

Exhibit A



AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

This Standard Form of Agreement Between Owner and Architect contains terms and conditions (the "Architect Terms and Conditions" or "Exhibit A") of the Contract Between Owner and Architect (the "Architect Contract") and together they are referred to herein as this or the "Agreement," which is effective as of the date the Architect first performs services for the Project.

The Agreement is between the Architect's client identified as the **Owner**:

Vanderbilt University
c/o Department of Facilities
2201 West End Avenue
Nashville, Tennessee 37235

and the **Architect**:

as identified in the Architect Contract

for the following **Project**:

as identified in the Architect Contract

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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User Notes:

Architect Terms and Conditions (VU Standard 03/16/19)

(1482124363)

TABLE OF ARTICLES

1	INITIAL AND GENERAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL AND GENERAL INFORMATION

§ 1.1 This Agreement is based on the parameters and initial information set forth in the Architect Contract. In the event such parameters and information change and the change is material with respect to the scope of the Architect's services, the schedule and the Architect's compensation shall be adjusted to the extent appropriate without invalidating the Agreement. However, Architect will only be entitled to increases in compensation and extensions of the schedule that are incorporated into the Agreement in accordance with the provisions of Article 4.

(Paragraphs deleted)

§ 1.2 Architect represents that (a) it possesses experience and expertise in the design and contract administration of projects of similar size, complexity and nature as the Project and (b) the Architect's compensation provided for herein is adequate for its timely performance under the Agreement.

§ 1.3 The parties shall agree upon protocols governing the transmission and exchange of digital data. However, nothing in these protocols shall be construed to materially modify the rights and obligations of the Owner or Architect Parties with respect to the Instruments of Service as set forth herein.

(Paragraph deleted)

§ 1.4 The deadlines established in the schedule set forth in the Architect Contract are material to the Agreement. Architect represents that the schedule is reasonable and that it includes reasonable allowances of time for the Owner's reviews, for the performance of the Architect, the Architect's consultants and the Owner's consultants, and for the approvals of submissions by authorities having jurisdiction over the Project. Modifications of the schedule for any reason must be specifically approved by Owner in writing.

§ 1.5 The "Architect Parties" are the Architect, its consultants, and their employees, and any other persons or entities that provide services on behalf of the Architect for the Project. The Architect shall not engage or terminate any engineer or other consultant for the Project without the prior written approval of the Owner.

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ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement in accordance with the schedule set forth in the Architect Contract. Failure to perform in accordance with the schedule set forth in the Architect Contract shall be adequate cause for termination in accordance with Section 9.2. The Architect represents that it has employees who are 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 Parties shall perform and provide the services: (a) in accordance with the parameters and initial information set forth in the Architect Contract, including the project size, quality and cost parameters, and (b) in a manner consistent with the professional skill and care ordinarily provided by the applicable professional practicing under the same or similar circumstances, including projects of a similar nature to that of the Project. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2.1 Subject to the applicable standard of care, the services of the Architect Parties, their designs, and the Construction Documents shall comply with the latest Architectural and Engineering Standards of Owner in effect as of the date of the Agreement. At the appropriate time, it is the responsibility of Architect to confirm the applicable version of these standards with the Owner's representative.

§ 2.2.2 Subject to the applicable standard of care, the services of the Architect Parties and the Construction Documents shall comply with the laws, statutes, codes, ordinances, rules, regulations and lawful orders or any other requirements of public authorities applicable to the Architect Parties, their services, and the Project (the "Laws"), including those that relate to the Americans with Disabilities Act, accessibility for the physically challenged, hazardous materials, and environmental protection.

§ 2.2.3 Architect represents that it is in full compliance with the Immigration Reform and Control Act of 1986, as amended, and represents that it is in compliance with all applicable Federal, state, and local laws, as amended, including 41 CFR 60-1.4, CFR 60-250.4, and 41 CFR 60-741.4, with respect to nondiscrimination in employment on the basis of race, religion, color, national origin, or sex, equal opportunity, affirmative action, employment of disabled veterans, and veterans of the Vietnam era, and employment of the handicapped. Neither the Architect nor any of its consultants shall discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation or national origin.

§ 2.3 The Architect's representative identified in the Architect Contract is authorized to act on behalf of the Architect with respect to the Project. The Architect shall not change this representative unless approved by Owner in writing. Architect shall not remove or replace any consultant or key personnel working on the Project or assign them to other projects in a manner that adversely affects their ability to perform their duties on the Project, unless and until Owner has approved the removal, replacement, or assignment in writing. In the event that any employee, agent, or consultant of Architect, or any other person or entity for which it is responsible, fails to properly perform or otherwise hinders the Project's progress, Architect shall replace the person or entity as reasonably requested by Owner. The Owner shall not unreasonably withhold approvals required under this section. Architect shall be responsible to Owner for all services provided under the Agreement, including the services of the other Architect Parties.

§ 2.4 Except with the Owner's knowledge and consent, none of the Architect Parties shall engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise its professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain at least the following insurance with insurance companies licensed to provide the insurance in Tennessee until termination of this Agreement.

§ 2.5.1 Commercial General Liability insurance with limits of liability applicable to the Project that are no less than the limits of Architect's existing general liability policy and no less than the minimum limits specified below, written on ISO Occurrence form CG00 01 1093 or a substitute form providing equivalent coverage, with coverages for Premises – Operations (including Explosion, Collapse and Underground Hazards (XCU) coverage), Independent Contractors Protective, Products and Completed Operations, Broad Form Property Damage (including coverage of the work

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performed by subcontractors), Personal and Advertising Injury without the Employment Exclusion, and Blanket Contractual Liability.

.1	Per Occurrence:	\$1,000,000
.2	Annual Aggregate:	\$3,000,000
.3	Fire Legal:	\$100,000
.4	Personal and Advertising:	\$1,000,000

§ 2.5.2 Automobile Liability insurance, including coverage for liability arising out of all owned, leased, hired, and non-owned vehicles, with a combined single limit for bodily injury and property damage of at least \$1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1, 2.5.2, and 2.5.7, 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 insurance that complies with all state and federal requirements.

§ 2.5.5 Employers' Liability insurance without restriction to the Worker's Compensation coverage and with policy limits not less than \$500,000 per occurrence for bodily injury by accident, (\$500,000) policy limit by disease, and \$500,000 per employee for bodily injury by disease.

§ 2.5.6 Professional Liability (errors & omissions) insurance with limits of liability applicable to the Project that are not less than the limits of Architect's existing professional liability policy and not less than the minimum limits specified below, providing coverage for damage resulting from negligent acts, errors and omissions in the performance of all professional services rendered under the Agreement. Unless this insurance becomes commercially unavailable, Architect shall maintain this insurance with minimum policy limits of not less than the minimum limits specified below applicable to the services for at least five (5) years after Substantial Completion of the Project, and shall furnish to Owner satisfactory evidence of continuation of the insurance before final payment and every year thereafter for five (5) years.

