



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the 09 day of August in the year 2018  
(In words, indicate day, month and year.)

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

City of Oregon City  
625 Center Street  
Oregon City, Oregon 97045

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

FFA Architecture and Interiors, Inc.  
520 SW Yamhill Street, Suite 900  
Portland, Oregon 97204  
Main: 503-222-1661  
Troy Ainsworth Direct: 503-327-0343  
(Ian Gelbrich) Direct: 503-327-0330

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

Oregon City Police and Municipal Courts Building  
1232 Linn Avenue, Oregon City, Oregon 97045  
FFA Project No. 24.03.18  
The project will be a new approximately 37,000 square foot police station and municipal court building for the City of Oregon City. The anticipated construction budget is approximately \$17 Million and the project delivery process is expected to be CM/GC.

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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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

**§ 1.1** This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Paragraph deleted)*

The project scope of work involves the design of a new police station and municipal courts facility located in Oregon City, Oregon. The site is located at 1232 Linn Ave. and is approximately 8.3 acres. The program of the building includes three basic components of the police station, the municipal court facility and support buildings.

Project procurement or delivery method will be as follows: Owner will retain a Construction Manager/General Contractor (Contractor) which will provide design phase, subcontractor bidding phase and construction phase services. The Contractor will provide cost estimating services during design, assist in cost control and value engineering, manage subcontractor bidding and act as the Contractor during construction. The construction contract will be a modified AIA A102-2007, Standard Form of Agreement Between Owner and Contractor, and modified AIA A201-2007, General Conditions of the Contract for Construction, where the basis of payment is the "Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

**§ 1.2** The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

**.1** Commencement of construction date:

The Owner's anticipated construction start date is: October 01, 2019.

**.2** Substantial Completion date:

The anticipated date of Substantial Completion is December 31, 2020 calendar days after the Notice to Proceed is provided to the Owner's Contractor.

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.1.1 See Exhibit 'A' for all Sub-Consultants to be retained by the Architect.

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

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

§ 2.3.1 The Architect's Designated Representative authorized to act on behalf of the Architect with respect to the Project is Ian Gelbrich. Any change of the Architect's Designated Representative shall be subject to the Owner's written approval

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. The Architect's Consultants will also be required to carry similar insurance in amounts consistent with their discipline. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

- .1 General Liability  
\$1,000,000 Single  
\$2,000,000 Aggregate
- .2 Automobile Liability  
\$1,000,000
- .3 Workers' Compensation  
\$500,000
- .4 Professional Liability  
\$2,000,000 Single  
\$5,000,000 Aggregate

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Exhibit 'A' and/or Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in Exhibit 'A' and/or Article 3 are Additional Services. See Exhibit 'A' for Consultants specifically retained by the Architect to be included in Basic Services.

§ 3.1.1 The Architect shall manage the Architect's services and administer the work of the Architect's consultants, consult with the Owner and its representatives, including the Contractor, research applicable design criteria, attend Project meetings, communicate with members of the Project Team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable current adopted regulations, building codes, and design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect at appointed times, shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Owner is responsible for all printing costs and filing fees for authorities having jurisdiction.

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

§ 3.2.3 The Owner's Contractor or Construction Manager shall submit to the Owner and Architect an estimate of the Cost of Work. The Architect shall review the estimate and provide written comments as appropriate.

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

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

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

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

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

**§ 3.2.7** The Architect shall submit the Schematic Design Documents to the Owner and Owner's Project Manager for their review. The Owner and Architect acknowledge and agree that the Owner, and Owner's Project Manager will conduct an intensive review of the Schematic Design Documents. The Architect's services shall include, but not be limited to, a comparison of the Contractor's estimate of the Cost of the Work based upon the Schematic Design Documents with the Owner's budget established in accordance with Article 5.2. The Architect's services shall include revisions to the Schematic Design Documents following the intensive review for the purpose of aligning the Cost of the Work with the Owner's budget. Once aligned, the Architect shall request the Owner's approval. Any conditions to the Owner's approval including but not limited to any further revisions to be made to the pending design that are to be incorporated into or otherwise addressed in the Design Development Documents or in the design depicted in such Documents, due to cost of other considerations, shall be included in the Owner's approval and notice to proceed.

### **§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES**

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

**§ 3.3.2** The Architect shall submit the final (100%) Design Development Documents to the Owner, Owner's Project Manager and Contractor and cooperate with the Contractor during Contractor's preparation of an estimate of the Cost of the Work.

**§ 3.3.3** The Architect shall submit the Design Development Documents to the Owner, Owner's Project Manager and Contractor for their review. The Owner and Architect acknowledge and agree that the Owner, Owner's Project Manager and Contractor will conduct an intensive review of the Design Development Documents. The Architect's services shall include but not be limited to a comparison of the Contractor's estimate of the Cost of the Work based upon the Design Development Documents with the Owner's budget established in accordance with Article 5.2. The Architect's services shall include revisions to the Design Development Documents following the intensive review for the purpose of aligning the Cost of the Work with the Owner's budget. Once aligned, the Architect shall request the Owner's approval. Any conditions to the Owner's approval including but not limited to any further revisions to be made to the pending design that are to be incorporated into or otherwise addressed in the Construction Documents or in the design depicted in such Documents, due to cost of other considerations, shall be included in the Owner's approval and notice to proceed.

### **§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

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

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

**§ 3.4.3** The Architect shall prepare the fifty percent (50%) Construction Documents, and the final one hundred percent (100%) Construction Documents such that the Drawings and Specifications are coordinated. As used in this Section 3.4.3, the term "coordinated" shall mean that all of the documents and their various provisions for all design disciplines are correlated, integrated and harmonized such that consistent with Section 2.2 all spatial and dimensional conflicts and inconsistencies as well as all conflicts and inconsistencies between and among systems, components and materials have been identified and are resolved.

**§ 3.4.4** The Architect shall submit fifty percent (50%) Construction Documents to the Owner, Owner's Project Manager and Contractor and cooperate with the Contractor during Contractor's preparation of an estimate of the Cost of the Work. The Owner and Architect acknowledge and agree that the Owner, Owner's Project Manager and Contractor will conduct an intensive review of the fifty percent (50%) Construction Documents. The Architect's services shall include but not be limited to a comparison of the Contractor's estimate of the Cost of the Work based upon the fifty percent (50%) Construction Documents with the Owner's budget established in accordance with Article 5.2. The Architect's services shall include revisions to the fifty percent (50%) Construction Documents following the intensive review for the purpose of aligning the Cost of the Work with the Owner's budget.

