laws. If Architect Confidential Information is not clearly marked, or the Architect Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Architect shall identify the Architect Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Agreement itself shall not be considered Architect Confidential Information. Architect Confidential Information does not include information that (1) is or becomes (other than by disclosure by Owner) publicly known; (2) is furnished by Architect to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in Owner's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (4) is obtained from a source other than Architect without the obligation of confidentiality, (5) is disclosed with the written consent of Architect, or; (6) is independently developed by employees or agents of Owner who can be shown to have had no access to the Architect Confidential Information. Subject to subsection (i) and (ii), the Owner shall: (1) limit disclosure of Architect Confidential Information to those directors, elected and appointed officials, employees, contractors and agents of the Owner who need to know the Architect Confidential Information in connection with the Services and who have been informed of confidentiality obligations at least as strict as those contained in this Agreement, and (2) exercise reasonable care to protect the confidentiality of the Architect Confidential Information, at least to the same degree of care as the Owner employs with respect to protecting its own proprietary and confidential information.

§ 10.8.3.2 Owner's Confidential Information. Any and all information that the Owner provides to Architect or its employees or agents in the performance of this Agreement that Owner designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials that result from Architect's use of such information and any other Work Product that Owner designates as confidential, is deemed to be confidential information of Owner ("Owner Confidential Information"). Owner Confidential Information does not include information that (1) is or becomes (other than by disclosure by Architect) publicly known; (2) is furnished by Owner to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in Architect's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (4) is obtained from a source other than Owner without the obligation of confidentiality, (5) is disclosed with the written consent of Owner, or; (6) is independently developed by employees or agents of Architect who can be shown to have had no access to the Confidential Information.

§ 10.8.3.3 Architect shall treat as confidential any Owner Confidential Information that has been made known or available to Architect or that Architect has received, learned, heard or observed; or to which Architect has had access. Architect shall use Owner Confidential Information exclusively for the Owner's benefit in the performance of this Agreement. Except as may be expressly authorized in writing by the Owner, in no event shall Architect publish, use, discuss or cause or permit to be disclosed to any other person such Owner Confidential Information. Architect shall (1) limit disclosure of the Owner Confidential Information to those directors, officers, employees, subcontractors, and agents of Architect who need to know the Owner Confidential Information in connection with the Services and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the Owner Confidential Information, at least to the same degree of care as Architect employs with respect to protecting its own proprietary and confidential information, and (3) return

immediately to the Owner, upon its request, all materials containing Owner Confidential Information, in whatever form, that are in Architect's possession or custody or under its control. Architect is expressly restricted from and shall not use the intellectual property rights of the Owner without the Owner's prior written consent.

- § 10.8.3.4 Retroactivity. 10.8 shall apply to all Owner Confidential Information previously received, learned, observed, known by or made available to Architect and related to this Agreement.
- § 10.8.3.5 Survival. Architect's confidentiality obligations under this Agreement shall survive termination or expiration of this Agreement.
- § 10.8.3.6 Equitable Relief. Architect acknowledges that unauthorized disclosure of Owner Confidential Information will result in irreparable harm to the Owner. The Parties agree that, notwithstanding any other section of this Agreement, in the event of a breach or a threatened breach of the Agreement's terms related to Confidential Information or intellectual property rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- § 10.8.3.7 Discovery of Documents. In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.
- § 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 Survival. In addition to the provisions specifically called forth as surviving in this Agreement, all provisions in this Agreement, which by their nature should remain in effect beyond termination or expiration of this Agreement, will survive until fulfilled.
- § 10.11 Non-Discrimination. Each party agrees not to discriminate on the basis of age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income in the performance of this Agreement.
- § 10.12 No Waiver. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given.
- § 10.13 Order of Precedence. Should there be any conflict between the terms of this Agreement and the Architect's proposed contract terms, scope of work, payment terms, or any other document provided by the Architect, this Agreement shall control, and nothing in this Agreement shall be considered as an acceptance of any conflicting terms in the documents Architect provides.
- § 10.14 Counterparts; Electronic Signatures. The Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same Agreement. The Owner and Architect may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures.

### 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)

**User Notes:** 

Two hundred forty-five thousand, five hundred and twenty-eight dollars (\$245,528); further services to be decided and added via amendment. In addition, there is a \$1,000 allowance for reimbursable expenses.

Percentage Basis (Insert percentage value)

> Not applicable ( )% 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)

Not applicable for Programming Phase

§ 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.)

For Programming Phase this is included in Basic Services amount. For future phases, to be decided and added via amendment.

§ 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.)

To be decided and added via amendment.

§ 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 Five percent (5%), or as follows: (Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

For future phases, to be decided and added via amendment.

§ 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	All to be decided and added via amendment.	percent (		%)
Design Development Phase		percent (		%)
Construction Documents		percent (		%)
Phase				
Procurement Phase		percent (		%)
Construction Phase		percent (		%)
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.)

The hourly rates are set forth in the Architect's Proposal

# **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

(Paragraphs deleted)

Permitting and other fees required by authorities having jurisdiction over the Project; and (Paragraphs deleted)

- **.2** Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective.
- § 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent (5 %) of the expenses incurred.

(Paragraphs deleted)

§ 11.10 Payments to the Architect

§ 11.10.1 Payments

§ 11.10.1.1 Owner will not pay Architect for services performed before the term of this Agreement starts or after the term of the Agreement ends. The Owner will only pay for completed services that are accepted by the Owner.

