



AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

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

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

City of Manzanita
PO Box 129
Manzanita, Oregon 97130

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

TBD
TBD
TBD

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

Design services for the City of Manzanita’s new City Hall building

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.0 The Project will be divided into two phases. Phase 1 will include all services of Architect up to and including Architect's completion of 30% complete Schematic Design Documents. Owner will use the 30% complete Schematic Design Documents to seek City Council approval for Phase 2 of the Project. Phase 2 will consist of Architect's completion of the Schematic Design Phase, the Design Development Phase, the Construction Documents Phase, and the Construction Phase services as further described in this Agreement. Architect will not commence Phase 2 services unless authorized by Owner in writing. Owner is under no obligation to authorize Phase 2 services. In the event that Owner chooses not to authorize Phase 2 services, Owner may terminate this Agreement as set forth in Section 9.5 below.

§ 1.1.1 The Owner's program for the Project:

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

Architect will assist Owner in developing Owner's Program as described in the Request For Proposal ("RFP") attached as Exhibit X.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

See RFP attached as Exhibit X.

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§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

[TBD]

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

[TBD]

.2 Construction commencement date:

[TBD]

.3 Substantial Completion date or dates:

[TBD]

.4 Other milestone dates:

[TBD]

§ 1.1.5 The Owner intends to retain a Construction Manager using a competitive request for proposals process under the Owner's public contracting rules. The Owner intends to enter a construction contract with the selected Construction Manager that is based on AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended (the "CM/GC Contract").
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

[TBD]

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, or another mutually agreeable form, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

[TBD]

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

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[TBD]

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

.1 Geotechnical Engineer:

[TBD]

.2 Civil Engineer:

[TBD]

.3 Other, if any:

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

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

[TBD]

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

[TBD]

.2 Mechanical Engineer:

[TBD]

.3 Electrical Engineer:

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[TBD]

§ 1.1.11.2 Consultants retained under Supplemental Services:

[TBD]

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

[TBD]

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner may 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 professional services as set forth in this Agreement. The Architect will be bound by and will perform its work in compliance with Modified AIA Document A201-2007 General Conditions of the Contract for Construction, as amended (the "General Conditions"), but only to the extent that the General Conditions relate to the services of the Architect. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Consistent with this Section 2.2 and Section 3.1.3, the Architect will perform this Agreement and render decisions in a timely manner to avoid delay in the progress of the Project and the Work of the Contractor. The standard of performance established under this Section 2.2 applies to the entire Agreement. Nothing in this Agreement may be interpreted to modify the standard of performance required by this Section 2.2.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project (the "Architect's Designated Representative"). The Architect's Designated Representative and its principal architects (collectively, "Supervisory Personnel"), and any persons nominated to replace them, must be reasonably satisfactory to the Owner and the Owner may require the removal and replacement of any or all of them upon ten (10) days' notice to the Architect. So long as the Supervisory Personnel remain employed by the Architect, the Architect may not remove or replace its Supervisory Personnel from any Project without 45 calendar days' advance written notice to the Owner. Except for emergencies, the Architect will consult with the Owner and obtain the Owner's

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approval of any new or replacement Supervisory Personnel for the Project. New or replacement Supervisory Personnel must be qualified and must have adequate experience with similar projects, and the Architect shall deliver to the Owner résumés of proposed new or replacement Supervisory Personnel.

§ 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, at its sole cost, shall procure and maintain at all times while performing services under this Agreement the following insurance issued by responsible carriers rated A VII or better by A.M. Best's rating service (unless otherwise approved by the Owner), and in a form and substance reasonably satisfactory to the Owner, that affords at least the minimum coverage limits listed in this Section 2.5.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million (\$2,000,000) for each occurrence, Three Million (\$2,000,000) in the aggregate for bodily injury and property damage, Three Million (\$3,000,000) in the aggregate for products completed operations, Three Million (\$3,000,000) for personal and advertising injury, Five Hundred Thousand (\$500,000) for fire damage from any one fire, and \$5,000 in medical expenses per any one person. The commercial general liability insurance shall be issued on an occurrence basis, written on ISO form CG 00 01 (or an equivalent form approved in advance by Owner). The CGL coverage shall include all major coverage categories, including without limitation bodily injury, property damage, premises/operations, products and completed operations, independent contractors, blanket broad form contractual liability, and X, C, U hazards.

§ 2.5.2 Automobile Liability issued on an occurrence basis, and covering owned, hired, and non-owned vehicles used by the Architect with a comprehensive single limit of not less than Two Million (\$ 2,000,000) per claim for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. Commercial umbrella/excess liability coverage must include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000) each accident, One Million (\$1,000,000) each employee, and One Million (\$1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services by the Architect or its employees, agents, representatives or consultants, with policy limits of not less than Two Million (\$2,000,000) per claim and Two Million (\$2,000,000) in the aggregate and subject to no more than \$10,000 per claim deductible.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and its officers, directors, employees, agents, volunteers, representatives, consultants, councilors, and officials as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. The additional insured endorsement for the Commercial General Liability must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

§ 2.5.8 Certificates of Insurance. The Architect shall file with the Owner certificates of insurance in forms acceptable to or provided by the Owner before it commences its services under this Agreement and annually thereafter. Each certificate of insurance must (a) demonstrate the coverage dates, amount, and type of insurance required by this Section 2.5 or by law, (b) provide all endorsements and declarations applicable to the coverage, and (c) identify the insurer(s) providing each set of coverage.

- .1 The Architect must notify the Owner in writing at least thirty (30) days before cancellation, lapse, or expiration of any insurance required by this Section 2.5.
- .2 Consistent with Section 2.5.7, all insurance policies, certificates, and binders of insurance for Commercial General Liability and Automobile Liability shall show the Owner and its officers, directors, employees, agents, volunteers, and consultants as additional insureds.
- .3 Upon the Owner's request, the Architect will deliver to the Owner copies of any policy (together with all endorsements, schedules, and other attachments), or a certified abstract of the policy, for any coverage provided under this Agreement.
- .4 The Architect shall notify the Owner in writing if any deductibles or self-insured retention exceeds \$10,000. At its sole discretion, the Owner may (1) accept the higher deductible, (2) require the Architect to insure such deductibles or self-insured retention as respects the Owner, its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers, or (3) require the Architect to provide a surety bond guaranteeing the Architect's payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses. The Architect is solely responsible for satisfying all self-insured retentions or deductibles. No self-insured retention or deductible is a reimbursable expense.
- .5 The Owner has the right, but not the obligation, to prohibit the Architect from entering the Project Site until the required certificates, in complete compliance with this Section 2.5, are received and approved by the Owner.

§ 2.5.9 Responsibility for Architect Consultants The Architect shall be responsible to the Owner for acts and omissions of (1) the Architect's principals and employees, (2) the Architect's consultants and subcontractors, (3) the respective principals, agents, and employees of the consultants and subcontractors, and (4) other persons or entities for whom the Architect is responsible, for their respective performance of the Architect's services.

§ 2.5.10 Consultant Insurance. The Architect shall cause all its consultants to carry and maintain workers' compensation coverage required by law and general and professional liability insurance coverage with limits mutually agreed upon by the Owner and the Architect. In the absence of any such agreement, the limits shall be the same as those required of the Architect.

§ 2.5.11 Maintaining Insurance. The Architect must maintain the same or better insurance coverage throughout the Project and the applicable tail-out period. The tail-out period for Architect's professional liability coverage described in Section 2.5.6 may not be less than 4 years from the date of Substantial Completion of the Project. The tail-out period for all other insurance coverage may not be less than two years from the date of Substantial Completion of the Project.