- .1 If the Cost of the Work, as defined in Article 6, is expected to be greater than or equal to \$50,000,000, the limits of liability must be no less than \$5,000,000 per claim and \$7,000,000 in the aggregate;
- .2 if the Cost of the Work is expected to be between \$8,000,000 and \$50,000,000, the limits of liability must be no less than \$3,000,000 per claim and \$5,000,000 in the aggregate; and
- .3 if the Cost of the Work is expected to be \$8,000,000 or less, the limits of liability must be no less than \$1,000,000 per claim and \$2,000,000 in the aggregate

§ 2.5.7 Additional Insurance Obligations. To the full extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by any of the Architect Parties' negligent acts or omissions. The additional insured coverage shall provide the same breadth of coverage with the same monetary limits as the insurance applicable to the named insured, and the coverage shall be primary and non-contributory to any other insurance or self-insurance, including any deductible applicable to the additional insureds, and shall apply to both ongoing and completed operations. The Architect shall also obtain a waiver of subrogation endorsement to the insurance policies required by Sections 2.5.1, 2.5.2, 2.5.4, and 2.5.5 that waives the insurer's right to subrogate a claim against Owner.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner on Acord forms that evidence compliance with the requirements in this Section 2.5 and indicate Owner as the Certificate Holder prior to Architect's performance of services under the Agreement, and thereafter, upon renewal or otherwise as requested by Owner. Owner must

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receive written notice at least thirty (30) days prior to cancellation or expiration of the stated coverage. Neither Architect's failure to furnish nor Owner's failure to obtain this proof of insurance shall constitute a waiver of the requirement for insurance, proof of insurance, or of any other provision of the Agreement or applicable law.

§ 2.6 Services for the Project performed by an engineer or other consultant on behalf of Architect shall be provided under written agreements between Architect and consultant that specifically bind the consultant to the terms of the Agreement for the benefit of Owner to the extent applicable to the consultant or its services. These agreements shall require the consultants to carry and maintain insurance coverage similar to the coverage described in Section 2.5, except with monetary limits of liability proportional to the consultants' scope of services. Architect shall provide copies of these agreements to Owner upon request.

§ 2.7 No approval by Owner of any of the Preliminary Design Documents, Schematic Design Documents, Design Development Documents, Construction Documents, or construction phase submissions shall relieve or release Architect or any of its consultants of its responsibilities, obligations, or duties under or arising out of the Agreement or any agreement between the Architect and its consultants.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of the services described in this Article 3 and elsewhere in the Agreement, including (a) the usual and customary architectural and interior design services, (b) the usual and customary civil (with landscape design), structural, mechanical, plumbing, fire protection, and electrical (with low voltage wiring of telecommunications, data, and security) engineering services, and (c) all specialty services identified in the Architect Contract.

§ 3.1.1 The Architect shall provide, manage, and coordinate all of the Architect's services, consult with Owner research applicable design criteria, schedule, attend, and manage Project meetings during the design phases, attend Project meetings and visit the Project site during construction, communicate with members of the Project team, and report progress and observations to the Owner.

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

§ 3.1.2.1 The Architect's services shall include the exercise of usual and customary professional care to perform reasonable investigation of the existing conditions, of the accuracy of Owner furnished drawings, and of other information provided by Owner. If materials or equipment tests are required to more accurately determine existing conditions, Architect will recommend that Owner provide these tests, which recommendation may be accepted or rejected by Owner. If tests are recommended by Architect and provided at Owner's expense, Architect shall be entitled to reasonably rely on their accuracy. The purpose of the investigations and verifications referenced herein is to insure conformance with the design intent of the Project.

§ 3.1.2.2 Architect shall provide prompt written notice to the Owner if the Architect becomes aware of, or has concerns regarding, any error, omission, or inconsistency in services or information provided by Owner or the Owner's consultants, or if Architect becomes aware of any deviations or inconsistencies between these services or information and any services, information, or documents provided, or to be provided, by the Architect. Owner's use of a consultant to supplement or review the services of Architect shall not relieve or release Architect of its obligations or duties, or waive any of Owner's rights, under or arising out of the Agreement.

§ 3.1.2.3 In the event the Architect Parties use drawings furnished by Owner that are instruments of service by others for another project, Architect shall indemnify and hold harmless Owner from all claims, losses, liabilities, and expenses, including reasonable attorneys' fees and costs, arising out of any unauthorized use of the Instruments of Service by any of the Architect Parties for another project.

§ 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 consistent with the schedules in the Architect Contract. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work. The schedule shall include allowances for periods of time reasonably 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 be exceeded by the Architect without written approval of Owner, except for causes beyond the control of the Architect Parties. 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 consent.

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

§ 3.1.6 The Architect shall coordinate with, and manage all submissions required by, governmental authorities having jurisdiction over the construction of the Project and by entities providing utility services to the Project, shall prepare minutes of all meetings with these authorities and entities, shall prepare and file all submittal documents, drawings, and special requests required by the approval process of these authorities and entities, and shall make the design modifications and supplementary or clarifying submittals as required to obtain final approvals and authorizations for the Project from these authorities and entities. Architect shall copy Owner on all meeting minutes, submittals, approvals, correspondence, and other written communications with these authorities and entities.

§ 3.1.7 Until commencement of construction, Architect shall take minutes and attendance at all meetings regarding the Project that are attended by Architect, and Architect shall provide a copy of these minutes to Owner within seven (7) days of the meeting if the meeting is also attended by the Owner, the Contractor, or a Subcontractor.

§ 3.1.8 Architect shall provide written reports to Owner. Until commencement of construction, reports shall be monthly regarding the status of the design and schedule, including updates on the status of the design for each discipline and items requiring Owner's consideration or attention. After commencement of construction, each of the Architect Parties shall submit written reports regarding their site visits that identify all items requiring the attention of the Contractor or Owner. Reports shall provide notice, if applicable, of potential needs for additional services or changes in the Work, concerns with the Project's schedule or budget, design deviations from previously approved plans, known or suspected deviations between the Work and the Contract Documents and deviations from the construction schedule, known or suspected defects or deficiencies in the Work, and known or suspected errors, omissions, and inconsistencies in the Construction Documents. Receipt of these reports shall be a condition precedent to Architect's right to monthly payment.

§ 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 the Project.

§ 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 or errors discovered in the information, and (2) other information or consulting services reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall advise and consult with the Owner regarding its recommendations and alternative approaches to design and construction of the Project.

§ 3.2.4 Based on the Project requirements and the directives and selections of Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design that consists of programming information, drawings, narratives, and other documents illustrating the scale, character, and relationship of the Project components.

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§ 3.2.5 Based on the Owner's comments to and approval of the preliminary design, and consistent with Owner's program, schedule and budget for the Cost of the Work, the Architect shall meet and work with Owner to prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings, narratives, and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and upon the request of the Owner, shall include some combination of study models, perspective sketches, or digital representations. Preliminary interior design concepts and 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, and advise and consult with Owner regarding, 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 goals and objectives regarding sustainability and energy consumption and the Owner's program, schedule and budget for the Cost of the Work. Architect will complete a LEED checklist, or perform a similar exercise for another sustainability standard if requested, and advise and consult with Owner regarding options for achieving certain certifications or standards. Unless otherwise set forth in the Architect Contract, Owner may obtain more advanced sustainable design services as an Additional Service in accordance with Article 4.

§ 3.2.5.2 The Architect shall consider, and advise and consult with Owner regarding, 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.