§ 11.10.1.2 No compensation will be paid by Owner for any portion of the services not performed. Payment shall not be considered acceptance or approval of any services or waiver of any defects therein. The compensation and reimbursable expenses shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement or agreed to by mutual written and duly signed agreement of Owner and Architect. Failure of Architect to secure authorization for extra work shall constitute a waiver of all right to adjustment in the compensation, reimbursable expenses, or any stated project schedule due to such unauthorized extra work and Architect thereafter shall be entitled to no compensation whatsoever for the performance of such work.

# § 11.10.2 Progress Payments

§ 11.10.2.1

**User Notes:** 

(Paragraphs deleted)

Architect will submit monthly invoices to the Owner for services performed by the 10th day of each month. The invoices shall describe all services performed with particularity, including who performed them, when they were performed, and how much time was spent on them, and shall list all Reimbursable Expenses that were incurred in such month and that are permitted under the Agreement. Each invoice shall also include the total amount invoiced to date by Architect for serviced performed under this Agreement prior to the current invoice, and the total remaining funds that can be billed.

§ 11.10.2.2 Owner will pay Architect for undisputed services rendered within forty-five (45) days of receipt of the invoice. Invoices will be reviewed and approved by Owner prior to payment. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate of one and a half percent (1.5%) per month. Architect must promptly pay all sums due to subcontractors for their services and Reimbursable Expenses after receiving payment for those services from Owner.

§ 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.)

Oregon Statutorily Required Contract Provisions, Exhibit A.

This Agreement is intended to be for the entire Project, but the parties have solely agreed to move forward with the Programming Phase of the Design, which is identified in the Architect's Proposal. The parties will work in good faith to agree upon an Amendment to this Agreement that adds the remaining scope of work and the cost therefore; otherwise, the Architect shall be relieved from any later Basic and Supplemental Services not identified in the Architect's Proposal.

### 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 This AIA Document B101<sup>TM</sup>\_2017, Standard Form Agreement Between Owner and Architect, as amended
- .2 Building Information Modeling Exhibit, if completed:

To be decided and added via amendment.

**.3** Exhibits:

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

- [ ] AIA Document E204<sup>TM</sup>–2017, Sustainable Projects Exhibit, dated as indicated below: (Insert the date of the E204-2017 incorporated into this agreement.)
- [ x ] 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.)

Exhibit A, Oregon Statutorily Required Contract Provisions

.4 Other documents:

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

The Owner's Request for Proposals; the Architect's proposal

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

OWNER (Signature)

Jeff Shaffer

Jeff Shaffer

VP of Finance and
Operations/CFO

ARCHITECT (Signature)

John Swrb

John Shorb (Jul 29, 2025 06-25-10 PDT)

(John Sorb, Principal

**User Notes:** 

# Additions and Deletions Report for

AIA® Document B101® – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:34:10 ET on 07/25/2025.

# PAGE 1

**AGREEMENT** made as of the 1st day of July in the year 2025

...

Clackamas Community College an Oregon municipal corporation 19600 Molalla Ave.

Oregon City, OR 97045

...

Opsis Architecture LLC 975 SE Main Street Portland, OR 97214

•••

Natural Resource Center of Excellence 19600 Molalla Ave.
Oregon City, OR 97045

PAGE 2

Develop a center of excellence for horticulture, farming, arboriculture, welding and wildlife fire departments along with a placement of the Oregon State University's Clackamas County Extension Service.

...

The building will be sited on the east side of the Oregon City CCC campus and is estimated to be 35,000sf to 40,000sf.

...

The total projected project budget is \$50,000,000, inclusive of design, construction and non-construction costs. **PAGE 3** 

Start of design: July 2025, Completion of Construction Documents September 2026. Early material orders and sitework packages should be anticipated.

• • •

Sitework package July 2026]

November 2027.

...

N/A.

..

The Owner anticipates that it will utilize the Construction Manager/General Contractor delivery method for this Project.

...

N/A.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204<sup>TM</sup> 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.[INTENTIONALLY OMITTED.]

...

Ron Prince, Dean of Campus Services
Clackamas Community College
19600 Molalla Avenue
Oregon City, OR 97045
(503) 594-6787

...

NA

...

.1 Geotechnical Engineer:Survey:

James B. Brown, President
Centerline Concepts Land Surveying, Inc.
19376 Molalla Avenue, Suite 120
Oregon City, OR 97045
503-650-0188

.2 <u>Civil-Geotechnical Engineer:</u>

Shawn M. Dimke, PE, GE
Columbia West Engineering, Inc.
8880 SW Nimbus Avenue, Suite 1
Beaverton, OR 97008
971-384-1666

PAGE 4

Arborist - To be added in subsequent amendment.

..

John Shorb, Principal

Opsis Architecture LLC 975 SE Main Street Portland, OR 97214 503-525-9511

...

Catena Consulting Engineers, Inc.

1500 NE Irving Street, Suite 412, Portland, OR 97232

John S. McDonald, T: 503-467-4980; E: john@catenaengineers.com

...

Valar Consulting Engineering LLC

8759 SE Margie Way, Happy Valley, OR 97086

.2 Mechanical Engineer: Bassam Bazz T: 503 250 4581, E: bassam.bazzi@valarengineering.com

..,

2 Mechanical, Plumbing, Electrical Engineer:

...