§ 2.5.12 Failure to Maintain Insurance. The Architect's maintenance of its and its consultants' insurance coverage in full force and effect for the Project is a condition precedent to the Architect's right to exercise or enforce any right or remedy for money damages against the Owner. Failure by the Architect to procure and maintain the insurance policies required above in full force and effect during the performance of services under this Agreement, and during any extensions or additional services hereunder, shall constitute a breach of this Agreement, in which case the Owner shall have the right, in addition to and without prejudice to any other rights, to purchase such insurance on behalf of the Architect, and the Architect shall reimburse the Owner upon demand and shall furnish such information needed by the Owner to obtain such insurance or, alternatively, the Owner may immediately terminate this Agreement for cause pursuant to Section 9.4 of this Agreement.

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§ 2.5.13 Limitations on coverages:

- .1 No insurance provided by the Architect under this Section 2.5 shall be required to indemnify the Owner, the Construction Manager, or their agents, representatives, or employees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or part by their negligence, but will require indemnity to the extent of the negligence of the Architect or its agents, representatives, or employees.
- .2 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Architect. Insurance in effect or procured by the Architect will not reduce or limit the Architect's contractual obligations to indemnify the Owner for claims or suits that result from or are connected with the services provided under this Agreement.

§ 2.5.14 The Architect's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Architect's insurance shall not include any cross-suit exclusion or preclude the Owner from asserting a claim. The Architect waives all rights of subrogation against the Owner and coverage that the Owner maintains.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, review payment applications in a timely manner, promptly issue and revise punch list documentation, and report progress to the Owner. During the design and preconstruction phase, the Architect shall organize and conduct Project meetings and prepare and disseminate minutes and other meeting documentation, and shall work as a team with the Owner and the Construction Manager pursuant to the CM/GC Contract. Once the Construction Manager has been selected, the Architect shall assist the Construction Manager with scheduling and conducting regular Project meetings, and the Architect shall attend those meetings and review and correct minutes and other meeting documentation prepared by the Construction Manager.

§ 3.1.1.1 The Architect shall coordinate the designs and other services provided by Architect's consultants and correlate the design documents to be consistent with each other.

§ 3.1.1.2 The Architect shall attend Council Meetings as deemed necessary by Owner to present and provide design updates.

§ 3.1.1.3 The Architect shall participate in Owner's Community Outreach effort as described in Exhibit **X** to this Agreement. Participation in the Community Outreach effort includes but is not limited to preparing a Presentation Package and participating in Community Engagement and Design Input meetings.

§ 3.1.1.4 The Architect shall assist the Owner in preparation of a report to the State Historic Preservation Office (SHPO) as it relates to the Project.

§ 3.1.2 The Architect shall coordinate its services and the services of its consultants with those services provided by the Owner, the Construction Manager and the Owner's consultants. The Architect shall review information provided by the Owner, including information derived pursuant to Section 3.1.9, for completeness necessary to the performance of the Basic Services, and thereafter, the Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, 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 to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates

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when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project. Time is of the essence of this Agreement.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

(Paragraphs deleted)

§ 3.1.5 Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact certification agencies and governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to and comply with applicable design requirements imposed by those agencies, authorities and entities.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect will cooperate with and assist Owner in any appeal or challenge to code or inspection requirements.

§ 3.1.9 The Architect:

- .1 Shall advise the Owner of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and soil pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; Hazardous Materials testing; or other tests or reports required for the Architect's services, by law, or by the Contract Documents;
- .2 Shall recommend and assist the Owner in arranging for the services of engineers or consultants for those tests and services when they are reasonably necessary or required, but shall not itself contract with those engineers or consultants;
- .3 Shall assist the Owner in arranging for and coordinating those tests or services that are approved and contracted for by the Owner;
- .4 Shall review all inspections and reports, advise the Owner of their results and recommendations, provide the Owner with copies of those reports or results, if necessary, and report to the Owner and the provider of the inspections or reports any errors or inconsistencies discovered;
- .5 Shall obtain from the Owner's consultants or engineers the soil bearing, percolation, elevation, and other values necessary to prepare the Architect's designs and Construction Documents; and
- .6 Shall request verification of this information as necessary to perform its services.

To the extent that the Owner agrees with the Architect's recommendations, the Owner shall contract with consultants and engineers as identified in this Section 3.1.9, and pay in advance for their services.

§ 3.1.10 The Architect shall review and comply with all laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities applicable to the Architect's services, including without limitation all requirements identified in Section 3.5.2. If a conflict arises between any of these requirements, the Architect will so notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 3.2 Schematic Design Phase Services

(Paragraph deleted)

§ 3.2.0 The Architect shall review all previous work completed for the Project and refresh and rework Owner’s programming study as necessary.

§ 3.2.1 The Architect shall work with the Owner and, if applicable, the Construction Manager, to develop the program. The Architect will review information furnished by the Owner and Construction Manager, 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 other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall promptly notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner’s sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, 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 and the Construction Manager’s review. In addition to preparing a complete set Schematic Design Documents, Architect will prepare a set of 30% complete Schematic Design Documents. 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, including but not limited to MEP systems, low-voltage system, finishes, and any other pertinent information to represent the program and basic design intent, shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, 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 sustainable design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager 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 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 [Deleted].

§ 3.2.8 During the Schematic Design Phase, the following design and building components will be analyzed for recommendations or for identification of alternate materials, systems, equipment, and development of conceptual design solutions, as applicable:

- .1 Demolition plans
- .2 Alternate structural systems
- .3 Energy sources

- .4 Energy conservation
- .5 Heating and ventilating
- .6 Air conditioning
- .7 Plumbing
- .8 Fire protection
- .9 General space requirements
- .10 Conveying systems
- .11 Power service and distribution
- .12 Lighting
- .13 Telecommunications
- .14 Fire detection and alarms
- .15 Security systems
- .16 Electronic communications
- .17 Acoustical systems
- .18 Special electrical systems
- .19 Landscaping
- .20 On-site utility systems
- .21 Fire protection feeders
- .22 Drainage systems
- .23 Paving, drives, and walkways
- .24 Off-site utilities
- .25 Fixture and equipment layouts, including M/E/P and architectural requirements
- .26 Identification of potential architectural materials, systems, equipment, and their criteria and quality standards consistent with the conceptual design

§ 3.2.9 The Schematic Design Phase shall include a thorough code search identifying all applicable building codes and ordinances and certification requirements.

§ 3.2.10 The Schematic Design Documents shall include, at a minimum, typical structural bay plan, and outline specifications.

§ 3.2.11 Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services upon which proper development of design and construction documents is dependent.

§ 3.2.12 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.13 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.5, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.14 Following the approval of the Owner, the Architect shall seek and secure review of Schematic Design Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 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, pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by the Construction Manager and shall illustrate and describe the development of the approved Schematic Design

Documents and shall consist of drawings and other documents including plans, sections, elevations, major mechanical and electrical equipment sizes and riser diagrams, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 During the Design Development Phase, the scope of services will consist of continued development and expansion of all aspects of the Schematic Design Phase and development of outline specifications, details, and material lists to establish the following: .