**§ 3.4.5** The Architect shall provide to the Owner at no additional cost the final, approved one hundred percent (100%) Construction Documents in electronic format, in the case of the Drawings both in AutoCAD and .pdf formats.

**§ 3.4.6** Following the Owner's written approval of the final Construction Documents and updated cost estimate, the Architect, on behalf of the Owner, shall submit the Construction Documents to authorities having jurisdiction for the purpose of obtaining a building permit.

**§ 3.4.7** Upon request of the Owner, and when necessary due to considerations of Construction Cost, the Architect shall organize and prepare specified portions of the Construction Documents as additive alternates.

## **§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

### **§ 3.5.1 GENERAL**

The Architect, with the Owner's and Owner's Project Manager's concurrence shall support the Contractor in establishing a list of prospective subcontractors. Following the Owner's approval of the Construction Documents for subcontractor bidding, the Architect shall support the Contractor in (1) obtaining from prospective subcontractors either competitive bids or negotiated proposals; (2) confirming responsiveness of subcontractor bids or proposals; and (3) determining the successful subcontractor bids or proposals.

*(Paragraphs deleted)*

### **§ 3.5.2 COMPETITIVE BIDDING**

**§ 3.5.2.1** The Architect shall support the Contractor in subcontractor bidding for the Project by

- .1 providing electronic versions of the Construction Documents for distribution through the Contractor to prospective subcontractor bidders;
- .2 preparing responses to questions from prospective subcontractor bidders and providing through the Contractor clarifications and interpretations of the Construction Documents to all prospective bidders in the form of addenda; and
- .3 advising the Owner and Owner's Project Manager on matters pertaining to the approval of the Contractor's recommendations for award of subcontracts.

**§ 3.5.2.2** The Architect shall consider requests for substitutions, if the Construction Documents permit substitutions, and shall prepare and distribute through the Contractor addenda identifying approved substitutions to all prospective subcontractor bidders.

### **§ 3.5.3 NEGOTIATED PROPOSALS**

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

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

- .1 providing electronic versions of the Construction Documents for distribution through the Contractor to prospective subcontractor bidders;

- .2 preparing responses to questions from prospective subcontractors and providing through the Contractor clarifications and interpretations of the Construction Documents to all prospective subcontractors in the form of addenda; and
- .3 participating in negotiations with prospective subcontractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

**§ 3.5.3.3** The Architect shall consider requests for substitutions, if the Construction Documents permit substitutions, and shall prepare and distribute through the Contractor addenda identifying approved substitutions to all prospective subcontractors.

## **§ 3.6 CONSTRUCTION PHASE SERVICES**

### **§ 3.6.1 GENERAL**

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

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

**§ 3.6.1.3** Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction or Notice to Proceed and terminates on the date the Architect issues the final Certificate for Payment or sixty (60) calendar days after the date of Substantial Completion as determined by the Architect, whichever comes first.

### **§ 3.6.2 EVALUATIONS OF THE WORK**

**§ 3.6.2.1** The Architect will periodically visit the site at intervals appropriate to the stage of the Contractor’s operations, or as otherwise required in Section 4.3.3, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

**§ 3.6.2.2** The Architect has the authority and responsibility to advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority and responsibility to advise the Owner to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such 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, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall, upon the written request of either the Owner or Contractor, initially interpret matters concerning performance under and the requirements of the Contract Documents. The Architect’s response to such requests shall be made in writing within no more than 15 days after written request is made for them.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not

show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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

**§ 3.6.2.6** The Architect may evaluate pre-fabricated work, or work fabricated as an assembly that is intended to become a final component of the Work. This evaluation is for general conformance to the Design intent and will be limited within a 60-mile radius of the project site or Architect's office. Off-site visits are regulated in accordance with paragraph 4.3.3

### **§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts within five (5) business days after receipt of the complete application. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment, and will provide them to the Owner upon request.

### **§ 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. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

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

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

§ 3.6.4.4 Subject to the provisions of Section 4.3.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within time limits as identified herein and/or the Project Manual. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.5.3 The Owner's Contractor shall submit proposed changes to the Contract Sum and/or Contract Time in the form of a Proposal Request as outlined in the Project Manual. The Architect shall assist the Owner by evaluating and recommending appropriate actions regarding each Proposal Request. Evaluations of Proposal Requests that are within the original scope of the work are included in Basic Services. Proposal Requests that are a result of an Owner change of scope in the approved Construction Documents will be an Additional Service.

§ 3.6.5.4 Evaluations of material product and/or system substitutions after the Construction Contract Sum is established at the conclusion of the Bidding/Negotiation Phase will be completed under the provisions of Article 4.

### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner and Owner's Project Manager about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

§ 3.6.6.6 The Architect shall assist the Owner in Communicating with authorities having jurisdiction in achieving a certificate of occupancy.

## ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below and/or Exhibit 'A' are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

| Additional Services  | Responsibility<br>(Architect, Owner<br>or<br>Not Provided) | Location of Service Description<br>(Section 4.2 below or in an exhibit<br>attached to this document and<br>identified below) |
|--|--|--|
| § 4.1.1 Programming (B202™–2009)                                   | Owner  |  |
| § 4.1.2 Multiple preliminary designs                               | Architect  |  |
| § 4.1.3 Measured drawings  | N/A  |  |
| § 4.1.4 Existing facilities surveys                                | N/A  |  |
| § 4.1.5 Site Evaluation and Planning (B203™–2007)                  | Architect  |  |
| § 4.1.6 Building Information Modeling (E202™–2008)                 | Architect  |  |
| § 4.1.7 Civil engineering  | Architect  |  |
| § 4.1.8 Landscape design   | Architect  |  |
| § 4.1.9 Architectural Interior Design (B252™–2007)                 | Architect  |  |
| § 4.1.10 Value Analysis (B204™–2007)                               | N/A  |  |
| § 4.1.11 Detailed cost estimating                                  | Architect  |  |
| § 4.1.12 On-site Project Representation (B207™–2008)               | N/A  |  |
| § 4.1.13 Conformed construction documents                          | N/A  |  |
| § 4.1.14 As-Designed Record drawings                               | Architect  |  |
| § 4.1.15 As-Constructed Record drawings                            | N/A  |  |
| § 4.1.16 Post occupancy evaluation                                 | N/A  |  |
| § 4.1.17 Facility Support Services (B210™–2007)                    | N/A  |  |
| § 4.1.18 Tenant-related services                                   | N/A  |  |
| § 4.1.19 Coordination of Owner's consultants                       | N/A  |  |
| § 4.1.20 Telecommunications/data design                            | N/A  |  |
| § 4.1.21 Security Evaluation and Planning (B206™–2007)             | N/A  |  |
| § 4.1.22 Commissioning (B211™–2007)                                | N/A  |  |
| § 4.1.23 Extensive environmentally responsible design              | N/A  |  |
| § 4.1.24 LEED® Certification (B214™–2012)                          | N/A  |  |
| § 4.1.25 Fast-track design services                                | N/A  |  |
| § 4.1.26 Historic Preservation (B205™–2007)                        | N/A  |  |
| § 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007) | N/A  |  |
| § 4.1.28 Energy Modeling   | Architect  |  |

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

None

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

Init.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients that is over and above Basic Services;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner which are not part of Basic Services;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders, persons providing proposals, or Owner provided Consultants;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 Changes to Contract Documents due to "Value-Engineering;" or
- .13 Providing services made necessary by the material default or termination of contractor, by defects or deficiencies in the construction of the project or by failure of the Owner, Contractor, or others performing services or Work in connection with the Project; or
- .14 Providing services in connection with building commissioning.