Mazzetti, Inc

.3 Electrical Engineer:

220 Montgomery Street, Suite 640 San Francisco, CA 94104

**...** 

Tuan Tran, E: ttran@mazzetti.com, T: 503-601-5962

### PAGE 5

Vega Civil Engineering, LLC,

1300 SE Stark St., #201, Portland, OR 97214

Martha Williamson, 503-349-1381, martha@vegacivil.com

Walker Macy (Landscape Architect)

419 SW 11th Ave # 200, Portland, OR 97205

Michael Zilis, mzilis@walkermacy.com, (503) 228-3122

Winterbrook Planning (Land Use)

610 SW Alder St., Suite 810, Portland, OR, 97205

Ben Schonberger, E: ben@winterbrookplanning.com, T: 503.827.4422 ext. 105

Alderberg Consulting Group (Cost Estimating)

Eagle Mountain Construction, Inc, DBA Adlerberg Consulting Group

123 Ross Street, Molalla, OR 97038

Chip Hogle, 971-400-6941, ChipH@adlerberg.com

...

§ 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 shall, when appropriate, adjust the terms of this Agreement accordingly. The adjustments may address the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the

<u>Architect's compensation</u>, 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.

...

- § 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.
- § 1.4 The services covered by this Agreement are subject to an Owner-approved budget. Absent an express provision to the contrary in this Agreement, the Architect shall perform the services in a manner that will result in a Cost of the Work (as defined in Article 6 below) not exceeding the most current Owner-approved budget.

..

- § 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 eircumstances. circumstances (the "Standard of Care"). 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. The Architect shall secure the Owner's written consent prior to replacing the Architect's representative or another member of the team Architect proposed to work on the 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 <u>Two Million Dollars</u> (\$ 2,000,000 ) for each occurrence and <u>Four Million Dollars</u> (\$ 4,000,000 ) in the aggregate for bodily <u>injury</u>, <u>personal</u> injury and property damage. <u>Coverage shall include person injury</u>, <u>bodily injury</u> (<u>including death</u>), and <u>broad form property damage</u>, <u>including loss of use of property</u>, <u>occurring in the course of or in any way related to Architect's services under this Agreement</u>.
- § 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

PAGE 6

- § 2.5.4 Workers' Compensation at statutory limits. limits and in compliance with ORS 656.017, which requires subject employers to provide Oregon worker's compensation coverage for all subject workers.
- **§ 2.5.5** Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000 ) each accident, One Million Dollars (\$ 1,000,000 ) each employee, and Two Million Dollars (\$ 2,000,000 ) policy limit.
- § 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than <u>Two Million Dollars</u> (\$ 2,000,000 ) per claim and <u>Five Million Dollars</u> (\$ 5,000,000 ) in the aggregate.
- § 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner Owner, its elected officials, agents, employees and volunteers 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 acceptable to the Owner that evidence compliance with the requirements in this Section 2.5. There shall be no cancellation, material change, reduction of limits, or intent not to renew any of the required insurance policies without 30-day prior written notice from the Architect or its insurer(s) to Owner. If any of the required liability insurance is arranged on "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a minimum duration of 24 months. Architect will be responsible for furnishing certification of tail coverage as described or continuous claims made liability coverage for 24 months following Agreement expiration. Continuous claims made coverage will be acceptable in lieu of tail coverage, provided its retroactive date is on or before the effective date of this Agreement. Evidence of suitable coverage will be a condition of official acceptance and payment under the Agreement.
- § 2.6 Architect's Identification. Architect shall furnish to Owner Architect's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Architect's Social Security number.
- § 2.7 Project Information. Architect agrees to promptly share all information related to the services with the Owner and to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the services. Architect shall not provide any information, news, or press releases related to the services to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of Owner's Project Manager.
- § 2.8 Duty to Inform. Architect shall give prompt written notice to Owner's Project Manager if, at any time during the performance of this Agreement, Architect becomes aware of actual or potential problems, faults or defects in the services, any nonconformity with the Agreement, or with any federal, state, or local law, rule, regulation, decree, or other mandate, or if Architect has any objection to any decision or order made by Owner. Any delay or failure on the part of Owner to provide a written response to Architect shall constitute neither agreement with nor acquiescence in Architect's statement or claim and shall not constitute a waiver of any of Owner's rights.
- § 2.9 Independent Contractor. Architect is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Agreement. Architect hereby expressly acknowledges and agrees that as an independent contractor, Architect is not entitled to indemnification by the Owner or the provision of a defense by the Owner under the terms of ORS 30.285. This acknowledgment by Architect shall not affect Architect's independent ability (or the ability of Architect's insurer) to assert that the monetary limitations found at ORS 30.272, the immunities listed at ORS 30.265 or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).
- § 2.10 Architect Warranties and Representations. Architect makes the following representations and warranties to the Owner:
- § 2.10.1 Architect has the power, authority, ability, skills, and capacity to enter into and perform this Agreement, and when executed and delivered this Agreement shall be a valid and binding obligation of Architect enforceable in accordance with its terms.
- § 2.10.2 Architect is validly organized and exists in good standing under the laws of the State of Oregon and the Architect is duly qualified, registered or licensed to do business in good standing in the State of Oregon.
- § 2.10.3 The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary actions and do not and will not (a) require any further consent or approval of the board of directors or any shareholders of the Architect or any other person which has not been obtained or (b) result in a breach of default under the certificate of incorporation or by-laws of the Architect or any indenture or loan or credit agreement or other material agreement or instrument to which the Architect is a party or by which the Architect's properties and assets may be bound or affected. All such consents and approvals are in full force and effect.