- .1 Demolition and site preparation
- .2 Basic structural system dimensions
- .3 Final structural design criteria
- .4 Foundation design criteria
- .5 Preliminary sizing of major structural components
- .6 Critical coordination clearances
- .7 Outline specifications or material lists for all Construction Specifications Institute divisions
- .8 Existing building coordination
- .9 Approximate equipment sizes and capacities
- .10 Preliminary equipment layouts
- .11 Required space for equipment
- .12 Acoustical and vibration control
- .13 Visual impacts
- .14 Energy conservation measures
- .15 Criteria for lighting, electrical, and communications systems
- .16 Approximate sizes and capacities of major components
- .17 Landscaping
- .18 Required chases and clearances
- .19 Continued development and expansion of civil Schematic Design Documents
- .20 Continued development and expansion of landscape Schematic Design Documents
- .21 Interior construction of the Project
- .22 Special interior design features

§ 3.3.3 Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services on which proper development of design and construction documents is dependent..

(Paragraphs deleted)

§ 3.3.4 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.3.6 Following the approval of the Owner, the Architect shall seek and secure review of Design Development Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 3.3.7 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4 Evaluation of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.4.1 Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the

Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner on all communications related to substitution requests, clarifications, and interpretations.

§ 3.4.2 The Owner will receive a Guaranteed Maximum Price proposal or Control Estimate, as appropriate, from the Construction Manager no later than at the conclusion of the Design Development Phase or as mutually agreed by the Owner and Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager in writing.

§ 3.4.3 Upon authorization by the Owner, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 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 and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of coordinated Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to construct the Work, the Construction Manager 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.

§ 3.5.2 The Architect shall incorporate the design requirements of certification agencies and governmental authorities having jurisdiction over the Project into the Construction Documents, and shall prepare the Construction Documents to meet all requirements of applicable codes, regulations, industry and certification standards adopted in the jurisdiction. The Architect will respond to all comments, requests, or changes requested by state and local governments, or certification agencies, with jurisdiction over the Project or its use, including, when required, filing and prosecuting routine appeals and modifying Construction Documents. If a conflict arises between any of these requirements, the Architect will so notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 3.5.3 The Architect shall compile a project manual that includes the General Conditions and Specifications and may include bidding requirements and sample forms.

§ 3.5.4 [Deleted].

§ 3.5.5 [Deleted].

§ 3.5.6 The Architect will make available for reproduction two (2) sets of Construction Documents to be used by the Owner, Construction Manager, its subcontractors, and others who must review or approve the Project. These sets will be provided without additional charge to the Owner. The Architect will furnish additional sets of the Construction Documents as required to authorized recipients at the recipient's expense.

§ 3.5.7 Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services on which proper development of design and construction documents is dependent.

§ 3.5.8 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents. The Architect's and its consultant's Construction Documents submitted to the

Owner and to permitting or certification agencies shall be effectively complete, coordinated, and internally consistent, and shall contain no known undisclosed or missing elements.

§ 3.5.9 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and obtain the Owner's approval of the Construction Documents.

§ 3.5.10 Following the approval of the Owner, the Architect shall seek and secure review of Construction Documents by all governmental, regulatory, and certification agencies as may be necessary or appropriate, and obtain ultimate approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of those agencies.

§ 3.5.11 The Architect will include on each page of the Instruments of Service and bid sets all notices as may be required pursuant to ORS 701.625. The language for such notices will be provided by the Owner.

§ 3.5.12 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.5 [Deleted].

§ 3.5.1 [Deleted].

§ 3.5.2 [Deleted].

§ 3.5.2.1 [Deleted].

§ 3.5.2.2

(Paragraphs deleted)

[Deleted]:

§ 3.5.2.3 [Deleted].

§ 3.5.3 [Deleted].

§ 3.5.3.1 [Deleted].

§ 3.5.3.2

(Paragraphs deleted)

[Deleted]:

§ 3.5.3.3 [Deleted].

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the construction contract between the Owner and the Construction Manager as set forth below and in the General Conditions.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the first to occur of (a) Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, (b) Owner's approval of the Construction Manager's Control Estimate, or (c) Owner's issuance of a Notice to Proceed to the Construction Manager. Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services terminates at the expiration of the period for correction of the Work described in the General Conditions.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager 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 and in the General Conditions. 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 Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. But the Architect shall report to the Owner all

observed deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager. 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 Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, as a representative of the Owner, and the Architect's consultants, shall visit the site before commencement of the Work and at regular intervals appropriate to the stage of construction, or as otherwise required in the Contract Documents (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect 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 and substitutions to the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority, with notice to 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 to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect shall inform the Owner contemporaneously of any rejection of Work or documents.

§ 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 Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the 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 Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.6.2.5 The Architect shall assist with the resolution of Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.2.6 The Architect will consistently attend weekly construction progress and scheduling meetings at the Project Site, review and approve or reject the Construction Manager's critical path method construction schedule, and address all matters within the scope of the Architect's services for the Project. The Architect shall review and correct minutes and other meeting documentation prepared by others, and preserve copies of appropriate minutes and Project documentation.

§ 3.6.2.7 The Architect will require its consultants and engineers to perform periodic visual inspections necessary to determine whether materials and equipment delivered to the Project Site to be installed or incorporated in the Work conform to the requirements of the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager'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, the

Construction Manager has submitted all conditional lien releases, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.3.4 The Architect must complete its review of each Application for Payment from the Construction Manager and deliver the Certificate for Payment (or rejection of the Application for Payment) to the Owner within 7 days from the date of the Architect's receipt of the Application for Payment. The Architect will be liable to the Owner for all damages incurred as a result of the Architect's untimely review of the Applications for Payment, including without limitation damages owed to the Contractor, interest charges, attorney fees, indemnification expenses, construction lien costs or losses, suspension of work, and other direct or consequential damages.

§ 3.6.3.5 The Architect or the Owner may withhold approval for payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or the Owner's opinion the representations to the Owner required by Section 3.6.3.1 cannot be made. If the Architect is unable to certify payment equal to the amount requested in the Construction Manager's Application for Payment, the Architect will notify the Construction Manager and Owner as provided in Section 9.4.1 of the General Conditions. If the Construction Manager, the Owner, and the Architect cannot agree on a revised amount, the Architect will promptly approve payment of the amount for which the Architect is able to make such representations to the Owner.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness to not cause delay in the Work while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager'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 Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager 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 design professional retained by the Construction Manager that bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing with reasonable promptness to not cause delay in the Work, but in all events no later than 7 days after receipt of the request unless otherwise mutually agreed by Owner and Architect before the expiration of the 7 day period. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information. The Architect will maintain a log of requests for information throughout the Project.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect, with approval by the Owner, 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 the Contract Documents, the Architect or the Construction Manager shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce, and distribute Drawings and Specifications to describe Work to be added, deleted, or modified, as appropriate. The Architect's compensation may be equitably adjusted as appropriate for the preparation, reproduction, and distribution of Drawings and Specifications required by Owner-initiated changes.

§ 3.6.5.2 The Architect shall maintain a Change Order log for and document changes in the Work.

§ 3.6.5.3 The Architect shall review requests by the Owner or Construction Manager for changes in the Work, including adjustments to the Contract Sum or Contract Time. A request for a change in the Work shall be accompanied by sufficient supporting information to permit the Architect and the Owner to make a reasonable determination without extensive investigation. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. With the Owner's approval, the Architect shall incorporate those costs or estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Construction Manager.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, in consultation with the Owner, shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance;
- .3 fix the time within which the Construction Manager shall finish all items on the list of items to be corrected prepared under Section 9.8 of the General Conditions;
- .4 inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work;
- .5 issue Certificates of Substantial Completion;
- .6 receive from the Construction Manager 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 Construction Manager; and,
- .7 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with its consultants, the Construction Manager, and the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 [Deleted, See Section 3.6.6.1.4].

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (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 Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and the Construction Manager to review the facility and prepare a "punch list" of required corrective actions by the Construction Manager, distribute the written documents to the Construction Manager, and make appropriate recommendations to the Owner.