§ 3.2.5.3 The Schematic Design Documents shall include drawings and outline specifications or narratives specifying the parameters, design assumptions, and design philosophies of all major building systems, including structural, mechanical, electrical, and plumbing. If requested by Owner, Architect will prepare a utility impact statement that documents and evaluates the location, size, and capacity of all existing utility infrastructure necessary to support the proposed building utility systems, including, at a minimum, steam, chilled water, domestic water, fire protection water, gas, electrical power, sanitary sewer, storm drainage, and low voltage wiring of telecommunications, data, and security. Zoning information, including the zoning district, bulk regulations, and use restrictions, must be indicated in the drawings either on the cover sheet, title sheet, index sheet, or legend sheet.

§ 3.2.5.4 If applicable, Architect or its consultants shall perform survey(s) of the existing facilities to establish and document existing conditions and to identify conflicts or inconsistencies between existing conditions and existing drawings. The surveys shall include above lay-in ceiling inspections, but not concealed areas such as below grade or behind drywall ceilings or partitions unless selective destructive investigation is recommended by Architect and approved Owner in writing. The surveys shall include elements such as duct routing, pipe routing, panel board inspections, fan locations, equipment conditions and locations, etc. To the extent feasible without destructive testing, information and conditions from drawings provided by Owner or must be field verified.

§ 3.2.6 The Architect shall schedule, coordinate, and obtain initial/preliminary plan reviews of the Schematic Design Documents by the applicable local and state agencies.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner for approval and report to Owner regarding any results of the initial codes reviews.

§ 3.2.8 Architect shall consider, and advise and consult with Owner regarding, the estimates, value engineering suggestions, and constructability concerns of any potential contractors. If estimates are inconsistent with the Owner's budget for the Cost of the Work, Architect shall assist Owner and potential contractors with identifying the specific reasons for the deviation and suggest alternatives and modifications to bring the Project within budget. Architect shall incorporate into the Schematic Design Documents those alternatives and modifications that are approved by Owner in a manner that is consistent with the Project requirements and the budget for the Cost of the Work.

§ 3.2.9 Architect shall not proceed with the Design Development Phase Services until Owner has approved the Schematic Design Documents in writing.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's comments to and approval of the Schematic Design Documents, and consistent with 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 that fix and describe the size and character of the Project as to architectural, interior design, civil, structural, mechanical and electrical systems, telecommunications, data, audio/visual, and security systems, and other appropriate elements in accordance with Owner standards. The Design Development Documents shall also illustrate the architectural and decorative character of the Project and include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.1.1 The Design Development Documents shall include a description of the structural system, including column locations, preliminary beam and joist depths, slab thicknesses, floor loading, and floor to floor heights. The Design Development Documents shall include coordinated mechanical, electrical, low voltage wiring of telecommunications, data, audio/visual, and security, and plumbing systems drawings, including locations and sizes of air handlers and main horizontal and vertical ductwork, locations and sizes of electrical rooms panels, switchgear, and transformers, locations and sizes of electrical runs and cable trays, fiber optics, voice and data cables, and data rooms, locations and sizes of plumbing risers and horizontal runs for domestic water, chilled water, steam, and fire protection systems, and locations and sizes of back flow preventers, double check valve assemblies, water heaters, and other large plumbing equipment. The Design Development Documents shall include product data and illustrations for furniture, furnishings, and equipment as may be appropriate for the Project, including specially designed items or elements, to indicate finished appearance and functional operation.

§ 3.3.1.2 For building renovation projects, the Design Development Documents shall be based on a field verified set of existing conditions in accordance with Section 3.2.5.4. Existing conditions that must be documented include architectural, structural, mechanical, electrical, low voltage wiring of telecommunications, data, and security, plumbing, and fire protection systems that are to be demolished or significantly altered to accommodate replacement or tie-in to new systems.

§ 3.3.1.3 The Design Development Documents shall include a building codes summary documenting applicable codes, the proposed occupancy types, the proposed construction type, the proposed structural fire ratings for columns, floors, and roof, the proposed fire suppression system, if any, and height and area calculations for the Project. This summary shall be on the cover sheet, title sheet, index sheet, or legend sheet of the drawings.

§ 3.3.2 The Architect shall consider, and advise and consult with Owner regarding, the estimates, value engineering suggestions, and constructability concerns of potential contractors. If estimates are inconsistent with the Owner's budget for the Cost of the Work, Architect shall assist Owner and potential contractors with identifying the specific reasons for the deviation and suggest alternatives and modifications to bring the Project within budget. Architect shall incorporate into the Design Development Documents those alternatives and modifications that are approved by Owner in a manner that is consistent with the Project requirements and the budget for the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise and consult with the Owner regarding any changes in and the status of any estimates of the Cost of the Work and differences in and modifications to the design as compared to the approved Schematic Design Documents, and request the Owner's approval.

§ 3.3.4 If requested by Owner, Architect shall prepare and organize the Design Development Documents in such a manner as to facilitate multiple drawing packages and constructing portions of the Project under separate construction contracts. In the event this potential is not contemplated at the time of the signing of the Architect Contract, the Agreement shall be so amended and the schedule for completion of the various portions of the Architect's services and, if appropriate, the fees shall be adjusted accordingly.

§ 3.3.5 Architect shall not proceed with the Construction Documents Phase Services until Owner has approved the Design Development Documents in writing.

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§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's comments to and approval of the Design Development Documents, and consistent with 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, interior construction, and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will develop additional detail and information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.1.1 Architect shall coordinate the architectural Construction Documents with all other documents prepared and included in the Construction Documents, including verification of the completeness, accuracy, and consistency of the entire set of Construction Documents. Architect shall not intentionally use the addenda process to complete otherwise poorly coordinated or incomplete Construction Documents.

§ 3.4.1.2 Architect shall update the building code summary by documenting the calculated occupant load for each space, summarized by floor and for each area separated by 2 hour fire separations; exit capacity calculations; exit quantity calculations; corridor width requirements; dead end corridor limits; travel distance limits; door width limits; corridor construction fire rating requirements; hazardous area separation requirements, if any; panic hardware requirements; accessible means of egress requirements; stair enclosure requirements; stair width requirements; elevator shaft enclosure requirements; elevator shaft ventilating requirements; interior finish flame spread requirements; and floor covering radiant flux limits. This summary shall be on the cover sheet, title sheet, index sheet, or legend sheet of the Drawings.

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist, as requested by the Owner, in the development and preparation of procurement information and documents and 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 consider, and advise and consult with Owner regarding, the estimates, value engineering suggestions, and constructability concerns of potential contractors. If estimates are inconsistent with the Owner's budget for the Cost of the Work, Architect shall assist Owner and potential contractors with identifying the specific reasons for the deviation and suggest alternatives and modifications to bring the Project within budget. Architect shall incorporate into the Design Development Documents those alternatives and modifications that are approved by Owner in a manner that is consistent with the Project requirements and the budget for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise and consult with the Owner regarding any changes in and the status of the estimate of the Cost of the Work, advise and consult with Owner regarding differences in and modifications to the design as compared to the approved Design Development Documents, take any action required under Sections 6.4 or 6.5, and request the Owner's approval.