- § 2.10.4 Architect is engaged as an independent contractor and will be responsible for any federal, state or local taxes applicable to any payments made under this Agreement.
- § 2.10.5 Architect is not eligible for any federal social security, unemployment insurance, pension, PERS or workers' compensation benefits from compensation or payments paid to Architect under this Agreement.
- § 2.10.6 Architect is not an employee of the Owner, any special district, local government, the federal government or the State of Oregon.
- § 2.10.7 Architect has complied and will continue to comply with all Oregon laws applicable to the performance of Architect's obligations under this Agreement.
- § 2.10.8 Architect and Architect's employees and subcontractors, shall be qualified, professionally competent and duly licensed to perform the work and services at all times during the term of this Agreement
- § 2.10.9 Architect has inspected, or will inspect, the Project site and all of the surrounding locations to the extent necessary to perform the services.
- § 2.10.10 Architect has the skill and knowledge possessed by well-informed members of its industry, trade or profession, will apply that skill and knowledge with care and diligence when performing the services under this Agreement, and will do so in a professional manner and in accordance with standards prevalent in Architect's profession under similar conditions and circumstances.
- § 2.10.11 Architect has read, understands and agrees to be bound by each of the terms and conditions of this Agreement.
- § 2.10.12 Architect prepared its proposal for these services independently from all other proposers, and without collusion, fraud or other dishonesty
- § 2.10.13 Any Goods / Items / Equipment / Components / Hardware / Software / Intellectual Property Rights, etc. delivered to or granted to the Owner under this Agreement, and Architect's services rendered in the performance of Architect's obligations under this Agreement, are provided to the Owner free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and are free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.
- § 2.10.14 Upon Owner's request, Architect shall provide Owner with evidence reasonably satisfactory to confirming the foregoing representations and warranties. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and warranties that Architect provides.

# § 2.11 Indemnity.

- § 2.11.1 Unless otherwise limited by ORS 30.140, Architect shall indemnify and hold the Owner, its elected officials, officers, agents, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney's fees (collectively, "Claims"), arising out of, or resulting directly or indirectly from, the professional negligent acts, errors or omissions of Architect or its subcontractors, suppliers, agents or employees in performance of professional services under this Agreement. Where limited by ORS 30.140, Architect's duty to defend the Owner against a claim for professional negligence and relating to the professional services provided by Architect shall not arise until Architect's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and such obligation shall not exceed the proportionate fault of Architect. For the purpose of this agreement, agents are defined as a person or entity authorized by the Owner through employment or contract.
- § 2.11.2 Architect shall indemnify, defend, and hold the Owner, its elected officials, officers, agents, volunteers, and employees harmless from and against any and all Claims to the extent they arise out of, or result directly or indirectly from, all other acts or omissions of the Architect, or any of its subcontractors, suppliers, agents or employees arising in connection with the performance of this Agreement that are not otherwise identified in 2.11.2.

- § 2.11.3 The obligations of the indemnifications extended by the Architect to the Owner shall survive the termination or expiration of this Agreement.
- § 2.11.4 Except to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Architect or Architect's agents, representatives, or subcontractors, the indemnities in 2.11.1 and 2.11.2 do not require Architect or Architect's surety (if any) or insurer to indemnify the Owner, its elected officials, officers, agents, volunteers, or employees for damage arising out of the death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the Owner.
- § 2.12 Errors. Architect shall perform such additional services as may be necessary to correct errors in the services required under this Agreement without undue delays and without additional cost.
- § 2.13 Subcontracting. The Architect is solely and exclusively responsible to the Owner for the performance of the services, notwithstanding any subcontracts that it enters into for the performance of the services. Architect shall provide a list of all subcontractors with which Architect intends to utilize in providing services. This list shall include such information on their relevant qualifications as may be requested by Owner. Owner reserves the right to review and reject the Architect's use of subcontractors where Owner has a reasonable objection. Consultant shall obtain Owner's written consent prior to entering into any subcontracts for any of the Services required by the Agreement. PAGE 8
- § 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. Architect's proposal, and include usual and customary professional services for each phase of work. Services not set forth in this Article 3 or Architect's proposal are Supplemental or Additional Services.

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- § 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 may 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. consultants, unless the Architect has actual knowledge of, or through the course of its review identifies, any inaccuracies or incomplete aspects of the Owner-furnished services and information. 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. approval, but such approval shall not be unreasonably denied.

§ 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 <u>services.services and shall prepare designs and documents accordingly.</u>

- § 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, Owner's Project requirements, 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 <a href="may.">may.</a> if requested by Owner, 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.

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- § 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. Documents, such that the Construction Documents comply with applicable laws, ordinance and regulations and are sufficient to secure permits necessary to complete construction.

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- § 3.6.1.1 The Architect-Architect, in consultation with the Owner's designated representative, shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201<sup>TM</sup> 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 accordance with General Conditions for the Contract for Construction to the extent that they do not conflict with this Agreement.

§ 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. Construction.

- § 3.6.2.2 The Architect has the authority to shall reject Work that does not conform to the Contract Documents. Documents, subject to the Owner's prior written approval, which shall not be unreasonably withheld. 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, completed, subject to the Owner's prior written approval, which shall not be unreasonably withheld. 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. However, nothing in this section, this Agreement, or in the General Conditions makes a decision of the Architect concerning matters of performance under the Contract Documents or their requirements binding on Owner in the absence of Owner's written approval of that decision.

- § 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. Documents and Owner approved of the decision in writing.
- § 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an The Architect shall not be the 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-A201-2017, unless the Architect agrees to do so as to a particular Claim. If Architect agrees to render an initial decision on a Claim between the Owner and Contractor, such service shall be an Additional Service.

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- § 3.6.3.1 The Architect Architect, in consultation with the Owner's representative, 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.