§ 3.6.6.6 The Architect with its consultants will review and comment on the draft Record Construction Documents submitted by the Construction Manager at the time of Substantial Completion. The Architect will promptly return the draft Record Construction Documents with its comments to the Construction Manager so that the Construction Manager can prepare final documents and submit them to the Owner within 60 days following Substantial Completion. The Architect will provide electronic and other forms of its Construction Documents for the Construction Manager’s use in preparing Record Construction Documents.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	N/A
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Architect
§ 4.1.1.5 Site evaluation and planning	Basic Services, See Section 3.2.5 and Exhibit X
§ 4.1.1.6 Building Information Model management responsibilities	N/A
§ 4.1.1.7 Development of Building Information Models for post construction use	N/A
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Basic Service
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.13 On-site project representation	N/A
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	N/A
§ 4.1.1.16 As-constructed record drawings	Basic Services, See Section 3.6.6.6
§ 4.1.1.17 Post-occupancy evaluation	N/A
§ 4.1.1.18 Facility support services	N/A
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect's coordination of the Owner's consultants	N/A
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	Architect
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	[TBD]
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	Architect
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Acoustics, Building Envelope Services
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

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

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

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

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

§ 4.1.3 [Deleted].

§ 4.2 Architect's Additional Services

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

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

- .1 Services necessitated by a material and unanticipated change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

Init.

- .2 Services necessitated by the unanticipated enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by unanticipated official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other material failure of performance on the part of the Owner or the Owner's consultants or contractors for which the Architect can demonstrate an impact to the schedule or Cost of the Work or Project;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner, except as otherwise indicated elsewhere in this Agreement;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing (a) that could not reasonably have been anticipated, or (b) that was not needed to obtain approval for the Project or its design elements;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding to which the Architect is not a party, but the Owner has no duty to pay for the Architect's services at proceedings to the extent that those services arise from the Architect's negligence;
- .9 [Deleted];
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- or,
- .11 [Deleted].

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services for the Project, but only if authorized by the Owner's advance written approval. Architect will notify the Owner with reasonable promptness of the Additional Services listed in this Section 4.2.2 that need to be performed. The notification must be provided no later than two business days after the Architect becomes aware of the need and must include an explanation of the facts and circumstances giving rise to the need. The Additional Services that Architect may submit for Owner's approval are below:

- .1 Excessive instances of reviewing a Contractor's submittals out of sequence from the submittal schedule agreed to by the Architect;
- .2 Excessive instances of 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; or
- .3

(Paragraphs deleted)

Excessive instances of evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 () visits to the site by the Architect during construction
- .3 () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 () inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 [Deleted].

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information necessary and relevant for the Architect to perform in a timely manner regarding requirements for and limitations on the Project

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 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. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. 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 budget for the Cost of the Work or in the Project's scope and quality.

§ 5.5 The Owner shall identify a representative who will be authorized to act on the Owner's behalf with respect to the Project (the "Owner's Designated Representative"). Teachers, administrators, and other personnel of the Owner, other than the Owner's Designated Representatives, do not have such authority. Specifically, the Architect and its consultants cannot rely on statements, requests, or purported authorizations made by persons or entities other than the Owner's Designated Representatives for any purpose relating to the Work, the Contract Documents, changes, or payment. The Owner or the Owner's Designated Representative shall render decisions and evaluate, reject, or 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 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 may include, if reasonably available to the Owner, 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.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

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

§ 5.9 Subject to Section 3.1.9, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager 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.

§ 5.12 The Owner shall endeavor to include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any material direct communications between the Owner and the Construction Manager otherwise relating to the Project. The Owner shall generally endeavor to communicate with the Architect's consultants through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall endeavor to 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 Architect may request that the Owner provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

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

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

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 the Construction Manager's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services, 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 shall be adjusted throughout the Project as stated in Sections 5.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 [Deleted].

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

§ 6.6 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Construction Documents Phase exceeds the Owner's budget of the Cost of the Work, the Owner may

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 [Deleted];
- .3 [Deleted];
- .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. The Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Instruments of Service are representations, drawings, specifications, and other documents, including those in electronic form of the tangible creative work performed by the Architect and the Architect's consultants for the Project under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Architect must also provide printed and physically stamped Instruments of Service for this Project. The Architect will be bound by the printed and stamped Instruments of Service and the electronic versions after their delivery to the Owner. The Architect will not be responsible for any change made in electronic forms of its Instruments of Service, whether intentional or unintentional, after the Instruments of Service leave the Architect's control.

§ 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 an irrevocable 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 for which they are prepared. The Architect shall obtain similar irrevocable nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, 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.

§ 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 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.

§ 7.3.2 Notwithstanding any other provision of Section 7.3, Instruments of Service may be continuously used for construction of the Project during the pendency of any dispute between the Owner and the Architect, including without limitation any dispute for payment. If and upon the date the Architect is in default of this Agreement, the foregoing license shall be supplemented by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project.

§ 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.

§ 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 DEFINITION OF CLAIMS A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and the Architect arising out of or relating to this Agreement. The responsibility to substantiate a Claim shall rest with the party making the Claim.

§ 8.1.2 NOTICE OF CLAIMS A claim by either the Owner or the Architect must be made by written notice to the other party. Claims by either party must be initiated within twenty-one (21) working days after occurrence of the event giving rise to such Claim or within twenty-one (21) working days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner or the Architect must identify known bases for each Claim and the nature and amount of relief sought.

§ 8.1.3 CONTINUING CONTRACT PERFORMANCE Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 9, the Architect shall proceed diligently with performance of its services under this Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 8.1.4 INITIAL RESOLUTION To facilitate the resolution of Claims between the Architect and the Owner, the parties shall attempt in good faith first to resolve Claims that are made before final payment by the following dispute-resolution process. The parties agree not to proceed to arbitration until the following process has been attempted. Neither party's rights, defenses, Claims, or remedies shall be considered waived, released, or adversely affected by its participation in this process, but this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

- .1 All reasonable efforts will be made by the Owner's Designated Representatives and the Architect's Designated Representative to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Architect's senior executive responsible for the Project.
- .2 The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in this Agreement.
- .3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to arbitration under Section 8.2.

§ 8.2 Mediation

§ 8.2.1 The parties may endeavor to resolve disputes by mediation at any time and as they may agree.

§ 8.2.2 [Deleted].

§ 8.2.3 [Deleted].

§ 8.2.4 The method of binding dispute resolution shall be the following:
(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation conducted in Tillamook County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

[] Other: *(Specify)*

§ 8.3 Arbitration [Deleted.]

(Paragraphs deleted)

§ 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 when due in accordance with this Agreement for more than 70 calendar days, such failure may 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 for this Project 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 for more than 30 consecutive days (not related to phasing of 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 reasonable 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 consecutive days for reasons other than the fault of the Architect (unless related to phasing of the Project), 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 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and, unless terminated because Owner will not be authorizing Phase 2 of the Project, costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7

(Paragraphs deleted)

[Deleted].

§ 9.8 [Deleted].

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by and construed in accordance with the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in the General Conditions identified in Section 2.1. The term "day" as used in the Agreement shall mean calendar day unless otherwise specifically defined. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

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

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect, except for persons or entities indemnified under the terms of this Agreement.

