



- (b) The consultants for the Project will be: (1) MEP – Infrastructure Associates; (2) Civil – Isani Engineers; (3) Structural – Dally & Associates; (4) IT / AV - PGA Engineers; (5) Landscape – Wong & Associates.
- 2. **Incorporation of certain terms of AIA Agreement.** Architect has provided County with a proposed draft agreement from the American Institute of Architects (the “AIA Agreement”). The Parties hereby adopt, as part of this Agreement, and incorporate by reference for all intents and purposes the following terms of the AIA agreement attached hereto as Exhibit “A”:
  - (a) All of Article 3, “Scope of Architect’s Basic Services.”
  - (b) Sections 11.1 and 11.5 of Article 11, “Compensation”
- 3. **Scope of Services.** Architect shall render services to County for the Project as provided in Article 3, “Scope of Architect’s Basic Services” of the AIA Agreement attached hereto as Exhibit “A” (the “Services”).
- 4. **Time of Performance.** Time for performance of the Scope of Services under this Agreement shall begin with Architect’s receipt of Notice to Proceed (“Commencement Date”) and shall end no later than twenty (20) months from the Commencement Date. Architect shall complete such tasks described in the Scope of Services, within this time or within such additional time as may be extended by County in writing.
- 5. **Compensation and Payment Terms.**
  - (a) The Maximum Compensation to Architect for the Services performed under this Agreement is One Million Four Hundred Twenty Eight Thousand and 00/100 Dollars (\$1,428,000.00). In no event shall the amount paid by County to Architect under this Agreement exceed said Maximum Compensation without an approved change order.
  - (b) Architect understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated herein.
  - (c) County will pay Architect on an incremental basis as provided in Section 11.5 of the AIA Agreement attached hereto as Exhibit “A.” Upon completion of the phases identified in Section 11.5 of Exhibit “A”, Architect shall submit to County staff person designated by the Fort Bend County Facilities Management and Planning Director, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing.

County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

6. **Limit of Appropriation.** Architect understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is One Million Four Hundred Twenty Eight Thousand and 00/100 Dollars (\$1,428,000.00). In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Architect clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Million Four Hundred Twenty Eight Thousand and 00/100 Dollars (\$1,428,000.00) specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. Architect does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Architect may become entitled to and the total maximum sum that County may become liable to pay to Architect under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed One Million Four Hundred Twenty Eight Thousand and 00/100 Dollars (\$1,428,000.00).
7. **Non-appropriation.** Architect understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County shall immediately notify Architect in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the County. In no event shall said termination of this Agreement or County's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by County in any amount(s) in excess of those previously funded.
8. **Taxes.** County is a body corporate and politic under the laws of the state of Texas and as such, is exempt from sales and use taxes. County shall furnish evidence of its tax-exempt status upon written request by Architect.
9. **Insurance.** Prior to commencement of the Services, Architect shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Architect shall provide certified copies of insurance endorsements and/or policies if requested by County. Architect shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Architect shall obtain such insurance written on an Occurrence form from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- (a) Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
- (b) Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
- (c) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- (d) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (e) Professional Liability insurance with limits not less than \$1,000,000.

County shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Architect shall contain a waiver of subrogation in favor of County.

If required coverage is written on a claims-made basis, Architect warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.

Architect shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by County.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to County.

Approval of the insurance by County shall not relieve or decrease the liability of the Architect.

10. **Indemnity.** TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, ARCHITECT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBARCHITECT OR SUPPLIER COMMITTED BY ARCHITECT OR ARCHITECT'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH ARCHITECT EXERCISES CONTROL. ARCHITECT SHALL FURTHER PROCURE AND MAINTAIN GENERAL LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT AND SHALL FURNISH A CERTIFICATE OF INSURANCE FOR THE SAME SHOWING FORT BEND COUNTY, TEXAS AS AN ADDITIONAL INSURED.
11. **Public Information Act.** Architect expressly acknowledges and agrees that County is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall County be liable to Architect for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, County agrees to maintain the confidentiality of information provided by Architect expressly marked as proprietary or confidential. County shall not be liable to Architect for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Architect further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.
12. **Compliance with Laws.** Architect shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. Architect in providing all services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
13. **Independent Architect.** In the performance of work or services hereunder, Architect shall be deemed an independent Architect, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Architect. Architect and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
14. **Use of Customer Name.** Architect may use County's name without County's prior written consent only in Architect's customer lists. Any other use of County's name by Architect must have the prior written consent of County.