- § 3.6.4.1 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 schedule and the absence of good cause, no more than fourteen (14) days after the Architect's receipt of the submittal.
- § 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 as necessary to determine their conformance with the requirements for the Work as indicated 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. Architect's reliance on such documents shall be subject to the Standard of Care.
- § 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 shall acknowledge the receipt of each request for information within seven (7) days after receiving it. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. or,

unless good cause exists for otherwise, not later than fourteen (14) days after Architect receives the request. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 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. Time, subject to Owner's prior written approval, which shall not be unreasonably withheld. 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.

...

.2 <u>coordinate with the Owner to issue Certificates of Substantial Completion;</u>

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.4 <u>coordinate with the Owner to 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.</u>

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§ 4.1.1.1 Programming	<u>Architect</u>	
§ 4.1.1.2 Multiple preliminary designs	<u>Architect</u>	
§ 4.1.1.3 Measured drawings	<u>Architect</u>	
§ 4.1.1.4 Existing facilities surveys	<u>Owner</u>	
§ 4.1.1.5 Site evaluation and planning	<u>Architect</u>	
§ 4.1.1.6 Building Information Model management responsibilities	To be decided and added via amendment.	
§ 4.1.1.7 Development of Building Information Models for post construction use	To be decided and added via amendment.	
§ 4.1.1.8 Civil engineering	<u>Architect</u>	
§ 4.1.1.9 Landscape design	<u>Architect</u>	
§ 4.1.1.10 Architectural interior design	<u>Architect</u>	
§ 4.1.1.11 Value analysis	To be decided and added via amendment.	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	To be decided and added via amendment.	
§ 4.1.1.13 On-site project representation	<u>Architect</u>	
§ 4.1.1.14 Conformed documents for construction	To be decided and added via amendment.	
§ 4.1.1.15 As-designed record drawings	To be decided and added via amendment.	
§ 4.1.1.16 As-constructed record drawings	To be decided and added via amendment.	
§ 4.1.1.17 Post-occupancy evaluation	To be decided and added via amendment.	
§ 4.1.1.18 Facility support services	<u>Owner</u>	
§ 4.1.1.19 Tenant-related services	<u>Owner</u>	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect	
§ 4.1.1.21 Telecommunications/data design	To be decided and added via amendment.	
§ 4.1.1.22 Security evaluation and planning	To be decided and added via amendment.	
§ 4.1.1.23 Commissioning	<u>Owner</u>	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<u>N/A</u>	

§ 4.1.1.25 Fast-track design services	<u>N/A</u>
§ 4.1.1.26 Multiple bid packages	To be decided and added via amendment.
§ 4.1.1.27 Historic preservation	<u>N/A</u>
§ 4.1.1.28 Furniture, furnishings, and equipment design	To be decided and added via amendment.
§ 4.1.1.29 Other services provided by specialty Consultants	To be decided and added via amendment.
§ 4.1.1.30 Other Supplemental Services	To be decided and added via amendment.

For initial agreement, includes Program Level Civil Engineering, Landscape Design, Land Use Application and Cost Estimating.

...

Survey, Geotechnical Engineering, Certified Arborist Report

§ 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<sup>TM</sup> 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.[INTENTIALLY OMITTED.]

..

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 may be cause for an equitable adjustment in compensation and an appropriate adjustment in the Architect's schedule.

..

- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance wholly 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; or
- .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 eonstruction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.construction.
- § 4.2.2 To avoid delay in the Construction Phase, and if they have not been otherwise agreed to be provided in Architect's proposal, 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 Where the Owner agrees that the services were necessary and impact the compensation to be paid to Architect, the Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 <u>To be decided and added via amendment.</u> ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 To be decided and added via amendment. ( ) visits to the site by the Architect during construction

- .3 To be decided and added via amendment. ( ) 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 <u>To be decided and added via amendment.</u> ( ) 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, Contractor shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. Upon receiving notice that the initial date of Substantial Completion will be extended, Architect shall provide Owner a timely estimate of any additional costs it anticipates that it may incur due to the extended date.
- § 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.

...

- § 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. Owner may change its representative and may modify the scope of the representative's authority upon written notice to Architect.
- § 5.4 The Where necessary for the Architect's performance of its services, 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.

- § 5.8 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 that are not the responsibility of the Architect, and that were not needed as a result of the Architect's negligence or failure to perform. Such tests, inspection, and reports may include 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. interests, as determined in the Owner's sole discretion.
- § 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes in a reasonable time period after becoming 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.communicate with Architect's subcontractors through the Architect, except as the Architect may otherwise permit.
- § 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 reasonable access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect reasonable 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. Owner will provide Architect with copies of the Contractor's performance and payment bonds, upon request. PAGE 18
- § 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. Work.
- § 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. All work produced by Architect under this Agreement is the exclusive property of the Owner. "Work Product" includes but is not limited to, technical drawings, prints, blueprints, schematics, research, reports, computer programs, manuals, drawings, plans, recordings, photographs, artwork and any data or information in any form. Architect and the Owner intend that such Work Product shall be deemed "work made for hire" of which the Owner shall be deemed the author. If for any reason, a Work Product is deemed not to be a "work made for hire," upon payment for the Services, the Architect irrevocably assigns and transfers to the Owner all right, title and interest in such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Architect shall obtain such interests and execute all documents necessary to fully vest such rights in the Owner. Architect waives all rights relating to Work Product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications. Owner's obligation to pay the Architect is conditioned upon Architect obtaining a written assignment of copyrights from its subcontractors in terms substantially similar to those applicable to Architect in this subsection, which Architect, in turn, assigns to Owner. In exchange, Owner grants Architect and its subcontractors a revocable, non-exclusive license to reproduce their respective Work Product for purposes relating directly to the Architect's performance of its obligations under this Agreement, for archival records, and for Architect's reproduction of drawings and photographs in the Architect's marketing materials, if approved in writing by Owner, and where Owner approves the Project-related contents of those materials. If, pursuant to law, Work Product is the property of the Architect or its subcontractors, by execution of this Agreement, Architect grants the Owner an exclusive and irrevocable license to use that Work Product.
- § 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, Sub-contractors, 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. Notwithstanding the above, all pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights of Architect are and will remain the exclusive property of Architect.