**§ 4.3.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect beyond the current total for those services:

- .1 Reviewing a Contractor's submittal materially out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. Architect will promptly notify the Owner if the Architect believes the Contractor is submitting excessive RFI's so that the Owner may take appropriate action;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data beyond the limits as identified in paragraph 4.3.3.6, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 calendar days after the date of Substantial Completion of the Work;
- .7 Failure of performance to an industry standard of care of the Owner's consultants or contractors;
- .8 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;
- .9 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner but only to the extent such alternate bid or proposal requests are not in the ordinary course of development of plans and are outside the general scope of services described herein;

- .10 Design corrections due to the Contractor's deficiencies;
- .11 Formal energy analysis, except to the extent required to procure permits for the Project.

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

- .1 2 ( two ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 52 ( fifty-two ) Construction Observation site visit/OAC meeting per month for the duration of the project. Assumes a maximum duration of 11 months. Duration to be set by the Contractor prior to execution of Contract for Construction. If project is extended beyond this time frame the Architect may request additional services.
- .2.1 In addition to the site visits outlined in 4.3.3.2, the Architect will make up to five (5) additional visits at the Owner's request.
- .3 2 ( two ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 2 ( two ) inspections for any portion of the Work to determine final completion
- .5 2 ( two ) reviews/responses to any individual RFI (Request for Information)
- .6 2 ( two ) evaluations of any Proposal Request

**§ 4.3.4** If the services covered by this Agreement have not been completed within 32 ( thirty-two ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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

**§ 5.3** The Owner has designated a Project Manager (Owner's Project Manager), PlanB Consultancy Inc., to be the Owner's representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

**§ 5.5** The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.6** The Owner and Architect shall cooperate in coordinating the services of the Owner's consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of

services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

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

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

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

**§ 5.10** With the exception of routine communications, the Architect and the Contractor shall endeavor to communicate with each other through the Owner's Project Manager. Routine communications between the Architect and Contractor may occur, provided the Owner's Project Manager is apprised through copies of appropriate correspondence, meeting minutes or other records of such communications. All instructions and other communications to the Contractor prepared by the Architect will be issued through the Owner's Project Manager. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with subcontractors and material suppliers of the Contractor shall be through the Contractor. Communications by and with Owner's separate contractors shall be through the Owner's Project Manager.

**§ 5.11** Before executing the Contract for Construction, the Owner shall provide the Architect with a preliminary copy of the proposed Contract for Construction and coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction. The Architect shall have ten (10) business days to review the Construction Contract and General Conditions to identify any scope modifications.

**§ 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 wherever it is in preparation or progress.

## **ARTICLE 6 COST OF THE WORK**

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

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

**§ 6.3** The Owner and Architect recognize the overriding budget limitations that must guide the design of the Project. The Architect agrees to use its best efforts and work jointly with the Owner and Contractor to design the Project to be constructed within the Owner's budget for the Cost of the Work. Architect will cooperate with Contractor during Contractor's execution of its responsibility to prepare preliminary construction cost estimates, to obtain bids and to establish a Guaranteed Maximum Price (GMP) that does not exceed the Owner's budget for the Cost of the Work. The Architect shall consider the periodic cost estimates provided by the Contractor as the current cost opinion to be compared to the Owner's budget for the Cost of the Work. A design and estimating contingency will be established by

mutual agreement between the Owner, Architect and Contractor. The design and estimating contingency will be gradually adjusted downward and, as appropriate, added to the Cost of the Work or the Owner's construction contingency as milestone cost estimates are prepared, but in no case shall the Owner's budget for the Cost of the Work change without notice in writing from the Owner. If the Contractor's final GMP exceeds the Owner's budget for the Cost of the Work by more than 5%, at the Owner's discretion, the Architect may be required to work with the Owner and Contractor to determine modifications in the design in order to reduce the final GMP to be equal to or lower than the Owner's budget for the Cost of the Work. In this instance, the Architect will perform these design and documentation services as an additional service to the Owner. The Owner's budget for the Cost of the Work assumes that the Project will be bid by qualified subcontractors, a minimum of three (3) sub-bids for each trade, except for design-build subcontractor trades established prior to bidding. The Contractor and their primary subcontractors will provide meaningful constructability review, value engineering and cost input during the Schematic Design (if a CM/GC has been formally appointed by at this stage), Design Development and Construction Documents phases. Architect shall be permitted to include within the Construction Documents, subject to the Owner's approval, such bid alternates and other measures intended to provide for reasonable adjustments to the final GMP so that the GMP will be equal to or lower than the Owner's budget for the Cost of the Work.

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

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

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the GMP, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize subcontractor rebidding or renegotiating of the Project within a reasonable time
- .3 terminate in accordance with Section 9.5;
- .4 pursuant to Section 6.3, work with the Architect and Contractor to determine modifications in the design in order to reduce the final GMP to be equal to or lower than the Owner's budget for the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect, as an additional service, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

**§ 6.7.1** Pursuant to paragraph 6.7, the Architect shall be entitled to Additional Services if the Owner has unreasonably rejected the Architects recommendation per paragraph 6.5.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. The Owner and Architect intend to transmit Instruments of Service and other information or documentation in digital form, they agree to establish necessary protocols governing such transmissions.

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

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a perpetual nonexclusive license at no cost to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining,

altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

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

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

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

### **§ 8.2 DIRECT NEGOTIATION**

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

**§ 8.2.2** Direct Negotiation, as defined herein, will be the initial dispute resolution process utilized by the parties. The provisions in this paragraph must be fully completed within thirty (30) calendar days.