§ 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. Notwithstanding the foregoing sentence:

- .1 To the extent that the Architect's duties include examination of existing conditions at the Project site where hazardous materials are used or are present, the Architect is responsible, with respect to its or its consultants' actions, to use proper precautions to avoid dissemination of hazardous materials and maintain a safe working environment; and
- .2 To the extent that the Architect's duties include (a) specification of the use of hazardous materials in construction work or (b) the design of systems to carry hazardous materials for use in the Owner's operations, the Architect is responsible to incorporate into its services proper precautions and design elements to contain or abate (as appropriate) hazardous materials and to maximize the safe use and transmission of hazardous materials as part of the continuation or planned use of the Owner's operations.

§ 10.7 The Architect may, subject to the Owner's prior review and approval (which shall not be unreasonably withheld) 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. Prior to entering onto Owner's property to make such representations, the Architect shall notify the Owner and the Owner and the Architect shall agree on a schedule for such access. The Architect shall provide the Owner with copies of all photographic or artistic representations of the completed Project. However, the Architect's materials shall not include the Owner's confidential or proprietary information, except as may be approved by the Owner. 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 If the Architect or Owner receives information that is "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 or as may be required under the Oregon Public Records Law (ORS 192.410 to 505) . This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably

necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Compliance with Public Contracting Code. The Architect will comply with all federal, state, and local laws applicable to the Work under this Agreement, including without limitation the following requirements of the Oregon Public Contracting Code.

§ 10.10.1 Payment of Laborers (ORS 279B.220 and 279C.505): The Architect shall:

- .1 Make payment promptly, as due, to all persons supplying to such Architect labor or material for the prosecution of the work provided for this contract.
- .2 Pay all contributions or amounts due the Industrial Accident Fund by the Architect or subcontractors, if permitted, incurred in the performance of this contract.
- .3 Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished by Architect.
- .4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- .5 If Architect neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Agreement as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Architect. Owner's payment of such a claim shall not relieve Architect or Architect's surety, if any, from its obligation to any unpaid claims.

§ 10.11.2 Payment for Medical Care and Workers' Compensation (ORS 279B.230 and 279C.530):

- .1 Architect shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Architect, of all sums that Architect agrees to pay for such services and all moneys and sums that Architect collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for such service.
- .2 All subject employers working under the Agreement are either employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

§ 10.11.3 Hours of Labor (ORS 279B.020(5), 279B.235(3), 279C.520(3), and 279C.540(6)):

- .1 **Maximum Hours:** Architect shall pay its employees at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
- .2 **Exemption:** The requirements of 1.4.2.4.3.1 do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC. 201 to 209 from receiving overtime.

- .3 Discrimination Prohibition. The Construction Manager shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause.
- .4 Salary Discussion. The Construction Manager may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- .5 Notice to Employees: Architect must give notice in writing to its employees who perform work on this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 10.11.4 Time Limitation on Claim for Overtime (ORS 279C.545): Any worker employed by Architect shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Architect within 90 days from the completion of this Contract, providing Architect has

- .1 Posted circular: Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
- .2 Maintaining posted circular: Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

§ 10.12 When Work Is Performed on Owner's property (including school buildings) Architect Shall Comply With the Following:

- .1 Identification. Architect performing work on Owner's property or for Owner shall carry photo identification and will present such, to anyone on request. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the Owner in its sole discretion determines is required to easily identify Contractors.
- .2 Sign-in Required. As required by schools and other Owner facilities, each day of work Architect employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are in the school or other location.
- .3 No Smoking. Smoking or other use of tobacco is prohibited on the Owner property..
- .4 No Weapons or Firearms. Except as provided by Oregon Statutes and Owner policy, weapons and firearms are prohibited on Owner property.

§ 10.13 When Work Is Performed in or on School Sites, Architect Shall Comply With the Following:

- .1 **No Unsupervised Contact with Students.** Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Architect will ensure that Architect, any consultants, and their officers, agents and employees will have no direct unsupervised contact with students while on Owner's property. Architect will work with the Owner to ensure compliance with this requirement. If Architect is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contract with students in a particular circumstance or circumstances, Architect shall so notify the Owner before performing any services that could result is such contact. Architect authorizes Owner to obtain information about Architect and Architect's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of

Architect that will have unsupervised contact with students. Architect also agrees to cause Architect's employees and/or subcontractors, if any, to authorize Owner to conduct such background checks. Architect shall pay all fees assessed by Oregon Department of Education for processing the background check. Owner may deduct the cost of such fees from a progress or final payment to the Architect under this contract, unless the Architect elects to pay such fees directly.

- .2 Confidentiality.** The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Architect or its consultants in the performance of this Agreement may not be re-disclosed to third parties without written consent of the students' parents/guardians; and must be used only for the purposes identified in this Agreement.

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum**
(Insert amount)
- .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 the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

[TBD]

(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.)

[TBD]

§ 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:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

[TBD]

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	percent ()
Design Development Phase	percent ()
Construction Documents	percent ()

Phase				
Procurement Phase		percent (%)
Construction Phase		percent (%)
<hr/>				
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 Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager 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.

§ 11.6.1 [Deleted].

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices, which may occur no more than once each year and which may not occur until 12 months following the Effective Date. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
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§ 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 reasonably and necessarily incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Transportation in connection with the Project and pre-authorized out-of-town travel and subsistence subject to the following:
 - (a) Expenses of commuting to and from the Project site are excluded from reimbursable expenses.
 - (b) Routine fax, cellular telephone, e-mail, and postage charges are not reimbursable, and
 - (c) Reimbursement for transportation and commuting will not exceed the Internal Revenue Service’s rate per mile for reimbursement of business transportation in effect at the time of travel.
- .2 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, and standard form documents;
- .5 Extraordinary postage, handling, and delivery such as Fed ex, UPS, overnight, or other expedited delivery;
- .6 Expense of overtime work requiring higher than regular rates, only if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and non-typical presentation materials requested by the Owner or required for the Project;
- .8 [Deleted];
- .9 [Deleted];
- .10 [Deleted];
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures as preapproved by the Owner pursuant to Section 11.8.3.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants without markup. Notwithstanding the foregoing sentence, the Architect may include a markup of up to 10 percent of the actual fees assessed by government agencies for Project permits that the Architect pays on the Owner’s behalf, conditioned upon submission of the receipt of payment for the fees assessed. The Architect shall

not issue a bill to the Owner for payment of Reimbursable Expenses unless the aggregate Reimbursable Expenses exceed \$100.00.

§ 11.8.3 The Architect has provided and the Owner has approved a detailed estimate of anticipated Reimbursable Expenses. The estimate of [\$TBD] is based upon the rates outlined in the Fee Proposal incorporated under Section 13.2 of this Agreement. Costs may not be incurred for Reimbursable Expenses in excess of this amount without prior written approval of the Owner. If, subject to Section 4.2, Additional Services are required during the course of the Project that were not previously identified and anticipated, the Architect shall prepare a detailed estimate of the cost of reimbursable expenses arising from such Additional Services and submit it to the Owner for approval before the services are rendered. Thereafter, costs may not be incurred in excess of the approved written estimate without prior written approval of the Owner. Compliance with this Section 11.8.3 is a condition precedent to payment for Reimbursable Expenses.

§ 11.9

(Paragraphs deleted)

[Deleted].

§ 11.10 Payments to the Architect

§ 11.10.1 [Deleted].

§ 11.10.1.1 [Deleted].

§ 11.10.1.2 [Deleted].

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within 30 days of Owner's acceptance 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.)

Interest will accrue at an annual rate of one percent over the prime lending rate published by The Wall Street Journal on the date on which interest begins to accrue.