15. **County/County Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code.
16. **Personnel.** Architect represents that it presently has, or is able to obtain adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Architect shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Architect shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Architect or agent of Architect who, in County's opinion, is incompetent or by his conduct become detrimental to providing Services pursuant to this Agreement, shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at County's facilities, Architect shall comply with, and will require that all Architect's Personnel comply with, all applicable rules, regulations and known policies of County that are communicated to Architect in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

17. **Confidential and Proprietary Information.** Architect acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Architect or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Architect shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Architect) publicly known or is contained in a publicly available document; (b) is rightfully in Architect's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Architect who can be shown to have had no access to the Confidential Information.

Architect agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Architect uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of

Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Architect shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Architect shall advise County immediately in the event Architect learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Architect will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Architect against any such person. Architect agrees that, except as directed by County, Architect will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Architect will promptly turn over to County all documents, papers, and other matter in Architect's possession which embody Confidential Information.

Architect acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Architect acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Architect in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

18. **Ownership and Reuse of Documents.** All documents, data, reports, research, graphic presentation materials, etc., developed by Architect as a part of its work under this Agreement, shall become the property of County upon completion or termination of this Agreement. Architect shall promptly furnish all such data and material to County on request.
19. **Inspection of Books and Records.** Architect shall permit County, or any duly authorized agent of County, to inspect and examine the books and records of Architect for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect such books and records shall survive the termination of this Agreement for a period of four years. Notwithstanding the foregoing, Architect shall bear no liability or responsibility for deliverables that have been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.
20. **Termination.** County may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Architect. Upon termination of this Agreement by County, Architect shall be paid in accordance with Section 5, above, for those services which were provided under this Agreement prior to its termination and which have not

been previously invoiced to County. Architect's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 5 above. No fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Architect by County.

21. **Force Majeure.** Notwithstanding anything to the contrary contained herein, neither Party shall be liable to the other for any delay or inability to carry out its obligations under this Agreement if such delay or inability is the result of a Force Majeure Event. Within a reasonable time after the occurrence of such event, the Party whose obligations are affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, a Force Majeure Event includes, but is not limited to: strikes or other labor disputes, severe weather disruptions, natural disasters, fire or other acts of God; riots, war, or other emergencies; failure of any governmental agency to act in a timely manner; the discovery of any hazardous substance or differing and unforeseeable site conditions; and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

22. **Assignment.** Architect may not assign this Agreement to another party without the prior written consent of County.
23. **Successors and Assigns Bound.** County and Architect each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
24. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall Architect release any material or information developed or received during the performance of Services hereunder unless Architect obtains the express written approval of County or is required to do so by law.



25. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

**If to County:** Fort Bend County Facilities Management and Planning  
Attention: Facilities Director  
301 Jackson Street,  
Richmond, Texas 77469

**And**

Fort Bend County, Texas  
Attention: County Judge  
401 Jackson Street, 1<sup>st</sup> Floor  
Richmond, Texas 77469

**If to Architect:** Team Plus Build, LLC, d/b/a F S Group Architects  
13105 Northwest Fwy.  
Suite 1110  
Houston, Texas 77040

26. **Performance Representation.** Architect represents to County that Architect has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession (“Professionals”) practicing in the greater Houston metropolitan area. Architect shall provide the Services to County with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
27. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect.
28. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
29. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this

Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

30. **Conflict.** Architect understands and agrees that County does not accept or adopt any additional terms of the AIA agreement as part of this Agreement other than those articles and sections expressly stated in Section 2 above. In the event of a conflict between said terms of the AIA Agreement and the terms of this Agreement, the terms of this Agreement shall control.
31. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
32. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.
33. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Architect hereby verifies that Architect and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
  - (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
  - (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Architect does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
  - (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Architect does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.

- (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Architect does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. “Discriminate against a firearm entity or firearm trade association” has the meaning provided in § 2274.001(3) of the Texas Government Code. “Firearm entity” and “firearm trade association” have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.
34. **Human Trafficking.** BY ACCEPTANCE OF THIS AGREEMENT, ARCHITECT ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
35. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
36. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and shall have the same force and effect as the use of manual signatures.
37. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.


**{Execution Page Follows}**

IN WITNESS WHEREOF, and intending to be legally bound, County and Architect hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

**FORT BEND COUNTY, TEXAS**

**TEAM PLUS BUILD, LLC  
D/B/A F S GROUP ARCHITECTS**

\_\_\_\_\_  
KP George, County Judge

  
\_\_\_\_\_  
Authorized Agent – Signature

\_\_\_\_\_  
Date

Sabir, Fakhruddin  
\_\_\_\_\_  
Authorized Agent- Printed Name


**ATTEST:**

Managing Partner  
\_\_\_\_\_  
Title

\_\_\_\_\_  
Laura Richard, County Clerk

07/05/2023  
\_\_\_\_\_  
Date

**APPROVED:**

  
\_\_\_\_\_  
James Knight, Director  
Facilities Management and Planning

**AUDITOR'S CERTIFICATE**

I hereby certify that funds in the amount of \$ \_\_\_\_\_ are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.