**§ 8.2.2.1** Either the Owner or the Architect may make a written request for Direct Negotiation as an initial attempt to resolve any claim, dispute, disagreement, or other matter arising out of this Agreement. The receiving party shall respond to the written request within seven (7) days to establish a mutually agreeable meeting time.

**§ 8.2.2.2** The parties may choose to exchange supporting information in advance of the meeting. The Direct Negotiation Representatives shall have the authority to make a final resolution decision on behalf of their respective parties for the purpose avoiding further actions. Direct Negotiation will take place at the project worksite or at the location as agreed to by the Owner's and Architect's Designated Representatives.

**§ 8.2.2.3** The initiating party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties to validate the resolution with the signature of each designated representative.

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

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

☒ [ X ] Arbitration pursuant to Section 8.3 of this Agreement

☐ [ ] Litigation in a court of competent jurisdiction

☐ [ ] Other *(Specify)*

*(Paragraphs deleted)*

### **§ 8.3 ARBITRATION**

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

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

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

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

### **§ 8.3.4 CONSOLIDATION OR JOINDER**

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

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

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

## ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect for up to forty-five (45) calendar days from the date of termination.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the state of Oregon, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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

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

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

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

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

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

§ 10.7.1 Project Photography and Documentation: The architect and/or architect's photographer shall be granted reasonable access to the site, grounds, exterior, and interior of the completed/occupied Project for the purpose of photographic and/or video documentation of the completed work, within twelve (12) months of the date of Substantial Completion. The use of those materials shall comply with Article 10.7. The Owner, or other parties related to the project, other than the Architect, and authorized by the Owner, will be granted permission to use the promotional materials upon executing the professional photographers or videographers copyright release form. Costs for the use of promotional material will be negotiated with all parties prior to authorizing the work.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. Architect acknowledges that Owner's obligations under this section are subject to the Oregon Public Records Act.

## ARTICLE 11 COMPENSATION

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

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

See Exhibit 'A' for total fees and fee schedule.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

As approved by the Owner in writing on the basis of a prior negotiated lump sum for each approved additional service request, if not included in Basic Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

As approved by the Owner in writing on the basis of a proposed lump sum for the Architectural service requested.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect:

Plus 10 percent (10%)

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

Init.

See Exhibit 'C'

*(Table deleted)*

## **§ 11.6 COMPENSATION FOR REIMBURSABLE EXPENSES**

**§ 11.6.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project. Typical expenses include, but are not limited to the following:

- .1 Transportation, out-of-town travel, lodging, and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

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

## **§ 11.7**

*(Paragraphs deleted)*

## **COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall not be obligated to pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project.

*(Table deleted)*

## **§ 11.8 PAYMENTS TO THE ARCHITECT**

*(Paragraphs deleted)*

**§ 11.18.1** An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement.

**§ 11.8.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ninety ( 90 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

one point five % 1.5% per month

*(Paragraphs deleted)*

**§ 11.8.3** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees in writing to a specific amount.

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

## **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

Init.

§ 12.1.1 All contractual notices or other communications hereunder to either party shall be in writing and mailed by registered or certified mail, postage prepaid, or by Federal Express or such other recognized overnight courier, or by confirmed facsimile transmission, and addressed to the address on page 1 of this Agreement, or to either party at such other address as such party may designate, in a notice to the other party, as its address for receipt of notices hereunder. Notices by mail shall be deemed to have been given on the earlier of actual receipt by the intended recipient or on the second business day after the date when deposited in the United States mail.

§ 12.1.2 Not used

§ 12.1.3 Notwithstanding anything to the contrary, no partner, shareholder, agent, employee, individual, Architect of record, or other representative of Architect shall have any personal liability to the Owner for any acts or omissions performed while acting within their scope of work, whether based on a claim of negligence, any other tort, breach of contract, or any other claim, arising out of or relating to this Agreement. This limitation does not apply to Architect's insurance carriers, nor does it apply to any direct claim that Owner may make against Architect's consultants.

§ 12.1.4 Notwithstanding any other provision of this Agreement to the contrary, nothing contained herein shall be construed as (i) constituting the guaranty, warranty or assurance, either express or implied, that the scope of services as described herein will yield or accomplish a perfect outcome for the Project; provided, however, that this disclaimer shall not diminish or relieve the Architect from performing its work in accordance with the standards set forth in Section 2.1 or elsewhere in the Agreement; (ii) an assumption of the Architect of the liability of any other party other than its consultants; (iii) creating any fiduciary responsibility from the Architect to the Owner; or (iv) creating liability for the Architect for any changes made to the Contract Documents by the Owner and/or Contractor without the Architect's knowledge. The Owner acknowledges that such changes and results thereof are not the responsibility of the Architect. Therefore, Owner agrees to release Architect from any liability arising from construction, use or as a result of such changes.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

.2

*(Paragraphs deleted)*

Other documents:

*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

Exhibit A – Project Information & Fee Structure

Exhibit B – AIA Document E203-2013, Building Information, Modeling, and Digital Data Exhibit

Exhibit C – FFA Standard Hourly Rates

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

City of Oregon City

FFA Architecture and Interiors, Inc

*(Signature)*

Anthony J. Konkol, III

City Manager

*(Signature)*

Troy Ainsworth, AIA

Principal

City of Oregon City

(Signature)  
James H. Band  
Chief of Police

City of Oregon City  
APPROVED AS TO LEGAL SUFFICIENCY

(Signature)  
Bill Kabeiseman  
City Attorney

Init.  
/

# Additions and Deletions Report for AIA® Document B101™ – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:56:38 on 08/10/2018.

## PAGE 1

**AGREEMENT** made as of the 09 day of August in the year 2018

...

City of Oregon City  
625 Center Street  
Oregon City, Oregon 97045

...

*(Name, legal status, address and other information)*

FFA Architecture and Interiors, Inc.  
520 SW Yamhill Street, Suite 900  
Portland, Oregon 97204  
Main: 503-222-1661  
Troy Ainsworth Direct: 503-327-0343  
(Ian Gelbrich) Direct: 503-327-0330

...

Oregon City Police and Municipal Courts Building  
1232 Linn Avenue, Oregon City, Oregon 97045  
FFA Project No. 24.03.18

The project will be a new approximately 37,000 square foot police station and municipal court building for the City of Oregon City. The anticipated construction budget is approximately \$17 Million and the project delivery process is expected be to CM/GC.

## PAGE 2

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

The project scope of work involves the design of a new police station and municipal courts facility located in Oregon City, Oregon. The site is located at 1232 Linn Ave. and is approximately 8.3 acres. The program of the building includes three basic components of the police station, the municipal court facility and support buildings.