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§ 12.1 INDEMNIFICATION

§ 12.1.1 Indemnity – Claims for Other Than Professional Liability:

§ 12.1.1.1 To the fullest extent permitted by law, the Architect shall defend, indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them for, from, and against claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, resulting from or arising out of the activities of the Architect or its consultants, agents or employees under this Agreement, including without limitation (a) the Architect's breach of this Agreement; (b) death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders caused in whole or in part by the Architect's performance under this Agreement; (c) any alleged violation or infringement of third-party trade rights arising out of services provided by the Architect; (d) any negligent or willful acts or omissions by the Architect or persons for whom the Architect is responsible; and

(e) claims asserted by employees of the Architect or of any entity for whom the Architect is responsible (including wage or benefit claims) or for any violation of federal, state, or local wage and labor laws and regulations thereunder by the Architect or other persons acting on behalf of the Architect. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 12.1.

§ 12.1.1.2 No indemnification or insurance provided by the Architect under this Section 12.1.1 will be required to indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Architect or those entities or persons for whom the Architect is responsible.

§ 12.1.2. Indemnity – Claims for Professional Liability.

§ 12.1.2.1 To the fullest extent permitted by law, Architect shall indemnify and hold harmless the Owner, Owner’s consultants, and agents and employees of any of them for, from, and against claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, resulting from our arising out of the professionally negligent acts, errors, or omissions, whether alleged or actual, of the Architect or its subconsultants, agents or employees in the performance of professional services under this Agreement, including without limitation (a) the Architect’s breach of this Agreement; (b) death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders caused in whole or in part by the Architect’s performance under this Agreement; (c) any alleged violation or infringement of third-party trade rights arising out of services provided by the Architect; (d) any negligent acts or omissions by the Architect or persons for whom the Architect is responsible; and (e) claims asserted by employees of the Architect or of any entity for whom the Architect is responsible (including wage or benefit claims) or for any violation of federal, state, or local wage and labor laws and regulations thereunder by the Architect or other persons acting on behalf of the Architect. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 12.1.

§ 12.1.3 No indemnification or insurance provided by the Architect under this Section 12.1.2 will be required to indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the negligence of the Architect or those entities or persons for whom the Architect is responsible.

§ 12.1.4 In claims against any person or entity indemnified under this Section 12.1 by an employee of the Architect or of any entity for whom the Architect is responsible, the indemnification obligation under Section 12.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

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 B101™–2017, Standard Form Agreement Between Owner and Architect, as amended
- .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:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

- 4 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit : Owner's Request for Proposal

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

CITY OF MANZANITA

[TBD]

OWNER (Signature)

By:
Name:
Title:
(Printed name and title)

ARCHITECT (Signature)

By:
Name:
Title:
(Printed name, title, and license number, if required)

Init.

Additions and Deletions Report for AIA[®] Document B101[™] – 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:33:49 ET on 12/14/2021.

PAGE 1

City of Manzanita
PO Box 129
Manzanita, Oregon 97130

...

TBD
TBD
TBD

...

Design services for the City of Manzanita's new City Hall building

PAGE 2

§ 1.1.0 The Project will be divided into two phases. Phase 1 will include all services of Architect up to and including Architect's completion of 30% complete Schematic Design Documents. Owner will use the 30% complete Schematic Design Documents to seek City Council approval for Phase 2 of the Project. Phase 2 will consist of Architect's completion of the Schematic Design Phase, the Design Development Phase, the Construction Documents Phase, and the Construction Phase services as further described in this Agreement. Architect will not commence Phase 2 services unless authorized by Owner in writing. Owner is under no obligation to authorize Phase 2 services. In the event that Owner chooses not to authorize Phase 2 services, Owner may terminate this Agreement as set forth in Section 9.5 below.

...

Architect will assist Owner in developing Owner's Program as described in the Request For Proposal ("RFP") attached as Exhibit X.

...

See RFP attached as Exhibit X.

PAGE 3

[TBD]

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

...

TBD

...

[TBD]

...

[TBD]

...

[TBD]

§ 1.1.5 ~~The Owner intends the following procurement and delivery method for the Project: to retain a Construction Manager using a competitive request for proposals process under the Owner's public contracting rules. The Owner intends to enter a construction contract with the selected Construction Manager that is based on AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended (the "CM/GC Contract").~~

...

[TBD]

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, or another mutually agreeable form. into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

...

[TBD]

PAGE 4

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PAGE 5

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[TBD]

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[TBD]

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

...

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect will be bound by and will perform its work in compliance with Modified AIA Document A201-2007 General Conditions of the Contract for Construction, as amended (the "General Conditions"), but only to the extent that the General Conditions relate to the services of the Architect. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Consistent with this Section 2.2 and Section 3.1.3, the Architect will perform this Agreement and render decisions in a timely manner to avoid delay in the progress of the Project and the Work of the Contractor. The standard of performance established under this Section 2.2 applies to the entire Agreement. Nothing in this Agreement may be interpreted to modify the standard of performance required by this Section 2.2.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project (the "Architect's Designated Representative"). The Architect's Designated Representative and its principal architects (collectively, "Supervisory Personnel"), and any persons nominated to replace them, must be reasonably satisfactory to the Owner and the Owner may require the removal and replacement of any or all of them upon ten (10) days' notice to the Architect. So long as the Supervisory Personnel remain employed by the Architect, the Architect may not remove or replace its Supervisory Personnel from any Project without 45 calendar days' advance written notice to the Owner. Except for emergencies, the Architect will consult with the Owner and obtain the Owner's approval of any new or replacement Supervisory Personnel for the Project. New or replacement Supervisory Personnel must be qualified and must have adequate experience with similar projects, and the Architect shall deliver to the Owner résumés of proposed new or replacement Supervisory Personnel.

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

§ 2.5 The Architect shall ~~maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~ Architect, at its sole cost, shall procure and maintain at all times while performing services under this Agreement the following insurance issued by responsible carriers rated A VII or better by A.M. Best's rating service (unless otherwise approved by the Owner), and in a form and substance reasonably satisfactory to the Owner, that affords at least the minimum coverage limits listed in this Section 2.5.

§ 2.5.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) Two Million (\$2,000,000) for each occurrence, Three Million (\$2,000,000) in the aggregate for bodily injury and property damage, Three Million (\$3,000,000) in the aggregate for products completed operations, Three Million (\$3,000,000) for personal and advertising injury, Five Hundred Thousand (\$500,000) for fire damage from any one fire, and \$5,000 in medical expenses per any one person. The commercial general liability insurance shall be issued on an occurrence basis, written on ISO form CG 00 01 (or an equivalent form approved in advance by Owner). The CGL coverage shall include all major coverage categories, including without limitation bodily injury, property damage, premises/operations, products and completed operations, independent contractors, blanket broad form contractual liability, and X, C, U hazards.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$) per accident issued on an occurrence basis, and covering owned, hired, and non-owned vehicles used by the Architect with a comprehensive single limit of not less than Two Million (\$ 2,000,000) per claim for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. Commercial umbrella/excess liability coverage must include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

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§ 2.5.5 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) One Million (\$ 1,000,000) each accident, One Million (\$ 1,000,000) each employee, and One Million (\$ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services by the Architect or its employees, agents, representatives or consultants, with policy limits of not less than (\$) per claim and (\$) in the aggregate. Two Million (\$ 2,000,000) per claim and Two Million (\$ 2,000,000) in the aggregate and subject to no more than \$10,000 per claim deductible.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and its officers, directors, employees, agents, volunteers, representatives, consultants, councilors, and officials as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. The additional insured endorsement for the Commercial General Liability must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5. **Certificates of Insurance.** The Architect shall file with the Owner certificates of insurance in forms acceptable to or provided by the Owner before it commences its services under this Agreement and annually thereafter. Each certificate of insurance must (a) demonstrate the coverage dates, amount, and type of insurance required by this Section 2.5 or by law, (b) provide all endorsements and declarations applicable to the coverage, and (c) identify the insurer(s) providing each set of coverage.