- § 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. When requested by the Owner, all Work Products shall be delivered to the Owner in PDF or full-size, hard copy form. Work Product shall be provided to the Owner at the time of completion of any of the discrete tasks specified in the Agreement. Architect shall maintain copies on file of any such Work Product involved in the Services for three (3) years after Owner makes final payment on this Agreement and all other pending matters are closed, shall make them available for the Owner's use, and shall provide such copies to the Owner upon request at commercial printing or reproduction rates.
- § 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. To the extent that liability arises from misuse of the Instruments of Service by Owner or another architect or engineer, the Architect shall not be responsible for that misuse.
- **§ 7.5** Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

- § 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 <u>proceeds received by the claimant from property</u> insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for <u>such damages</u>, except such rights as they may have to the proceeds of such insurance as set forth in <del>AIA Document A201 2017, the</del> 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.
- § 8.2.1 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. resolution, unless otherwise agreed to in writing by the parties.

- § 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, otherwise in writing, 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 party requests mediation. 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, equally, but shall otherwise bear their own costs and fees, including attorneys' fees. The mediation shall be held in the place where the Project is located, Clackamas County, Oregon, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

 $[\underline{x}]$  Litigation in a court of competent jurisdiction PAGE 20

§ 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 party demands arbitration. 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. The arbitration shall be held in Clackamas County, Oregon, unless another location is mutually agreed upon in writing.

§ 8.3.4.4 If the parties choose arbitration as the method of binding dispute resolution under Section 8.2.4, the Architect shall ensure that any subcontracts it enters into subject Architect and its subcontractors to substantially the same terms and conditions surrounding arbitration as are included in this Section 8.3.

§ 9.1 If the Owner fails to make <u>undisputed</u> 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 Agreement within thirty (30) days of the date due, for the Architect may give Owner written notice of its intent to suspend its services under this Agreement. The notice must detail Architect's reasons for its intended suspension, must state why the Architect believes the Owner is not justified in withholding payment to Architect, and must state with specificity the means by which the Architect believes the Owner may cure the alleged failure. Thereafter, the Owner shall have seven (7) days to either pay Architect or justify its lack of payment in accordance with the terms of the Agreement. If Owner does not pay or if Architect disagrees with Owner's justification for not paying, the Architect may suspend 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 such suspension of services was warranted. 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. undisputed sums due prior to suspension. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted, adjusted, if necessary.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for <u>undisputed</u> 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 If the Owner resumes the Project, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted if necessary.

- § 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. Either party may terminate this Agreement 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. Before such termination is permitted, the party seeking to terminate the Agreement shall give the other party written notice of the alleged breach, its intent to terminate, and thirty (30) calendar days for the other party to cure or justify the breach. If the breach is not cured within 30 days, the party seeking termination may terminate the Agreement by giving written notice that the Agreement is terminated. The non-breaching party shall provide the written notice of breach and the subsequent written notice of termination by certified mail. If there is an immediate risk of harm to life or property, the Owner may terminate the Agreement immediately and without regard to the 30-day notice provision.
- § 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. Architect shall promptly notify the Owner in writing upon the occurrence of any event that could reasonably be expected to result in a material adverse change in the financial condition, operations, or business prospects of the Architect, including but not limited to insolvency, bankruptcy proceedings (whether voluntary or involuntary), appointment of a receiver, assignment for the benefit of creditors, or the commencement of any proceeding under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors. In the event that the Owner determines, in its sole discretion, that Architect's financial condition has materially deteriorated or that any such adverse event has occurred or is reasonably likely to occur, the Owner shall have the right to terminate this Agreement immediately upon written notice to Architect, without penalty or further obligation.
- § 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 eause. cause at any time in its sole discretion. Termination is effective immediately upon notice of termination given by the Owner.
- § 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.termination and Reimbursable Expenses incurred. Architect waives the right to recover any additional costs or damages resulting from termination, including consequential damages and lost profits.
- § 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:

. If the Owner terminates pursuant to Section 9.3 or 9.4, the Owner is entitled to all remedies available at law or equity. In addition, the Architect shall pay the Owner all damages, costs, and sums incurred by Owner as a result of the breach. If the Owner's termination pursuant to Section 9.3 or 9.4 was wrongful, the termination shall automatically be converted to one for convenience under Section 9.5, and Architect shall be compensated as if the Agreement was terminated under Section 9.5.

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§ 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.

- § 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. State of Oregon, without reference to its conflicts of laws provisions that would otherwise require the application of the law of any other jurisdiction. Any action or suits involving any question arising under this Agreement that are to be resolved by litigation shall be brought in the appropriate court of Clackamas County, Oregon.
- § 10.2 Terms-Defined terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction. Construction, and this Agreement shall be construed in harmony with the final Contract Documents for the Work.