Project procurement or delivery method will be as follows: Owner will retain a Construction Manager/General Contractor (Contractor) which will provide design phase, subcontractor bidding phase and construction phase services. The Contractor will provide cost estimating services during design, assist in cost control and value

engineering, manage subcontractor bidding and act as the Contractor during construction. The construction contract will be a modified AIA A102-2007, Standard Form of Agreement Between Owner and Contractor, and modified AIA A201-2007, General Conditions of the Contract for Construction, where the basis of payment is the "Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

...

The Owner's anticipated construction start date is: October 01, 2019.

...

The anticipated date of Substantial Completion is December 31, 2020 calendar days after the Notice to Proceed is provided to the Owner's Contractor.

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

### PAGE 3

§ 2.1.1 See Exhibit 'A' for all Sub-Consultants to be retained by the Architect.

...

§ 2.3.1 The Architect's Designated Representative authorized to act on behalf of the Architect with respect to the Project is Ian Gelbrich. Any change of the Architect's Designated Representative shall be subject to the Owner's written approval

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. The Architect's Consultants will also be required to carry similar insurance in amounts consistent with their discipline. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

...

\$1,000,000 Single  
\$2,000,000 Aggregate

...

\$1,000,000

...

\$500,000

...

\$2,000,000 Single  
\$5,000,000 Aggregate

...

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

Additional Exhibit 'A' and/or Article 3 are Additional Services. See Exhibit 'A' for Consultants specifically retained by the Architect to be included in Basic Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, services and administer the work of the Architect's consultants, consult with the Owner and its representatives, including the Contractor, research applicable design criteria, attend Project meetings, communicate with members of the Project team Team and report progress to the Owner.

PAGE 4

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable current adopted regulations, building codes, and design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect at appointed times, shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Owner is responsible for all printing costs and filing fees for authorities having jurisdiction.

...

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project. Owner's Contractor or Construction Manager shall submit to the Owner and Architect an estimate of the Cost of Work. The Architect shall review the estimate and provide written comments as appropriate.

PAGE 5

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and Owner's Project Manager for their review. The Owner and Architect acknowledge and agree that the Owner, and Owner's Project Manager will conduct an intensive review of the Schematic Design Documents. The Architect's services shall include, but not be limited to, a comparison of the Contractor's estimate of the Cost of the Work based upon the Schematic Design Documents with the Owner's budget established in accordance with Article 5.2. The Architect's services shall include revisions to the Schematic Design Documents following the intensive review for the purpose of aligning the Cost of the Work with the Owner's budget. Once aligned, the Architect shall request the Owner's approval. Any conditions to the Owner's approval including but not limited to any further revisions to be made to the pending design that are to be incorporated into or otherwise addressed in the Design Development Documents or in the design depicted in such Documents, due to cost of other considerations, shall be included in the Owner's approval and notice to proceed.

...

§ 3.3.2 The Architect shall update the submit the final (100%) Design Development Documents to the Owner, Owner's Project Manager and Contractor and cooperate with the Contractor during Contractor's preparation of an estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Owner's Project Manager and Contractor for their review. The Owner and Architect acknowledge and agree that the Owner, Owner's Project Manager and Contractor will conduct an intensive review of the Design Development Documents. The Architect's services shall include but not be limited to a comparison of the Contractor's estimate of the Cost of the Work based upon the Design Development Documents with the Owner's budget established in accordance with Article 5.2. The Architect's services shall include revisions to the Design Development Documents following the intensive review for the purpose of aligning the Cost of the Work with the Owner's budget. Once aligned, the Architect shall request the Owner's approval. Any conditions to the Owner's approval including but not limited to any further revisions to be made to the to the pending design that are to be incorporated into or otherwise addressed in the Construction Documents or in the design depicted in such Documents, due to cost of other considerations, shall be included in the Owner's approval and notice to proceed.

PAGE 6

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The Architect shall prepare the fifty percent (50%) Construction Documents, and the final one hundred percent (100%) Construction Documents such that the Drawings and Specifications are coordinated. As used in this Section 3.4.3, the term "coordinated" shall mean that all of the documents and their various provisions for all design disciplines are correlated, integrated and harmonized such that consistent with Section 2.2 all spatial and dimensional conflicts and inconsistencies as well as all conflicts and inconsistencies between and among systems, components and materials have been identified and are resolved.

**§ 3.4.4** The Architect shall ~~update the estimate for the Cost of the Work, submit fifty percent (50%) Construction Documents to the Owner, Owner's Project Manager and Contractor and cooperate with the Contractor during Contractor's preparation of an estimate of the Cost of the Work.~~ The Owner and Architect acknowledge and agree that the Owner, Owner's Project Manager and Contractor will conduct an intensive review of the fifty percent (50%) Construction Documents. The Architect's services shall include but not be limited to a comparison of the Contractor's estimate of the Cost of the Work based upon the fifty percent (50%) Construction Documents with the Owner's budget established in accordance with Article 5 .2. The Architect's services shall include revisions to the fifty percent (50%) Construction Documents following the intensive review for the purpose of aligning the Cost of the Work with the Owner's budget.

**§ 3.4.5** The Architect shall ~~submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.~~ provide to the Owner at no additional cost the final, approved one hundred percent (100%) Construction Documents in electronic format, in the case of the Drawings both in AutoCAD and .pdf formats.

**§ 3.4.6** Following the Owner's written approval of the final Construction Documents and updated cost estimate, the Architect, on behalf of the Owner, shall submit the Construction Documents to authorities having jurisdiction for the purpose of obtaining a building permit.

**§ 3.4.7** Upon request of the Owner, and when necessary due to considerations of Construction Cost, the Architect shall organize and prepare specified portions of the Construction Documents as additive alternates.

...

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

### **§ 3.5.2 COMPETITIVE BIDDING**

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

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

- .1 — procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 — distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 — organizing and conducting a pre-bid conference for prospective bidders;
- .4 — preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and

- ~~.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.~~

**§ 3.5.2.3** The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### **§3.5.2 COMPETITIVE BIDDING**

**§3.5.2.1** The Architect shall support the Contractor in subcontractor bidding for the Project by

- .1 providing electronic versions of the Construction Documents for distribution through the Contractor to prospective subcontractor bidders;
- .2 preparing responses to questions from prospective subcontractor bidders and providing through the Contractor clarifications and interpretations of the Construction Documents to all prospective bidders in the form of addenda; and
- .3 advising the Owner and Owner's Project Manager on matters pertaining to the approval of the Contractor's recommendations for award of subcontracts.

**3.5.2.2** The Architect shall consider requests for substitutions, if the Construction Documents permit substitutions, and shall prepare and distribute through the Contractor addenda identifying approved substitutions to all prospective subcontractor bidders.