§ 3.5 PROCUREMENT PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner and its prospective contractors with developing estimates of the Cost of the Work and with contracting for the construction of the Project by assisting with (1) obtaining competitive proposals from contractors; (2) evaluating, responding to, and confirming responsiveness of proposals; (3) determining the successful proposal, if any; and, (4) negotiating, awarding, and preparing contracts for construction.

§ 3.5.2 PROPOSALS AND ESTIMATES

§ 3.5.2.1 Promptly after Owner approves the Schematic Design Documents, Architect shall assist Owner with obtaining competitive proposals and detailed estimates from potential contractors based on the Schematic Design Documents.

§ 3.5.2.2 The Architect shall assist the Owner with:

- .1 developing a list of prospective contractors for Owner's pre-approval;
- .2 preparing a Request for Proposal, distributing the Request for Proposal to prospective contractors, coordinating their responses, and maintaining a comprehensive comparison of the proposals and responses with Architect's comments and recommendations;
- .3 organizing and conducting interviews and conferences with prospective contractors;
- .4 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Schematic Design Documents to all prospective contractors; and
- .5 preparing and distributing additional questions and requests for information to the prospective contractors, and subsequently documenting such, as directed by Owner.

§ 3.5.2.3 Architect shall consider the estimates and value engineering suggestions of the potential contractors and incorporate approved modifications into the Project during the Design Development Phase Services in accordance with Section 3.3.2.

§ 3.5.2.4 At various stages of the design and upon the request of Owner, Architect shall provide drawings and information to the potential contractor(s) for purposes of refining estimates of the Cost of the Work.

§ 3.5.3 FINAL PROPOSALS AND NEGOTIATION

§ 3.5.3.1 Promptly after Owner approves the Construction Documents, Architect shall assist Owner with obtaining final proposals based on the Construction Documents.

§ 3.5.3.2

(Paragraphs deleted)

Unless the Contractor is selected prior to the approval of the Construction Documents, Architect shall assist the Owner in the same manner as described in Section 3.5.2.

§ 3.5.3.3 Once the Contractor has been selected by Owner, Architect shall respond to requests for information, provide clarifications and interpretations of the Construction Documents, consider requests for substitutions and value engineering, prepare and distribute addenda identifying approved modifications and substitutions, and assist with negotiating and preparing the Contract Documents.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

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

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

§ 3.6.1.3 The Architect's responsibility to provide Construction Phase Services commences with the award of the contract for construction between the Owner and the Contractor, and terminates upon the completion of the services described herein.

§ 3.6.1.4 If Owner retains a verification/commissioning consultant, Architect and its appropriate consultants shall participate in the verification/commissioning program, Architect shall coordinate the site visits of the consultant with the site visits of the appropriate Architect Parties, and the Architect Parties shall work with the consultant while the Contractor corrects all deficiencies identified. To the extent applicable, Architect shall provide similar coordination with the Owner's other consultants.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect and its consultants shall visit the Project site at intervals appropriate to the stage of construction, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine 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 Parties 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, and as otherwise or also known to the Architect, 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 in writing (1) known or suspected deviations from the Contract Documents, (2) known or suspected deviations from the most recent construction schedule, (3) known or suspected defects and deficiencies observed in the Work, and (4) known or suspected errors, omissions, or inconsistencies in the Construction Documents.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed, or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Architect shall advise and obtain the consent of Owner prior to rejecting any Work and prior to requiring any inspection or testing of the Work. If Architect is to observe tests, inspections, or approvals required by the Contract Documents, Architect will do so promptly and, where applicable, at the place of testing.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the requirements indicated in, or 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 approved by Owner and consistent with the intent expressed in the Contract Documents.

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

§ 3.6.2.6 Unless otherwise approved by Owner in writing, the Architect Parties shall schedule their site visits to coincide with the Owner, Architect, and Contractor meetings ("OAC Meetings") and provide written reports in accordance with Section 3.1.8 herein to Owner within seven (7) days of the site visit. In addition to the OAC Meetings, the Architect and its appropriate consultants shall attend the pre-bid meeting, the pre-construction meeting for the overall Project, the pre-construction meetings for the specific systems or trades, and the inspections of the agencies having authority, and provide the written reports required by Section 3.1.8

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor's Application for Payment, and Architect shall, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to Owner a Certificate for Payment, with a copy to the Contractor, for such amount as Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or

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in part. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect Parties' evaluation of the Work as provided in Section 3.6.2 and on the documentation 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 in writing 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 all requisitions received from Subcontractors and suppliers and other documentation 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.

§ 3.6.3.4 Architect shall withhold a Certificate for Payment in whole or in part, as reasonably necessary to protect Owner, if in Architect's opinion the representations referred to in Section 3.6.3.1 cannot be made. If Architect is unable to certify payment in the amount of the Application, Architect will notify Contractor and Owner as provided in Section 3.6.3.1. If Contractor and Architect cannot agree on a revised amount, Architect will promptly issue a Certificate for Payment for the amount for which Architect is able to make these representations to Owner. Architect shall also withhold the whole or part of a Certificate for Payment, or, because of subsequently discovered evidence, nullify the whole or a part of a Certificate for Payment previously issued, as necessary in Architect's opinion to protect Owner from loss for which Contractor is responsible, including loss resulting from acts and omissions of others for which Contractor is responsible under the Contract Documents, because of

- .1 defective Work not remedied;
- .2 third party claims asserted or reasonable evidence indicating probable assertion of such claims, unless security acceptable to Owner is provided by Contractor;
- .3 failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment, or to furnish satisfactory evidence of payment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance that may be due Contractor;
- .5 damage to Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure of Contractor to comply with Laws; or
- .8 failure to carry out the Work in accordance with, or failure to comply with, the Contract Documents.

§ 3.6.3.5 When the above reasons for withholding or nullifying certification have been removed, certification will be made for amounts for which certification was previously withheld or nullified.

§ 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 with such promptness as to cause no unreasonable delay in the Work or in the activities of the Owner, Contractor, or separate contractors while allowing sufficient time, in the Architect's professional judgment, to permit adequate review; but, in any event, the Architect's action shall be taken within fourteen (14) calendar days following receipt of the submittal.

§ 3.6.4.2 The Architect shall review and approve, or take other timely and appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, as necessary to check for conformance of the information given with the requirements of the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy of dimensions or quantities, or confirming the performance of equipment or systems, which are the Contractor's responsibilities, except to the extent the Architect's assistance is specifically requested to address errors, inconsistencies, or omissions in the Contract Documents or

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conflicts therein with existing field conditions. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an entire assembly of which the item is only a component.

§ 3.6.4.3 With Owner's prior written approval, the Contract Documents may specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment. In that event, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. In addition, Architect shall include in the Construction Documents a list of the professional design services and certifications that are so delegated, in detail sufficient to inform others of the appropriate arrangements and insurance requirements arising therefrom. In addition, the Architect shall timely 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 with the requirements of the Work expressed in the Contract Documents. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to reasonably 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. This requirement of professional design services by the Contractor shall in no way diminish Architect's obligation to provide Construction Documents as required by Section 3.4.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents by the Contractor or Owner. The Architect shall set forth, in the Contract Documents, the procedure for requests for information, which shall include, at a minimum, the submittal of a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing and furnished to the Contractor and Owner with such reasonable promptness as to cause no unreasonable delay in the Work or in the activities of the Owner, Contractor, or separate contractors, but in no event more than fourteen (14) days after the receipt of the request. If appropriate or reasonably requested by Owner or Contractor, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 Architect shall review and respond to product substitution requests, component and room mock-ups, finish presentation boards, etc. in accordance with any procedures set forth in the Specifications and with such promptness as to cause no unreasonable delay in the Work or in the activities of the Owner, Contractor, or separate contractors and, in any event, within fourteen (14) calendar days.