- § 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. If the Architect becomes aware of the presence of hazardous materials or toxic substances on the Project Site, it shall immediately report that presence to the Owner in writing.
- § 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. Conflict of Interest. Architect hereby certifies that it is not a official or employee of Owner or a business with which an official or employee of Owner is associated, and that to the best of its knowledge, Architect, its employee(s), officer(s) or its director(s) is not an official employee of Owner or a relative of any official or employee of Owner who: (1) has responsibility in making decisions or ability to influence decision-making on the Agreement or Project to which this Agreement pertains; (2) has or will participate in evaluation or management of the Agreement; or (3) has or will have financial benefits in the Agreement. Architect understands that should it elect to employ any former official or employee of Owner during the term of the Agreement, then that former official or employee of Owner must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047, and any provisions of the Owner's Charter, Code, ordinances, or administrative rules.
- § 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.

  Public Records, Audits and Confidentiality.
- § 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. Public Records Requests. Architect acknowledges that the Owner is subject to the Oregon Public Records Act and federal law. Third persons may claim that the Architect Confidential Information (as defined below) that Architect submitted to the Owner hereunder may be, by virtue of its possession by the Owner, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The Owner's commitments to maintain certain information confidentially under this Agreement are all subject to the constraints of Oregon and federal laws. All information submitted by Architect to the Owner is a public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Architect requests and meets an exemption from disclosure consistent with federal or Oregon law, in accordance with the process set forth below. Within the limits and discretion allowed by those laws, the Owner will make a good faith effort to maintain the confidentiality of information.

## § 10.8.2 Public Records Retention and Audits.

§ 10.8.2.1 Owner Records Retention. Owner will retain one (1) copy of any public records for the express purposes of complying with State of Oregon public records and archiving laws.

- § 10.8.2.2 Architect Records Retention. Architect shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Architect agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Agreement during the term of this Agreement and for a minimum of six (6) years after the expiration or termination date of this Agreement, for a minimum of six (6) years after all other pending matters in connection with this Agreement are closed, whichever is longer.
- § 10.8.2.3 City Audits. The Owner, either directly or through a designated representative, may conduct financial and performance audits of the billings and services at any time in the course of the Agreement and during the records retention period listed above. Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States Government Accountability Office.
- § 10.8.2.4 Access to Records. The Owner may examine, audit and copy Architect's books, documents, papers, and records relating to this Agreement at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request. Access to said documents shall be granted within seven (7) days written notice, or such other earlier time as is reasonable under the circumstances.

## § 10.8.3 Confidentiality.

§ 10.8.3.1 Architect's Confidential Information. During the term of this Agreement, Architect may disclose to the Owner certain Architect confidential information pertaining to Architect's business ("Architect Confidential Information"). Architect shall be required to mark Architect Confidential Information CONFIDENTIAL with a restrictive legend or similar marking, together with a written statement describing the material which is requested to remain protected from disclosure and the justification for such request under Oregon public records laws. If Architect Confidential Information is not clearly marked, or the Architect Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Architect shall identify the Architect Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Agreement itself shall not be considered Architect Confidential Information. Architect Confidential Information does not include information that (1) is or becomes (other than by disclosure by Owner) publicly known; (2) is furnished by Architect to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in Owner's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (4) is obtained from a source other than Architect without the obligation of confidentiality, (5) is disclosed with the written consent of Architect, or; (6) is independently developed by employees or agents of Owner who can be shown to have had no access to the Architect Confidential Information. Subject to subsection (i) and (ii), the Owner shall: (1) limit disclosure of Architect Confidential Information to those directors, elected and appointed officials, employees, contractors and agents of the Owner who need to know the Architect Confidential Information in connection with the Services and who have been informed of confidentiality obligations at least as strict as those contained in this Agreement, and (2) exercise reasonable care to protect the confidentiality of the Architect Confidential Information, at least to the same degree of care as the Owner employs with respect to protecting its own proprietary and confidential information.

§ 10.8.3.2 Owner's Confidential Information. Any and all information that the Owner provides to Architect or its employees or agents in the performance of this Agreement that Owner designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials that result from Architect's use of such information and any other Work Product that Owner designates as confidential, is deemed to be confidential information of Owner ("Owner Confidential Information"). Owner Confidential Information does not include information that (1) is or becomes (other than by disclosure by Architect) publicly known; (2) is furnished by Owner to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in Architect's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (4) is obtained from a source other than Owner without the obligation of confidentiality, (5) is disclosed with the written consent of Owner, or; (6) is independently developed by employees or agents of Architect who can be shown to have had no access to the Confidential Information.

- § 10.8.3.3 Architect shall treat as confidential any Owner Confidential Information that has been made known or available to Architect or that Architect has received, learned, heard or observed; or to which Architect has had access. Architect shall use Owner Confidential Information exclusively for the Owner's benefit in the performance of this Agreement. Except as may be expressly authorized in writing by the Owner, in no event shall Architect publish, use, discuss or cause or permit to be disclosed to any other person such Owner Confidential Information. Architect shall (1) limit disclosure of the Owner Confidential Information to those directors, officers, employees, subcontractors, and agents of Architect who need to know the Owner Confidential Information in connection with the Services and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the Owner Confidential Information, at least to the same degree of care as Architect employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the Owner, upon its request, all materials containing Owner Confidential Information, in whatever form, that are in Architect's possession or custody or under its control. Architect is expressly restricted from and shall not use the intellectual property rights of the Owner without the Owner's prior written consent.
- § 10.8.3.4 Retroactivity. 10.8 shall apply to all Owner Confidential Information previously received, learned, observed, known by or made available to Architect and related to this Agreement.
- § 10.8.3.5 Survival. Architect's confidentiality obligations under this Agreement shall survive termination or expiration of this Agreement.
- § 10.8.3.6 Equitable Relief. Architect acknowledges that unauthorized disclosure of Owner Confidential Information will result in irreparable harm to the Owner. The Parties agree that, notwithstanding any other section of this Agreement, in the event of a breach or a threatened breach of the Agreement's terms related to Confidential Information or intellectual property rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- § 10.8.3.7 Discovery of Documents. In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