\_\_\_\_\_  
Robert Ed Sturdivant, County Auditor

# EXHIBIT A

(Follows Behind)

# DRAFT AIA® Document B104® – 2017

## Standard Abbreviated Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the « 5th » day of « June » in the year « 2023 »  
(In words, indicate day, month and year.)

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

« Jamie Knight » « »  
« Director of Facilities »  
« Fort Bend County »  
« »

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

« Team Plus Build LLC dba F S Group Architects »  
« 13105 Northwest Freeway, Ste 1110 »  
« Houston, Texas 77040 »  
« »

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

« Approximately 42,000 gsf, three story IT facility on County-owned property in Richmond »  
« »  
« »

The Owner and Architect agree as follows.

The Fort Bend County - IT Building will be approximately a 42,000-sf office Building to house the Event & Training Space, Project Management Office, Programming Offices, Cybersecurity Offices, Infrastructure Offices, and staff & conference areas & general building functions. The building will be a steel frame building with masonry, glass and metal panels and single ply membrane roofing. The site consists of surface parking paving for employees & visitors including County Vehicle Parking, loading dock, perimeter security fencing and potentially a guardhouse.

The consultants will be the following:

- 1) MEP – Infrastructure Associates.
- 2) Civil – Isani Engineers
- 3) Structural – Dally & Associates
- 4) IT / AV - PGA Engineers
- 5) Landscape – Wong & Associates

**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.

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



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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

*(State below 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, and other information relevant to the Project.)*

« »

§ 1.2 The Owner and Architect may 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. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

**§ 2.2** The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.8:

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

**.1 General Liability**

« \$1,000,000 »

**.2 Automobile Liability**

« \$1,000,000 »

**.3 Workers' Compensation**

« \$1,000,000 »

**.4 Professional Liability**

« \$1,000,000 »

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

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

**§ 3.1.1** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. 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.

**§ 3.1.2** 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. 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.

**§ 3.1.3** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**§ 3.2 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 discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.



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

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.5 The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

### § 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the 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 3.4.4.

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

§ 3.3.3 The Architect shall submit the Construction Documents to the Owner, update the estimate for the Cost of the Work and advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.3.4 The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

### § 3.4 Construction Phase Services

#### § 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A104-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 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.

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

#### § 3.4.2 Evaluations of the Work

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.2, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known

deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

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

§ 3.4.2.4 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.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

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

### § 3.4.4 Submittals

§ 3.4.4.1 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 any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about 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.

### § 3.4.5 Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

### § 3.4.6 Project Completion

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

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services are not included in Basic Services but may be required for the Project. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement.

*(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)*

« »

§ 4.2 The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect shall provide services necessitated by a change in the Initial Information, changes in previous instructions or approvals given by the Owner, or a material change in the Project including size; quality; complexity; the Owner's schedule or budget for Cost of the Work; or procurement or delivery method as an Additional Service.

§ 4.2.2 The Architect has included in Basic Services « » ( « » ) visits to the site by the Architect during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.3 The Architect shall, as an Additional Service, provide services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service.

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

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

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

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.5 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.

§ 5.6 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.

§ 5.7 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.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

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

§ 5.10 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.

## ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program

and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1, as a Supplemental Service.

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

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

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

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

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

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising

from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other, for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. 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 9.6.

### § 8.2 Mediation

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

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

*(Check the appropriate box.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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

### § 8.3 Arbitration

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

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

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

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

### § 8.3.4 Consolidation or Joinder

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

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

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

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

## ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

«N/A »

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

«N/A »

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

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

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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 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. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

#### ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum  
(Insert amount)

\$1,428,000

.2 Percentage Basis  
(Insert percentage value)

« » ( « » ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other  
(Describe the method of compensation)

« »

§ 11.2 For Supplemental Services identified 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.)

« »

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

« »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « » percent ( « » %), or as follows:

« »

§ 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:

Design Phase	«Thirty»	percent (	«30 »	%)
Construction Documents Phase	«Fifty »	percent (	« 50 »	%)
Construction Phase	«Twenty»	percent (	« 20 »	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, 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.)*

« »

Employee or Category	Rate

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and 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.

§ 11.8.2 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.

§ 11.9 Payments to the Architect

§ 11.9.1 Initial Payment

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.

**§ 11.9.2 Progress Payments**

**§ 11.9.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of 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.)*

« » % « »

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

**§ 11.9.2.3** 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:  
*(Include other terms and conditions applicable to this Agreement.)*

« »

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B104™-2017, Standard Abbreviated Form of Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this agreement.)*

« »

- .3 Exhibits:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.)*

« »

- .4 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

« »

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