§ 3.6.4.6 The Architect shall maintain a record of submittals and copies of submittals and requests from the Contractor for the Record Set.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 In accordance with Article 7 of the General Conditions, Architect shall review, evaluate, and respond to Potential Change Orders and any other requests regarding changes in the Work, schedule, or cost, in writing within fourteen (14) days of receipt of such request. If Architect requires additional information or documentation, Architect shall request it in writing. Architect shall prepare Change Orders 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 all Potential Change Orders, Change Orders, and any other changes in the Work. Each Change Order shall clearly define the Change in the Work and be accompanied by sufficient documentation to support any adjustments in the Contract Sum or the Contract Time. Architect and its consultants shall keep current the electronic drawings to reflect the changes made as a result of the Change Order process, including RFI's, any Supplemental Drawings, etc.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect and its consultants, as appropriate, shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

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

§ 3.6.6.2 The 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. Architect shall coordinate all such inspections with Owner, and Owner and its consultants shall have the right to participate in such inspections.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall advise 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 obtain from Contractor and review and forward to the Owner the following information: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, statements, certificate, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other information and documentation required of the Contractor under the Contract Documents, including operations and maintenance manuals, prior to final payment.

§ 3.6.6.5 Architect shall conduct a Project Closeout/Handover Meeting with Owner's Plant Operations staff within ten (10) days prior to the scheduled date of Substantial Completion. At this meeting, Architect and its consultants shall coordinate with Contractor to review the operation and maintenance manuals, any applicable asset spreadsheet information, test and balance reports, internal commissioning, warranties, and current BIM models, if applicable. Architect shall further coordinate the date(s) of Substantial Completion, completion of the As-Built drawings and other Project closeout requirements. Also at this meeting, Owner's commissioning consultant, if any, shall present the building commissioning findings, if complete.

§ 3.6.6.6 Within thirty (30) days after receipt of the marked-up As-Built drawings from Contractor, Architect shall coordinate, prepare, and submit a Record Set to Owner in accordance with the Owner's current Record Set Deliverable Requirements. Although Architect may reasonably rely on the accuracy and completeness of the As-Built drawings furnished by Contractor, Architect shall not accept the As-Built drawings until it is satisfied, after reasonable inquiry and review, that they accurately reflect the changes to the Drawings and Specifications known to Architect.

§ 3.6.6.6.1 The Record Set shall include all building information modeling (BIM) and all changes incorporated into the Work during construction, including change orders, supplemental drawings, and any other changes. The Record Set shall include all drawings, whether or not changes were made to every drawing. The Record Set shall also include one set of diagrammatic floor plans showing the as-built locations of all fire sprinkler shut-off valve locations. These drawings shall be submitted as a PDF file with a sheet size of 8 ½ x 11 or 11 x 17.

§ 3.6.6.6.2 Architect shall submit the Record Set to Owner in one set of half size prints, one set of files in electronic Hewlett Packard Graphical Language (HPGL/2), and one set of native CAD files in AutoCAD (.DWG) or other native CAD file format acceptable to Owner. The Project Manual shall be submitted in Adobe Acrobat (.PDF) format. All electronic media shall be submitted on CD ROM or other media acceptable to Owner. Before proceeding with submittal of the Record Set, Architect shall obtain from Owner and comply with the latest version of the Owner's Record Set Deliverable Requirements. If the latest version is more onerous than the version current as of the signing of the Agreement, the Architect shall be entitled to Additional Services as appropriate.

§ 3.6.6.6.3 All services described in this Section 3.6.6.6 are part of the Basic Services, and completion of these services shall be conditions precedent to the Owner's obligation to pay any portion of the Architect's compensation attributed to these services in Section 11.5.

§ 3.6.6.7 Prior to the expiration of one year from the date of Substantial Completion, the Architect and its applicable consultants shall, without additional compensation, attend and participate in the post completion inspection described in the General Conditions and prepare a written report regarding the observations and results of the inspection, recommendations for any appropriate remedial or corrective work, Contractor's obligations under the Contract Documents, and the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 MODIFICATIONS TO BASIC SERVICES

§ 4.1.1 All modifications to the Basic Services described above in Article 3, including those particular to the Project and other services to be provided as Basic Services, are specified in the "Clarifications" paragraph of the Architect Contract.

(Table deleted)

(Paragraphs deleted)

§ 4.2 ARCHITECT'S ADDITIONAL SERVICES

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

§ 4.2.1 Upon recognizing a need to perform Additional Services, the Architect shall notify the Owner with reasonable promptness, explain the facts and circumstances giving rise to the need, and submit a written proposal for the Additional Services. If Owner approves the proposal in writing, Architect shall prepare, sign, and submit an Amendment for signature of Owner and proceed with the Additional Services subject to the terms and conditions of the Agreement and the proposal. Unless otherwise provided herein or in the Architect Contract, the following services are not included in Basic Services:

- .1 Revisions to previously prepared Instruments of Service necessitated by Owner requests that are inconsistent with prior instructions or approvals of the Owner, including material change(s) in the Project's size, quality, or complexity, the Owner's schedule, or the budget for Cost of the Work, or procurement or delivery method, but not including changes incorporated to bring the Project within budget;
 - .2 Revisions to previously prepared Instruments of Service necessitated by the enactment or revision of Laws after the Instruments of Service are prepared;
 - .3 Revisions to 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 and the Instruments of Service were previously approved by the applicable authorities having jurisdiction;
 - .4 Services necessitated by a breach of the Agreement on the part of the Owner or a breach of contract on the part of the Owner's consultants or contractors;
 - .5 Preparing detailed estimates of the Cost of the Work;
 - .6 Preparation of additional design documentation required to bid, contract, or construct the Project in separate or sequential packages, unless anticipated at the time of the signing of the Architect Contract;
 - .7 Preparation for, and attendance at, a public presentation, meeting or hearing, unless reasonably anticipated as necessary for approval of the applicable authorities having jurisdiction;
 - .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect has received a subpoena, where the Architect is party thereto, or where compensation is prohibited by Laws or rules of professional responsibility;
 - .9 More than two (2) reviews of each Shop Drawing or other submittal of Contractor, more than two (2) substantial completion inspections of any portion of the Work, or more than two (2) final completion inspections of any portion of the Work;
 - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- or,

- .11 Except for services required under Sections 3.6.6.6 and 3.6.6.7, and other obligations that might exceed beyond completion of construction of the Project, Construction Phase Services provided more than ninety (90) days after the date of Substantial Completion of the Work to the extent Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.2

(Paragraphs deleted)

If approved in accordance with Section 4.2.1, the Additional Services shall be incorporated into the Agreement with an AIA Document G802™ - 2017, Amendment to the Professional Services Agreement (an "Amendment"). The Owner's representative referred to Section 5.3 does not have the authority to sign an Amendment. Only the Chancellor and those to whom the Chancellor has delegated such authority in accordance with Owner's internal policies, which include Eric C. Kopstain and Michael G. Perez, have the authority to sign an Amendment or any other modification of the Agreement.