...

- ~~.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 organizing and participating in selection interviews with prospective contractors; providing electronic versions of the Construction Documents for distribution through the Contractor to prospective subcontractor bidders;~~
- .2 preparing responses to questions from prospective subcontractors and providing through the Contractor clarifications and interpretations of the Construction Documents to all prospective subcontractors in the form of addenda; and
- .3 participating in negotiations with prospective contractors, subcontractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

**§ 3.5.3.3** The Architect shall consider requests for substitutions, if the ~~Proposal~~ Construction Documents permit substitutions, and shall prepare and distribute through the Contractor addenda identifying approved substitutions to all prospective ~~contractors~~ subcontractors.

**PAGE 7**

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

...

**§ 3.6.1.3** Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction or Notice to Proceed and terminates on the date the Architect issues the final Certificate for ~~Payment~~ Payment or sixty (60) calendar days after the date of Substantial Completion as determined by the Architect, whichever comes first.

...

**§ 3.6.2.1** The Architect ~~shall~~ will periodically visit the site at intervals appropriate to the stage of ~~construction, the Contractor's operations,~~ or as otherwise required in Section 4.3.3, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to

determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect ~~shall~~ will not be required to make ~~exhaustive~~ exhaustive, or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall ~~keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.~~

**§ 3.6.2.2** The Architect has the authority and responsibility to advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority and responsibility to advise the Owner to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such 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, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

**§ 3.6.2.3** ~~The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. shall, upon the written request of either the Owner or Contractor, initially interpret matters concerning performance under and the requirements of the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. no more than 15 days after written request is made for them.~~

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**§ 3.6.2.6** The Architect may evaluate pre-fabricated work, or work fabricated as an assembly that is intended to become a final component of the Work. This evaluation is for general conformance to the Design intent and will be limited within a 60-mile radius of the project site or Architect's office. Off-site visits are regulated in accordance with paragraph 4.3.3

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such ~~amounts. amounts within five (5) business days after receipt of the complete application.~~ The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

...

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for ~~Payment. Payment, and will provide them to the Owner upon request.~~

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**§ 3.6.4.4** Subject to the provisions of Section 4.3, ~~4.3.3,~~ the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within ~~any time limits agreed upon, or otherwise with reasonable promptness. time limits as identified herein and/or the Project Manual.~~ If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

...

**§ 3.6.5.3** The Owner's Contractor shall submit proposed changes to the Contract Sum and/or Contract Time in the form of a Proposal Request as outlined in the Project Manual. The Architect shall assist the Owner by evaluating and recommending appropriate actions regarding each Proposal Request. Evaluations of Proposal Requests that are within

the original scope of the work are included in Basic Services. Proposal Requests that are a result of an Owner change of scope in the approved Construction Documents will be an Additional Service.

**§ 3.6.5.4** Evaluations of material product and/or system substitutions after the Construction Contract Sum is established at the conclusion of the Bidding/Negotiation Phase will be completed under the provisions of Article 4.

...

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

**§ 3.6.6.3** When the Work is found to be substantially complete, the Architect shall inform the Owner and Owner's Project Manager about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.6.6.4** The Architect shall forward to the Owner and Owner's Project Manager the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner

...

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

**§ 3.6.6.6** The Architect shall assist the Owner in Communicating with authorities having jurisdiction in achieving a certificate of occupancy.

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**§ 4.1** Additional Services listed below and/or Exhibit 'A' are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

...

| Additional Services |   | Responsibility<br>(Architect, Owner<br>or <del>Not or</del><br><u>Not Provided</u> ) | Location of Service Description<br>(Section 4.2 below or in an exhibit<br>attached to this document and<br>identified below) |
|---------------------|---|--|--|
| <b>§ 4.1.1</b>      | Programming (B202™-2009)                      | <u>Owner</u>   |  |
| <b>§ 4.1.2</b>      | Multiple preliminary designs                  | <u>Architect</u>   |  |
| <b>§ 4.1.3</b>      | Measured drawings                             | <u>N/A</u>   |  |
| <b>§ 4.1.4</b>      | Existing facilities surveys                   | <u>N/A</u>   |  |
| <b>§ 4.1.5</b>      | Site Evaluation and Planning (B203™-2007)     | <u>Architect</u>   |  |
| <b>§ 4.1.6</b>      | Building Information Modeling<br>(E202™-2008) | <u>Architect</u>   |  |
| <b>§ 4.1.7</b>      | Civil engineering                             | <u>Architect</u>   |  |
| <b>§ 4.1.8</b>      | Landscape design                              | <u>Architect</u>   |  |
| <b>§ 4.1.9</b>      | Architectural Interior Design (B252™-2007)    | <u>Architect</u>   |  |
| <b>§ 4.1.10</b>     | Value Analysis (B204™-2007)                   | <u>N/A</u>   |  |
| <b>§ 4.1.11</b>     | Detailed cost estimating                      | <u>Architect</u>   |  |
| <b>§ 4.1.12</b>     | On-site Project Representation (B207™-2008)   | <u>N/A</u>   |  |
| <b>§ 4.1.13</b>     | Conformed construction documents              | <u>N/A</u>   |  |

|          |   |                  |  |
|----------|---|------------------|--|
| § 4.1.14 | As-Designed Record drawings                               | <u>Architect</u> |  |
| § 4.1.15 | As-Constructed Record drawings                            | <u>N/A</u>       |  |
| § 4.1.16 | Post occupancy evaluation                                 | <u>N/A</u>       |  |
| § 4.1.17 | Facility Support Services (B210™–2007)                    | <u>N/A</u>       |  |
| § 4.1.18 | Tenant-related services                                   | <u>N/A</u>       |  |
| § 4.1.19 | Coordination of Owner's consultants                       | <u>N/A</u>       |  |
| § 4.1.20 | Telecommunications/data design                            | <u>N/A</u>       |  |
| § 4.1.21 | Security Evaluation and Planning (B206™–2007)             | <u>N/A</u>       |  |
| § 4.1.22 | Commissioning (B211™–2007)                                | <u>N/A</u>       |  |
| § 4.1.23 | Extensive environmentally responsible design              | <u>N/A</u>       |  |
| § 4.1.24 | LEED® Certification (B214™–2012)                          | <u>N/A</u>       |  |
| § 4.1.25 | Fast-track design services                                | <u>N/A</u>       |  |
| § 4.1.26 | Historic Preservation (B205™–2007)                        | <u>N/A</u>       |  |
| § 4.1.27 | Furniture, Furnishings, and Equipment Design (B253™–2007) | <u>N/A</u>       |  |
| § 4.1.28 | Energy Modeling   | <u>Architect</u> |  |

...