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- § 10.10 Survival. In addition to the provisions specifically called forth as surviving in this Agreement, all provisions in this Agreement, which by their nature should remain in effect beyond termination or expiration of this Agreement, will survive until fulfilled.
- § 10.11 Non-Discrimination. Each party agrees not to discriminate on the basis of age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income in the performance of this Agreement.
- § 10.12 No Waiver. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given.
- § 10.13 Order of Precedence. Should there be any conflict between the terms of this Agreement and the Architect's proposed contract terms, scope of work, payment terms, or any other document provided by the Architect, this Agreement shall control, and nothing in this Agreement shall be considered as an acceptance of any conflicting terms in the documents Architect provides.
- § 10.14 Counterparts; Electronic Signatures. The Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same Agreement. The Owner and Architect may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures.

Two hundred forty-five thousand, five hundred and twenty-eight dollars (\$245,528); further services to be decided and added via amendment. In addition, there is a \$1,000 allowance for reimbursable expenses.

...

Not applicable ( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

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Not applicable for Programming Phase

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For Programming Phase this is included in Basic Services amount. For future phases, to be decided and added via amendment.

...

To be decided and added via amendment.

§ 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 Five percent ( $\frac{90}{5}$ ,  $\frac{5}{9}$ ), or as follows:

...

For future phases, to be decided and added via amendment.

Schematic Design Phase

All to be decided and added via amendment.

%)

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The hourly rates are set forth in the Architect's Proposal

...

- .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;

percent (

- -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 \_\_\_\_.2 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. Objective.
- § 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent (5\_%) 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.)

### § 11.10.1 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. Owner will not pay Architect for services performed before the term of this Agreement starts or after the term of the Agreement ends. The Owner will only pay for completed services that are accepted by the Owner.
- § 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. No compensation will be paid by Owner for any portion of the services not performed. Payment shall not be considered acceptance or approval of any services or waiver of any defects therein. The compensation and reimbursable expenses shall constitute full and complete payment for said services and all expenditures which may be made and expenses incurred, except as otherwise expressly provided in this Agreement or agreed to by mutual written and duly signed agreement of Owner and Architect. Failure of Architect to secure authorization for extra work shall constitute a waiver of all right to adjustment in the compensation, reimbursable expenses, or any stated project schedule due to such unauthorized extra work and Architect thereafter shall be entitled to no compensation whatsoever for the performance of such work.

§ 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.)

- —%—Architect will submit monthly invoices to the Owner for services performed by the 10th day of each month. The invoices shall describe all services performed with particularity, including who performed them, when they were performed, and how much time was spent on them, and shall list all Reimbursable Expenses that were incurred in such month and that are permitted under the Agreement. Each invoice shall also include the total amount invoiced to date by Architect for serviced performed under this Agreement prior to the current invoice, and the total remaining funds that can be billed.
- § 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. Owner will pay Architect for undisputed services rendered within forty-five (45) days of receipt of the invoice. Invoices will be reviewed and approved by Owner prior to payment. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate of one and a half percent (1.5%) per month. Architect must promptly pay all sums due to subcontractors for their services and Reimbursable Expenses after receiving payment for those services from Owner.

Oregon Statutorily Required Contract Provisions, Exhibit A.

This Agreement is intended to be for the entire Project, but the parties have solely agreed to move forward with the Programming Phase of the Design, which is identified in the Architect's Proposal. The parties will work in good faith to agree upon an Amendment to this Agreement that adds the remaining scope of work and the cost therefore; otherwise, the Architect shall be relieved from any later Basic and Supplemental Services not identified in the Architect's Proposal.

...

.1 <u>This AIA Document B101<sup>TM</sup></u>–2017, Standard Form Agreement Between Owner and ArchitectArchitect, as amended

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To be decided and added via amendment.

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 $[\underline{x}]$  Other Exhibits incorporated into this Agreement:

...

Exhibit A, Oregon Statutorily Required Contract Provisions

...

The Owner's Request for Proposals; the Architect's proposal

# Certification of Document's Authenticity

AIA® Document D401 ™ - 2003

sin ur do Bo	, hereby certify, to the best of my knowledge, information and belief, the multaneously with its associated Additions and Deletions Report and this cader Order No. 2114646625 from AIA Contract Documents software and recument I made no changes to the original text of AIA® Document B101T1 between Owner and Architect, other than those additions and deletions show	ertification at 17:34:10 ET on 07/25/2025 that in preparing the attached final M – 2017, Standard Form of Agreement
D-	eletions Report.	_
(S	igned)	
(T	itle)	-
(L	Dated)	-

(1364150327)

# CCC - NCRE - B101-2017 w Opsis Finalized AIA

Final Audit Report 2025-07-29

Created: 2025-07-28

By: Wesley Buchholz (wesley.buchholz@clackamas.edu)

Status: Signed

Transaction ID: CBJCHBCAABAA8InV2u367HqtbvEkxWDWt84IFCMPGK2I

# "CCC - NCRE - B101-2017 w Opsis Finalized AIA" History

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