(Paragraph deleted)

§ 4.2.3

(Paragraphs deleted)

Notwithstanding any of the provisions of this Article 4, Architect shall not be entitled to compensation for any services required due to the negligence or breach of contract of any of the Architect Parties. Owner shall have no obligation to pay any compensation or reimburse expenses associated with services that are outside the scope of Basic Services unless the services are previously approved as Additional Services in accordance with this Section 4.2.

(Paragraphs deleted)

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for in the Architect Contract, the Owner shall provide information in a timely manner in response to requests from Architect regarding requirements for and limitations on the Project, including information regarding 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 Cost of the Work and update the budget 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 of the adjustment and any 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, except as otherwise provided in the Agreement. The Owner shall render decisions and approve the Architect's submittals in a timely manner and in accordance with the schedule set forth in the Architect Contract.

§ 5.4 Upon Architect's reasonable request, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the Project site, and a written legal description of the Project site. The surveys and legal information shall include, as requested and applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries, and contours of the Project site; locations, overall dimensions, and other necessary data with respect to existing buildings, other improvements, and significant trees; and information concerning existing 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 Owner benchmarks, the State Plane Coordinate System of Tennessee, and the North American 83 Datum.

§ 5.5 If reasonably required by the scope of the Project, the Owner shall furnish services of environmental consultants and geotechnical engineers, including, if reasonably requested by the Architect, environmental assessments, 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 Architect shall coordinate its services with those services provided by the Owner's consultants. 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 require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.7 Upon Architect's reasonable request, the Owner shall furnish tests, inspections, and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. Architect shall timely advise Owner of these tests, inspections, and reports.

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

§ 5.9 Both Owner and Architect shall provide prompt written notice to the other if either becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Instruments of Service.

§ 5.10 Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor that relate to or affect the Architect's services. Except as otherwise provided in the Agreement or the Contract for Construction, or when direct communications have been specifically authorized, Owner shall endeavor to communicate with the Architect's consultants through the Architect about matters arising out of or relating to the Architect's services for the Project. Notwithstanding the foregoing, Owner may communicate directly with these third parties orally or in writing, but shall copy Architect on any written communications.

§ 5.11 The Owner shall provide the Architect a signed copy of the Contract for Construction, including the General Conditions and exhibits thereto.

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

(Paragraphs deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost paid by the Owner to construct all elements of the Project designed or specified by the Architect and approved by Owner, and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect or the Owner's other consultants; 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 may be adjusted by Owner throughout the Project. Evaluations of the Owner's budget for the Cost of the Work and any 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 At various stages during the design phases of the Project, Owner will provide estimates of the Cost of Work performed by a contractor or construction manager.

§ 6.4 If at any time an estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall advise and consult with Owner and the contractor that provided the estimate and make appropriate recommendations to the Owner to adjust the Project's size, quality, design, or budget for the Cost of the Work.

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

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;

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- .4 instruct the Architect to modify the design and the Construction Documents to bring the Project within budget, if necessary by revising the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.4, the Architect, without additional compensation, 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 6.5.1. 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

(Paragraphs deleted)

Work due to market conditions the Architect could not reasonably anticipate or other circumstances beyond the control of the Architect Parties, the Owner shall compensate the Architect for the modifications as an Additional Service in accordance with Article 4; 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.

(Paragraph deleted)

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Instruments of Service are the drawings, specifications, models, and other documents or representations, including those in digital or electronic form, prepared by the Architect and the Architect's consultants to describe and define the Work, including the Schematic Design Documents, the Design Development Documents, and the Construction Documents.

§ 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, except as otherwise provided herein, shall retain all common law, statutory and other reserved rights, including copyrights. Architect and the Architect Consultants, however, shall not use the Instruments of Service for any other projects without written authorization from Owner. Submission or distribution of Instruments of Service to meet regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of any intellectual property rights in the Instruments of Service.

§ 7.3 The Architect and its consultants hereby grant to the Owner a nonexclusive, irrevocable, and royalty-free licenses to use, reproduce, and distribute the Instruments of Service for the Owner's purposes, including for purposes of constructing, using, maintaining, altering, and adding to the Project. The Architect shall incorporate these irrevocable licenses into its written agreements with the Architect's consultants. The licenses granted under this section permit the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and other contractors, to use, reproduce, and distribute all or portions of the Instruments of Service, provided it is for the Owner's purposes.

§ 7.3.1 In the event the Owner uses the Instruments of Service for purposes other than those authorized above in Section 7.3, without retaining the author(s) of the Instruments of Service, the names of the author(s) shall not be used in connection therewith, and the Owner releases the Architect and Architect's consultant(s) not retained in connection therewith 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 not retained in connection therewith 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 for purposes other than those authorized above in Section 7.3 and to the extent the authors of the Instruments of Service are not retained. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right in the Instruments of Service shall be deemed granted or implied under this Agreement. Neither Architect, its consultants nor Owner shall assign, delegate, sublicense, pledge, or otherwise transfer any license granted or ownership right referred to in this Article 7 to another party without the prior written agreement of the Owner and other applicable parties. Any unauthorized use of the

Instruments of Service by Owner shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive any termination of this Agreement and any termination of an agreement between the Architect and one of the Architect Parties. The Owner's license in the Instruments of Service shall continue, and the Owner may authorize other similarly credentialed design professionals to reproduce and make changes, corrections, or additions to the Instruments of Service to the extent consistent with the license and allowed by applicable Laws. In the event of any termination, and provided Owner substantially performs its payment obligations to Architect, Architect and its consultants shall promptly send the Instruments of Service to the Owner, including electronic copies and those existing in tangible form, within fourteen (14) days of a specific written request.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, within the period specified by applicable law.

§ 8.1.2 To the extent damages are reimbursed or paid for by property insurance, and to the extent this waiver will not invalidate or adversely affect insurance coverage, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they have to the proceeds of such insurance as set forth in the General Conditions. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 To the full extent permitted by law, Architect shall indemnify and hold harmless Owner from and against claims, damages, losses, and expenses, including reasonable attorney, expert, and consultant fees and expenses, to the extent caused by the negligent acts, errors, or omissions of one or more of the Architect Parties in the performance, or failure in the performance, of the Architect's services under the Agreement. This obligation shall survive expiration or termination of the Agreement and shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect or Owner may proceed in accordance with applicable law to comply with the lien notice or filing deadlines, or to obtain the discharge of a lien, prior to or during resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A demand for mediation shall be made in writing, delivered to the other party to this Agreement. The demand 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.

§ 8.2.3 Owner and Architect shall include similar mediation provisions in all agreements with contractors and consultants retained for the Project, thereby providing for mediation in Nashville, Tennessee, as the initial method of dispute resolution among and between Owner, Architect, their contractors and consultants, and all other persons and entities performing any portion of the services to be provided under the Agreement or the Work for the Project. The parties to the mediation shall share the mediator's fee and any mediation fees equally. The mediation shall be held in Nashville, Tennessee, 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
(Paragraphs deleted)

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litigation in a court located in Nashville, Tennessee, unless Owner and Architect agree that the method of binding dispute resolution for a particular dispute shall be arbitration in accordance with Section 8.3.