- .1 The Architect must notify the Owner in writing at least thirty (30) days before cancellation, lapse, or expiration of any insurance required by this Section 2.5.

- .2 Consistent with Section 2.5.7, all insurance policies, certificates, and binders of insurance for Commercial General Liability and Automobile Liability shall show the Owner and its officers, directors, employees, agents, volunteers, and consultants as additional insureds.
- .3 Upon the Owner's request, the Architect will deliver to the Owner copies of any policy (together with all endorsements, schedules, and other attachments), or a certified abstract of the policy, for any coverage provided under this Agreement.
- .4 The Architect shall notify the Owner in writing if any deductibles or self-insured retention exceeds \$10,000. At its sole discretion, the Owner may (1) accept the higher deductible, (2) require the Architect to insure such deductibles or self-insured retention as respects the Owner, its consultants, councilors, officers, directors, officials, employees, agents, representatives, and volunteers, or (3) require the Architect to provide a surety bond guaranteeing the Architect's payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses. The Architect is solely responsible for satisfying all self-insured retentions or deductibles. No self-insured retention or deductible is a reimbursable expense.
- .5 The Owner has the right, but not the obligation, to prohibit the Architect from entering the Project Site until the required certificates, in complete compliance with this Section 2.5, are received and approved by the Owner.

§ 2.5.9 Responsibility for Architect Consultants The Architect shall be responsible to the Owner for acts and omissions of (1) the Architect's principals and employees, (2) the Architect's consultants and subcontractors, (3) the respective principals, agents, and employees of the consultants and subcontractors, and (4) other persons or entities for whom the Architect is responsible, for their respective performance of the Architect's services.

§ 2.5.10 Consultant Insurance. The Architect shall cause all its consultants to carry and maintain workers' compensation coverage required by law and general and professional liability insurance coverage with limits mutually agreed upon by the Owner and the Architect. In the absence of any such agreement, the limits shall be the same as those required of the Architect.

§ 2.5.11 Maintaining Insurance. The Architect must maintain the same or better insurance coverage throughout the Project and the applicable tail-out period. The tail-out period for Architect's professional liability coverage described in Section 2.5.6 may not be less than 4 years from the date of Substantial Completion of the Project. The tail-out period for all other insurance coverage may not be less than two years from the date of Substantial Completion of the Project.

§ 2.5.12 Failure to Maintain Insurance. The Architect's maintenance of its and its consultants' insurance coverage in full force and effect for the Project is a condition precedent to the Architect's right to exercise or enforce any right or remedy for money damages against the Owner. Failure by the Architect to procure and maintain the insurance policies required above in full force and effect during the performance of services under this Agreement, and during any extensions or additional services hereunder, shall constitute a breach of this Agreement, in which case the Owner shall have the right, in addition to and without prejudice to any other rights, to purchase such insurance on behalf of the Architect, and the Architect shall reimburse the Owner upon demand and shall furnish such information needed by the Owner to obtain such insurance or, alternatively, the Owner may immediately terminate this Agreement for cause pursuant to Section 9.4 of this Agreement.

§ 2.5.13 Limitations on coverages:

- .1 No insurance provided by the Architect under this Section 2.5 shall be required to indemnify the Owner, the Construction Manager, or their agents, representatives, or employees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or part by their negligence, but will require indemnity to the extent of the negligence of the Architect or its agents, representatives, or employees.
- .2 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Architect. Insurance in effect or procured by the Architect will not reduce or

limit the Architect's contractual obligations to indemnify the Owner for claims or suits that result from or are connected with the services provided under this Agreement.

§ 2.5.14 The Architect's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Architect's insurance shall not include any cross-suit exclusion or preclude the Owner from asserting a claim. The Architect waives all rights of subrogation against the Owner and coverage that the Owner maintains.

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

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, review payment applications in a timely manner, promptly issue and revise punch list documentation, and report progress to the Owner. During the design and preconstruction phase, the Architect shall organize and conduct Project meetings and prepare and disseminate minutes and other meeting documentation, and shall work as a team with the Owner and the Construction Manager pursuant to the CM/GC Contract. Once the Construction Manager has been selected, the Architect shall assist the Construction Manager with scheduling and conducting regular Project meetings, and the Architect shall attend those meetings and review and correct minutes and other meeting documentation prepared by the Construction Manager.

§ 3.1.1.1 The Architect shall coordinate the designs and other services provided by Architect's consultants and correlate the design documents to be consistent with each other.

§ 3.1.1.2 The Architect shall attend Council Meetings as deemed necessary by Owner to present and provide design updates.

§ 3.1.1.3 The Architect shall participate in Owner's Community Outreach effort as described in Exhibit X to this Agreement. Participation in the Community Outreach effort includes but is not limited to preparing a Presentation Package and participating in Community Engagement and Design Input meetings.

§ 3.1.1.4 The Architect shall assist the Owner in preparation of a report to the State Historic Preservation Office (SHPO) as it relates to the Project.

§ 3.1.2 The Architect shall coordinate its services and the services of its consultants with those services provided by the Owner-Owner, the Construction Manager and the Owner's consultants. The Architect shall review information provided by the Owner, including information derived pursuant to Section 3.1.9, for completeness necessary to the performance of the Basic Services, and thereafter, the Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner-Owner, the Construction Manager, 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 to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, and (5) 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. Time is of the essence of this Agreement.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval. submit information to the

Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

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

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

§ 3.1.5 Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact certification agencies and governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to and comply with applicable design requirements imposed by those agencies, authorities and entities.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect will cooperate with and assist Owner in any appeal or challenge to code or inspection requirements.

§ 3.1.9 The Architect:

- .1 Shall advise the Owner of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and soil pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; Hazardous Materials testing; or other tests or reports required for the Architect's services, by law, or by the Contract Documents;
- .2 Shall recommend and assist the Owner in arranging for the services of engineers or consultants for those tests and services when they are reasonably necessary or required, but shall not itself contract with those engineers or consultants;
- .3 Shall assist the Owner in arranging for and coordinating those tests or services that are approved and contracted for by the Owner;
- .4 Shall review all inspections and reports, advise the Owner of their results and recommendations, provide the Owner with copies of those reports or results, if necessary, and report to the Owner and the provider of the inspections or reports any errors or inconsistencies discovered;
- .5 Shall obtain from the Owner's consultants or engineers the soil bearing, percolation, elevation, and other values necessary to prepare the Architect's designs and Construction Documents; and
- .6 Shall request verification of this information as necessary to perform its services.

To the extent that the Owner agrees with the Architect's recommendations, the Owner shall contract with consultants and engineers as identified in this Section 3.1.9, and pay in advance for their services.

§ 3.1.10 The Architect shall review and comply with all laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities applicable to the Architect's services, including without limitation all requirements identified in Section 3.5.2. If a conflict arises between any of these requirements, the Architect will so notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 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.

§ 3.2.0 The Architect shall review all previous work completed for the Project and refresh and rework Owner's programming study as necessary.