None

PAGE 11

- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients; recipients that is over and above Basic Services;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; Owner which are not part of Basic Services;

...

- .9 Evaluation of the qualifications of bidders or persons providing proposals; bidders, persons providing proposals, or Owner provided Consultants;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 Changes to Contract Documents due to "Value-Engineering;" or
- .13 Providing services made necessary by the material default or termination of contractor, by defects or deficiencies in the construction of the project or by failure of the Owner, Contractor, or others performing services or Work in connection with the Project; or
- .14 Providing services in connection with building commissioning.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect beyond the current total for those services:

- .1 Reviewing a Contractor's submittal materially out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or ~~documentation;~~ documentation. Architect will promptly notify the Owner if the Architect believes the Contractor is submitting excessive RFI's so that the Owner may take appropriate action;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data; ~~data beyond the limits as identified in paragraph 4.3.3.6,~~ or the preparation or revision of Instruments of Service;

- ~~.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier, calendar days after the date of Substantial Completion of the Work;~~
- ~~.7 Failure of performance to an industry standard of care of the Owner's consultants or contractors;~~
- ~~.8 Providing consultation concerning replacement of Work resulting from fire or other cause during construction;~~
- ~~.9 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner but only to the extent such alternate bid or proposal requests are not in the ordinary course of development of plans and are outside the general scope of services described herein;~~
- ~~.10 Design corrections due to the Contractor's deficiencies;~~
- ~~.11 Formal energy analysis, except to the extent required to procure permits for the Project.~~

PAGE 12

- ~~.1 2 ( two ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~
- ~~.2 ( — ) visits to the site by the Architect over the duration of the Project during construction~~ 52 ( fifty-two ) Construction Observation site visit/OAC meeting per month for the duration of the project. Assumes a maximum duration of 11 months. Duration to be set by the Contractor prior to execution of Contract for Construction. If project is extended beyond this time frame the Architect may request additional services.
- ~~.2.1 In addition to the site visits outlined in 4.3.3.2, the Architect will make up to five (5) additional visits at the Owner's request.~~
- ~~.3 2 ( two ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~.4 2 ( two ) inspections for any portion of the Work to determine final completion~~
- ~~.5 2 ( two ) reviews/responses to any individual RFI (Request for Information)~~
- ~~.6 2 ( two ) evaluations of any Proposal Request~~

**§ 4.3.4** If the services covered by this Agreement have not been completed within 32 ( thirty-two ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

**§ 5.3** ~~The Owner shall identify a~~ has designated a Project Manager (Owner's Project Manager), PlanB Consultancy Inc., to be the Owner's representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.6** ~~The Owner shall coordinate the services of its own and Architect shall cooperate in coordinating the services of the Owner's consultants with those services provided by the Architect.~~ Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

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**§ 5.10** ~~Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the~~

~~Architect of any direct communications that may affect the Architect's services. With the exception of routine communications, the Architect and the Contractor shall endeavor to communicate with each other through the Owner's Project Manager. Routine communications between the Architect and Contractor may occur, provided the Owner's Project Manager is apprised through copies of appropriate correspondence, meeting minutes or other records of such communications. All instructions and other communications to the Contractor prepared by the Architect will be issued through the Owner's Project Manager. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with subcontractors and material suppliers of the Contractor shall be through the Contractor. Communications by and with Owner's separate contractors shall be through the Owner's Project Manager.~~

**§ 5.11** Before executing the Contract for Construction, the Owner shall provide the Architect with a preliminary copy of the proposed Contract for Construction and coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction. The Architect shall have ten (10) business days to review the Construction Contract and General Conditions to identify any scope modifications.

...

**§ 6.3** ~~In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet The Owner and Architect recognize the overriding budget limitations that must guide the design of the Project. The Architect agrees to use its best efforts and work jointly with the Owner and Contractor to design the Project to be constructed within the Owner's budget for the Cost of the Work. Architect will cooperate with Contractor during Contractor's execution of its responsibility to prepare preliminary construction cost estimates, to obtain bids and to establish a Guaranteed Maximum Price (GMP) that does not exceed the Owner's budget for the Cost of the Work. The Architect shall consider the periodic cost estimates provided by the Contractor as the current cost opinion to be compared to the Owner's budget for the Cost of the Work. A design and estimating contingency will be established by mutual agreement between the Owner, Architect and Contractor. The design and estimating contingency will be gradually adjusted downward and, as appropriate, added to the Cost of the Work or the Owner's construction contingency as milestone cost estimates are prepared, but in no case shall the Owner's budget for the Cost of the Work change without notice in writing from the Owner. If the Contractor's final GMP exceeds the Owner's budget for the Cost of the Work by more than 5%, at the Owner's discretion, the Architect may be required to work with the Owner and Contractor to determine modifications in the design in order to reduce the final GMP to be equal to or lower than the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4. In this instance, the Architect will perform these design and documentation services as an additional service to the Owner. The Owner's budget for the Cost of the Work assumes that the Project will be bid by qualified subcontractors, a minimum of three (3) sub-bids for each trade, except for design-build subcontractor trades established prior to bidding. The Contractor and their primary subcontractors will provide meaningful constructability review, value engineering and cost input during the Schematic Design (if a CM/GC has been formally appointed by at this stage), Design Development and Construction Documents phases. Architect shall be permitted to include within the Construction Documents, subject to the Owner's approval, such bid alternates and other measures intended to provide for reasonable adjustments to the final GMP so that the GMP will be equal to or lower than the Owner's budget for the Cost of the Work.~~

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

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

...

.2 authorize subcontractor rebidding or renegotiating of the Project within a reasonable ~~time~~time

...

.4 ~~in consultation with the Architect, revise the Project program, scope, or quality as required to reduce pursuant to Section 6.3, work with the Architect and Contractor to determine modifications in the design in order to reduce the final GMP to be equal to or lower than the Owner's budget for the Cost of the Work; or~~

...

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect, ~~without additional compensation, as an additional service,~~ shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

**§ 6.7.1** Pursuant to paragraph 6.7, the Architect shall be entitled to Additional Services if the Owner has unreasonably rejected the Architects recommendation per paragraph 6.5.

...

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. ~~If the~~ The Owner and Architect intend to transmit Instruments of Service ~~or any and~~ other information or documentation in digital form, they ~~shall endeavor agree~~ to establish necessary protocols governing such transmissions.