§ 8.3 ARBITRATION

§ 8.3.1 If Owner and Architect agree that the method of binding dispute resolution for a particular dispute shall be arbitration, the particular claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and delivered to the person or entity administering the arbitration. Unless another location is mutually agreed upon, the arbitration hearing shall be held in Nashville, Tennessee, and the parties hereby acknowledge that the selection of Nashville, Tennessee, is material to the agreement to arbitrate.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the demand 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 or repose. For statute of limitations or repose purposes, receipt of a written demand for arbitration by the other party shall constitute the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question.

§ 8.3.2 The agreement to arbitrate between Owner and Architect, and the agreements to arbitrate with additional persons or entities arising therefrom, 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 the arbitrations to be consolidated substantially involve common questions of law or fact arising out of the Project.

§ 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 arising out of the Project whose presence is necessary if complete relief is to be accorded in arbitration, provided that the party sought to be joined has consented to by contract or agreed in writing to such a joinder.

§ 8.3.4.3 The Architect's consultants shall be bound by the dispute resolution procedures of this Article 8, and, by reference to the Agreement, each agrees to consent to joinder or consolidation with the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.3.5 Owner and Architect shall include similar arbitration provisions in all agreements with contractors and consultants retained for the Project, thereby providing for arbitration in Nashville, Tennessee, as a method of binding dispute resolution among and between the Owner, the Architect, their contractors and consultants, and all other persons and entities performing any portion of the services to be provided under the Agreement or the Work on the Project, in the event the Owner and Architect agree to arbitrate a particular dispute and the Contractor, if applicable, agrees too.

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

§ 8.5 ATTORNEYS' FEES

In any legal or arbitration proceeding between Owner and Architect arising out of the Agreement or related to the Project, the prevailing party shall be entitled to recover from the non-prevailing parties all costs the prevailing party incurred pursuing or defending the underlying claims, including reasonable fees and expenses of attorneys and experts, arbitration and arbitrator fees, and fees, expenses, and costs associated with any related litigation, bankruptcy proceedings or appeals. The prevailing party is the party that prevails, either affirmatively or via a successful defense, with respect to the claims of greatest value or importance as reasonably determined by the arbitrator(s) or the court.

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ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect that are due 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. Before the Architect suspends services for failure to make a payment or for any other nonperformance, the Architect shall give fourteen (14) days' written notice to the Owner detailing the Architect's intentions and reasons for such termination or suspension and giving Owner an opportunity to cure. In the event of a proper suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, after a proper suspension of services, the Owner shall pay the Architect all sums due prior to suspension and any reasonable expenses incurred because of the interruption and resumption of the Architect's services. The Architect's time schedules shall be equitably adjusted.

§ 9.2 Subject to the other provisions of this Article 9, either party may terminate the Agreement by written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. However, if the nonperformance can be reasonably cured within fourteen (14) days, the nonperforming party shall be given the time as an opportunity to cure. If the Owner terminates the Agreement pursuant to this Section 9.2 and an arbitrator, panel of arbitrators, or a court of competent jurisdiction later determines that Architect did not fail to substantially perform in accordance with the terms of the Agreement, then such termination shall be deemed a termination for convenience under Section 9.3.

§ 9.3 Owner may suspend the Architect's services or terminate the Agreement upon written notice to Architect for the Owner's convenience and without cause.

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

§ 9.5 Architect shall include provisions consistent with this Article 9 in its agreements with consultants, including the Owner's right to terminate for convenience and only be responsible for fees and costs incurred to date by consultants of any tier.

§ 9.6 The Owner's rights with respect to the Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Tennessee, excluding Tennessee's choice of law rules. The Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in the Owner's modified version of the AIA Document A201, General Conditions of the Contract for Construction, which is referred to herein as the "General Conditions".

§ 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 buyer or grantee of all or part of the Project or an affiliated entity.

§ 10.4 If the Owner requests the Architect to sign certificates, other than standard AIA documents or industry forms, the proposed language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of signing. If the Owner requests the Architect to sign consents and other documents reasonably required to facilitate the business arrangements necessary to the development of the Project, the Architect shall sign all such consents and documents that are consistent with this Agreement, provided the proposed consent or document is submitted to the Architect for review at least fourteen (14) days prior to the required signature. The

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(1482124363)

Architect shall not be required to sign certificates, consents or other documents that would require knowledge or services beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement is intended to or shall be construed to create a third-party beneficiary to the Agreement, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall not specify or otherwise cause any hazardous or toxic substances, wastes, or materials (collectively, "Hazardous Materials") to be brought onto the Project site or incorporated into the Work, except in full compliance with Laws. To the full extent allowed by law, Architect shall defend, indemnify, and hold harmless Owner from and against liability, claims, damages, losses, and expenses, including reasonable attorney, expert and consultant fees and expenses, arising out of or resulting from a negligent breach of this Section 10.6. Except as provided above and elsewhere in the Agreement, Architect shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to, Hazardous Materials in any form at the Project site.

§ 10.7 Unless otherwise specifically approved in writing by the Owner's Office of Trademark Licensing, none of the Architect Parties shall use the Owner's name, logos, or trademarks, or photographic or artistic representations of the Project in any professional, marketing, advertising, or promotional materials or media. If a specific use or representation is approved by Owner, Architect shall be given reasonable access to the completed Project as defined in the written approval to make such representations. However, the Architect's materials shall not disclose any Confidential Information, as defined in Section 10.8. This Section 10.7 shall survive the termination of this Agreement.

§ 10.8 In connection with performance under the Agreement, the Architect Parties may become aware of information, including information particular to the Project, Owner's operations, student information or any other records or business knowledge of Owner, that is not known to the general public and confidential to the Owner ("Confidential Information"). This Confidential Information is owned exclusively by Owner, is used in the operation of its business and is secret, confidential and proprietary to Owner. Each of the Architect Parties shall keep Confidential Information strictly confidential, including all Project related information, and shall not disclose it to any other person except as set forth in Section 10.8.1. Each of the Architect Parties agrees to (a) use the Confidential Information only as necessary to fulfill its obligations under this Agreement or applicable law and, thus, restrict disclosure only to those persons who need to know for those purposes, (b) use a reasonable standard of care in maintaining the Confidential Information in strict confidence and (c) return or destroy all documents, copies, notes or other materials containing any Confidential Information upon completion of the its services or upon Owner's request. Accordingly, none of the Architect Parties shall divulge Confidential Information concerning the Project to anyone (including information in applications for permits, variances and similar items) without Owner's prior written consent. Owner reserves the right to release all Project information and to time its release, form and content. This Section 10.8 shall survive completion of the Architect's services and the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law 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 legal dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 If a court, arbitrator, or panel of arbitrators finds any provision of the Agreement to be invalid or unenforceable, in whole or in part, such finding shall not affect the validity or enforceability of any other provisions of the Agreement or the remainder of the provision in question. In lieu of each provision of the Agreement, or part thereof, that is determined to be invalid or unenforceable, there shall be added as part of the Agreement a provision as similar in terms to the invalid or unenforceable provision as is possible, valid, and enforceable. All obligations arising prior to the termination of the Agreement and all provisions of the Agreement allocating responsibility or liability between the Owner and the Architect that logically should survive completion of the Architect' services or termination of the Agreement shall survive completion of the Architect's services under the Agreement and termination of the Agreement.