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

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a perpetual nonexclusive license at no cost to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of ~~Service solely and exclusively for use in performing services or construction for the Project.~~ Service. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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## **§ 8.2** ~~MEDIATION~~ DIRECT NEGOTIATION

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

**§ 8.2.2** ~~The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement.~~

A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Direct Negotiation, as defined herein, will be the initial dispute resolution process utilized by the parties. The provisions in this paragraph must be fully completed within thirty (30) calendar days.

**§ 8.2.2.1** Either the Owner or the Architect may make a written request for Direct Negotiation as an initial attempt to resolve any claim, dispute, disagreement, or other matter arising out of this Agreement. The receiving party shall respond to the written request within seven (7) days to establish a mutually agreeable meeting time.

**§ 8.2.2.2** The parties may choose to exchange supporting information in advance of the meeting. The Direct Negotiation Representatives shall have the authority to make a final resolution decision on behalf of their respective parties for the purpose avoiding further actions. Direct Negotiation will take place at the project worksite or at the location as agreed to by the Owner's and Architect's Designated Representatives.

**§ 8.2.2.3** The initiating party shall document results of the Direct Negotiation, and these documents shall be exchanged between the parties to validate the resolution with the signature of each designated representative.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the parties do not resolve a dispute through direct negotiation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following: (Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☒ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☐ Other (Specify)

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following: (Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☐ Other (Specify)

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**§ 9.7** Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. Architect for up to forty-five (45) calendar days from the date of termination.

...

§ 10.1 This Agreement shall be governed by the law of the ~~place where the Project is located,~~ state of Oregon, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

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§ 10.7.1 Project Photography and Documentation: The architect and/or architect's photographer shall be granted reasonable access to the site, grounds, exterior, and interior of the completed/occupied Project for the purpose of photographic and/or video documentation of the completed work, within twelve (12) months of the date of Substantial Completion. The use of those materials shall comply with Article 10.7. The Owner, or other parties related to the project, other than the Architect, and authorized by the Owner, will be granted permission to use the promotional materials upon executing the professional photographers or videographers copyright release form. Costs for the use of promotional material will be negotiated with all parties prior to authorizing the work.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. Architect acknowledges that Owner's obligations under this section are subject to the Oregon Public Records Act.

...

See Exhibit 'A' for total fees and fee schedule.

...

As approved by the Owner in writing on the basis of a prior negotiated lump sum for each approved additional service request, if not included in Basic Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:follows:

...

As approved by the Owner in writing on the basis of a proposed lump sum for the Architectural service requested.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect ~~plus —percent (—%), or as otherwise stated below:~~Architect:

Plus 10 percent (10%)

§ 11.5 ~~Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:~~The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit 'C'

|                              |           |    |
|------------------------------|-----------|----|
| Schematic Design Phase       | percent—( | %) |
| Design Development Phase     | percent—( | %) |
| Construction Documents       | percent—( | %) |
| Phase                        |           |    |
| Bidding or Negotiation Phase | percent—( | %) |
| Construction Phase           | percent—( | %) |

|                          |             |           |     |    |
|--------------------------|-------------|-----------|-----|----|
| Total Basic Compensation | one hundred | percent ( | 100 | %) |
|--------------------------|-------------|-----------|-----|----|

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

#### **COMPENSATION FOR REIMBURSABLE EXPENSES**

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project. Typical expenses include, but are not limited to the following:

- .1 Transportation, out-of-town travel, lodging, and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

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

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

#### **COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall not be obligated to pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project.

**Employee or Category**

**Rate**

#### **§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSESPAYMENTS TO THE ARCHITECT**

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

- ~~.8 — Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
- ~~.9 — All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 — Site office expenses; and~~
- ~~.11 — Other similar Project-related expenditures.~~

§ 11.18.1 An initial payment of zero (\$ 0 ) shall be made upon execution of this Agreement.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus — percent ( — %) of the expenses incurred. Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ninety ( 90 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

one point five % 1.5% per month

#### **§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

#### **§ 11.10 PAYMENTS TO THE ARCHITECT**

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

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

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

—%

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

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

§ 11.8.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees in writing to a specific amount.

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

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§ 12.1.1 All contractual notices or other communications hereunder to either party shall be in writing and mailed by registered or certified mail, postage prepaid, or by Federal Express or such other recognized overnight courier, or by confirmed facsimile transmission, and addressed to the address on page 1 of this Agreement, or to either party at such

other address as such party may designate, in a notice to the other party, as its address for receipt of notices hereunder. Notices by mail shall be deemed to have been given on the earlier of actual receipt by the intended recipient or on the second business day after the date when deposited in the United States mail.

**§ 12.1.2** Not used

**§ 12.1.3** Notwithstanding anything to the contrary, no partner, shareholder, agent, employee, individual, Architect of record, or other representative of Architect shall have any personal liability to the Owner for any acts or omissions performed while acting within their scope of work, whether based on a claim of negligence, any other tort, breach of contract, or any other claim, arising out of or relating to this Agreement. This limitation does not apply to Architect's insurance carriers, nor does it apply to any direct claim that Owner may make against Architect's consultants.

**§ 12.1.4** Notwithstanding any other provision of this Agreement to the contrary, nothing contained herein shall be construed as (i) constituting the guaranty, warranty or assurance, either express or implied, that the scope of services as described herein will yield or accomplish a perfect outcome for the Project; provided, however, that this disclaimer shall not diminish or relieve the Architect from performing its work in accordance with the standards set forth in Section 2.1 or elsewhere in the Agreement; (ii) an assumption of the Architect of the liability of any other party other than its consultants; (iii) creating any fiduciary responsibility from the Architect to the Owner; or (iv) creating liability for the Architect for any changes made to the Contract Documents by the Owner and/or Contractor without the Architect's knowledge. The Owner acknowledges that such changes and results thereof are not the responsibility of the Architect. Therefore, Owner agrees to release Architect from any liability arising from construction, use or as a result of such changes.

...

.2 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:

.3 —Other documents:

...

Exhibit A – Project Information & Fee Structure

Exhibit B – AIA Document E203-2013, Building Information, Modeling, and Digital Data Exhibit

Exhibit C – FFA Standard Hourly Rates

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

**City of Oregon City**

**FFA Architecture and Interiors, Inc**

(Signature)

Anthony J. Konkol, III

City Manager

(Signature)

Troy Ainsworth, AIA

Principal

**City of Oregon City**

(Signature)

James H. Band

Chief of Police

**OWNER**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

**City of Oregon City**

**APPROVED AS TO LEGAL SUFFICIENCY**

\_\_\_\_\_  
*(Signature)*

Bill Kabeiseman

City Attorney

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Troy A. Ainsworth, AIA, NCARB, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:56:38 on 08/10/2018 under Order No. 0946461574 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*