§ 10.10 No action or failure to act by the Owner or Architect shall constitute a waiver of any right, remedy, obligation or duty afforded them under the Agreement or applicable law, nor shall such action or failure to act constitute approval of or acquiescence in any breach of contract or negligence of the other party, except as specifically provided herein or otherwise in writing.

§ 10.11 Any written notice given under the Agreement shall be deemed duly served and received (1) immediately upon hand delivery to the party's designated representative; (2) immediately upon acknowledged receipt if sent by electronic mail to the party's designated representative; (3) three business days after mailing to the applicable address provided in the Architect Contract by registered, certified, or regular mail; or (4) one business day after depositing with a nationally recognized courier service that provides confirmation of delivery for express or overnight delivery to the applicable address provided in the Architect Contract.

§ 10.12 Owner and Architect agree and acknowledge that both parties have had the opportunity to review and negotiate the provisions of the Agreement with counsel and that any uncertainty or ambiguity in the Agreement shall not be interpreted or construed against either Owner or Architect because of either's involvement in the preparation hereof.

§ 10.13 Notwithstanding any date within the Architect Contract, Owner and Architect recognize that material portions of the Architect's services might have been performed prior to such date. All of the Architect's services regardless of the date of performance shall be subject to the terms and conditions of the Agreement unless otherwise specifically subject to another written agreement between Owner and Architect with respect to the Project. Architect shall not be entitled to any additional compensation for such prior services except as expressly provided in the Architect Contract.

§ 10.14 The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute a complete document. Signatures to the Agreement transmitted by facsimile, electronic mail in "portable document format" (.pdf) or any other digital or electronic means intended to preserve the original graphic and pictorial appearance of a document shall have the same effect as original signatures.

ARTICLE 11 COMPENSATION

§ 11.1

(Paragraphs deleted)

Except for Reimbursable Expenses due in accordance with Section 11.8, the total amount owed to Architect for the Basic Services is the Basic Services Fee specified in the Architect Contract, which shall be paid in monthly progress payments in proportion to the Basic Services actually performed during the applicable billing period.

§ 11.2 Architect shall invoice the Owner for Basic Services once per month for that portion of the Basic Services Fee earned during the previous month. Owner shall pay amounts invoiced and due within forty-five (45) days from the date of the Architect's invoice. Payment amounts received by Architect for services performed by its consultants shall be held in trust for the applicable consultants and paid to same within seven (7) days of receipt. Owner is entitled to issue joint checks if reasonably necessary to ensure payment of consultants. Further, Owner may withhold amounts from monthly payments to correct previous invoices or payment errors.

§ 11.3 For Additional Services approved in accordance with Section 4.2, the Owner shall compensate the Architect as set forth in the Amendments authorizing the Additional Services. Payments for Additional Services shall be monthly in proportion to the Additional Services actually performed, if any, during the applicable billing period. Architect shall invoice for Additional Services with its invoices for Basic Services.

§ 11.4 When Additional Services include services performed by the Architect's consultants, the Architect's markup on amounts invoiced to the Architect by consultants shall not exceed ten percent (10.0%).

§ 11.5 For purposes of calculating progress payments to Architect, the Basic Services Fee shall be allocated between the phases of the Basic Services as follows:

Schematic Design Phase	twenty percent (20 %)
Design Development Phase	twenty-five percent (25 %)
Construction Documents Phase	thirty-five percent (35 %)
Procurement Phase	two percent (2 %)
Construction Phase	fifteen percent (15 %)
Record Drawings/Closeout Docs	three percent (3 %)
Total Basic Compensation	one hundred percent (100 %)

§ 11.6 When the Basic Services Fee is a percentage of the Cost of the Work or a stipulated sum to be determined based on a percentage of a certain estimate, progress payments for each phase of Basic Services until the fee is finalized shall be calculated based on the Owner's most recent estimate for the Cost of the Work. Compensation paid in previous progress payments shall accrue and be accounted for in subsequent invoices. When 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.

(Paragraph deleted)

§ 11.7 Whenever compensation for any Additional Services or any other services is based on hourly billing rates, the Architect's or its consultants' standard rates shall apply unless the applicable rates are attached to the Architect Contract. These rates may be adjusted annually in accordance with the Architect's and Architect's consultants' normal review practices.

(Paragraphs deleted)

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§ 11.8 REIMBURSABLE EXPENSES

§ 11.8.1 In addition to the amounts owed under Section 11.1 for Basic Services and under Section 11.3 for Additional Services, Architect shall be entitled to reimbursement of actual expenses that are (a) incurred by the Architect or the Architect's consultants, (b) commercially reasonable and (c) directly related and necessary to the performance of services under the Agreement ("Reimbursable Expenses.") Neither Architect nor its consultants shall be entitled to any markup, multiplier, or service or carrying charges on any Reimbursable Expenses. Reimbursable Expenses shall be further limited as follows:

- .1 Out-of-town travel expenses for transportation, lodging, and subsistence incurred in accordance with Section 11.8.2 or otherwise approved in advance by Owner;
- .2 Dedicated data and communication services, Project web sites, and extranets, but only to the extent specifically attributable to the Project and approved as a Reimbursable Expense in advance by Owner;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, and plots, but only for documents delivered to Owner (Architect must obtain at least three bids, that include delivery and all charges, if printing costs for the entire Project will exceed \$3,000, anticipated for the duration of the project);
- .5 Postage and delivery when electronic transmission is unavailable;
- .6 Expense of overtime work requiring higher than regular rates, but only if authorized in advance by the Owner in writing;
- .7

(Paragraphs deleted)

Architectural models or professional photography in writing by the Owner; and,

- .8 Other Project-related expenditures, provided Owner preapproves the expenditures in writing.

§ 11.8.2 For expenses incurred for out-of-town travel by the Architect, its consultants, or their employees, Reimbursable Expenses shall be limited to expenses incurred in accordance with the Owner's current Travel & Business Expense Policy and further limited to:

- .1 Airline tickets that do not exceed economy/coach class fares;
- .2 Lodging in standard or equivalent rooms at reasonable rates for the locale;

- .3 Rental cars at mid-sized car rates (excluding all add-ons or upgrades), provided the total cost does not exceed available round-trip coach airfare;
- .4 Personal automobile mileage in accordance with current IRS reimbursement rates, provided the total cost does not exceed available round-trip coach airfare; and
- .5 Subsistence reimbursement for meals, etc. at a standard per-diem rate of \$51 per day of over-night travel.

§ 11.9 Records of Reimbursable Expenses, costs related to Additional Services, and services performed on the basis of hourly billing rates shall be submitted with each of the Architect's applicable invoices. If requested by Owner, Architect and its consultants shall furnish timesheets to document services provided on an hourly basis and any other reasonable documentation of costs or fees requested by Owner.

(Table deleted)(Paragraphs deleted)