§ 3.2.1 The Architect shall work with the Owner and, if applicable, the Construction Manager, to develop the program. The Architect will review information furnished by the Owner and Construction Manager, 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, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall promptly notify the Owner of ~~(1) any~~ (1) any inconsistencies discovered in the information, and ~~(2) other~~ (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, present to the Owner and Construction Manager, 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, approval and the Construction Manager's review. In addition to preparing a complete set Schematic Design Documents, Architect will prepare a set of 30% complete Schematic Design Documents. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations, modeling. Preliminary selections of major building systems and construction materials materials, including but not limited to MEP systems, low-voltage system, finishes, and any other pertinent information to represent the program and basic design intent, shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1. other sustainable design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager 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, schedule and budget for the Cost of the Work.

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§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. [Deleted].

§ 3.2.8 During the Schematic Design Phase, the following design and building components will be analyzed for recommendations or for identification of alternate materials, systems, equipment, and development of conceptual design solutions, as applicable:

.1 Demolition plans

- .2 Alternate structural systems
- .3 Energy sources
- .4 Energy conservation
- .5 Heating and ventilating
- .6 Air conditioning
- .7 Plumbing
- .8 Fire protection
- .9 General space requirements
- .10 Conveying systems
- .11 Power service and distribution
- .12 Lighting
- .13 Telecommunications
- .14 Fire detection and alarms
- .15 Security systems
- .16 Electronic communications
- .17 Acoustical systems
- .18 Special electrical systems
- .19 Landscaping
- .20 On-site utility systems
- .21 Fire protection feeders
- .22 Drainage systems
- .23 Paving, drives, and walkways
- .24 Off-site utilities
- .25 Fixture and equipment layouts, including M/E/P and architectural requirements
- .26 Identification of potential architectural materials, systems, equipment, and their criteria and quality standards consistent with the conceptual design

§ 3.2.9 The Schematic Design Phase shall include a thorough code search identifying all applicable building codes and ordinances and certification requirements.

§ 3.2.10 The Schematic Design Documents shall include, at a minimum, typical structural bay plan, and outline specifications.

§ 3.2.11 Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services upon which proper development of design and construction documents is dependent.

§ 3.2.12 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.13 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.5, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.14 Following the approval of the Owner, the Architect shall seek and secure review of Schematic Design Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

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§ 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, pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall approval and Construction Manager's review. The Design Development Documents shall be based upon information

provided, and estimates prepared by the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, major mechanical and electrical equipment sizes and riser diagrams, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 ~~The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.~~ During the Design Development Phase, the scope of services will consist of continued development and expansion of all aspects of the Schematic Design Phase and development of outline specifications, details, and material lists to establish the following:

- .1 Demolition and site preparation
- .2 Basic structural system dimensions
- .3 Final structural design criteria
- .4 Foundation design criteria
- .5 Preliminary sizing of major structural components
- .6 Critical coordination clearances
- .7 Outline specifications or material lists for all Construction Specifications Institute divisions
- .8 Existing building coordination
- .9 Approximate equipment sizes and capacities
- .10 Preliminary equipment layouts
- .11 Required space for equipment
- .12 Acoustical and vibration control
- .13 Visual impacts
- .14 Energy conservation measures
- .15 Criteria for lighting, electrical, and communications systems
- .16 Approximate sizes and capacities of major components
- .17 Landscaping
- .18 Required chases and clearances
- .19 Continued development and expansion of civil Schematic Design Documents
- .20 Continued development and expansion of landscape Schematic Design Documents
- .21 Interior construction of the Project
- .22 Special interior design features

§ 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.~~ Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services on which proper development of design and construction documents is dependent.

§ 3.4 Construction Documents Phase Services

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

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

§ 3.4.3 ~~During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding,~~

including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

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

§ 3.3.4 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.3.6 Following the approval of the Owner, the Architect shall seek and secure review of Design Development Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 3.3.7 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4 Evaluation of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.4.1 Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner on all communications related to substitution requests, clarifications, and interpretations.

§ 3.4.2 The Owner will receive a Guaranteed Maximum Price proposal or Control Estimate, as appropriate, from the Construction Manager no later than at the conclusion of the Design Development Phase or as mutually agreed by the Owner and Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager in writing.

§ 3.4.3 Upon authorization by the Owner, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.5 Procurement Construction Documents Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction. 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 and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of coordinated Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to construct the

Work, the Construction Manager 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.

§ 3.5.2 ~~Competitive Bidding~~The Architect shall incorporate the design requirements of certification agencies and governmental authorities having jurisdiction over the Project into the Construction Documents, and shall prepare the Construction Documents to meet all requirements of applicable codes, regulations, industry and certification standards adopted in the jurisdiction. The Architect will respond to all comments, requests, or changes requested by state and local governments, or certification agencies, with jurisdiction over the Project or its use, including, when required, filing and prosecuting routine appeals and modifying Construction Documents. If a conflict arises between any of these requirements, the Architect will so notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 3.5.3 The Architect shall compile a project manual that includes the General Conditions and Specifications and may include bidding requirements and sample forms.

§ 3.5.4 [Deleted].

§ 3.5.5 [Deleted].

§ 3.5.6 The Architect will make available for reproduction two (2) sets of Construction Documents to be used by the Owner, Construction Manager, its subcontractors, and others who must review or approve the Project. These sets will be provided without additional charge to the Owner. The Architect will furnish additional sets of the Construction Documents as required to authorized recipients at the recipient's expense.

§ 3.5.7 Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services on which proper development of design and construction documents is dependent.

§ 3.5.8 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents. The Architect's and its consultant's Construction Documents submitted to the Owner and to permitting or certification agencies shall be effectively complete, coordinated, and internally consistent, and shall contain no known undisclosed or missing elements.

§ 3.5.9 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and obtain the Owner's approval of the Construction Documents.

§ 3.5.10 Following the approval of the Owner, the Architect shall seek and secure review of Construction Documents by all governmental, regulatory, and certification agencies as may be necessary or appropriate, and obtain ultimate approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of those agencies.

§ 3.5.11 The Architect will include on each page of the Instruments of Service and bid sets all notices as may be required pursuant to ORS 701.625. The language for such notices will be provided by the Owner.

§ 3.5.12 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.5 [Deleted].

§ 3.5.1 [Deleted].

§ 3.5.2 [Deleted].

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.[Deleted].

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

- .1 — facilitating the distribution of Bidding Documents to prospective bidders;
- .2 — organizing and conducting a pre-bid conference for prospective bidders;

- ~~3~~ — preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- ~~4~~ — organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.~~[Deleted]~~;

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.~~[Deleted]~~.

§ 3.5.3 **Negotiated Proposals**~~[Deleted]~~.

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~[Deleted]~~.

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

- ~~1~~ — facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- ~~2~~ — organizing and participating in selection interviews with prospective contractors;
- ~~3~~ — preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- ~~4~~ — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~[Deleted]~~;

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~[Deleted]~~.

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§ 3.6.1.1 The Architect shall provide administration of the Contract-construction contract between the Owner and the Contractor-Construction Manager as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.the General Conditions.

§ 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. Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the first to occur of (a) Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, (b) Owner's approval of the Construction Manager's Control Estimate, or (c) Owner's issuance of a Notice to Proceed to the Construction Manager. Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services terminates at the expiration of the period for correction of the Work described in the General Conditions.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment. The Architect shall advise and consult with the Owner and Construction Manager 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 and in the General Conditions. 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 Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. But the Architect shall report to the Owner all observed deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager. 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 Construction Manager or of any other persons or entities performing portions of the Work.

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§ 3.6.2.1 ~~The Architect shall visit the site at~~ Architect, as a representative of the Owner, and the Architect's consultants, shall visit the site before commencement of the Work and at regular intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, the Contract Documents (1) to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect 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 and substitutions to the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the ~~Contractor, Construction Manager,~~ and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the ~~authority~~-authority, with notice to 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 to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the ~~Contractor, Subcontractors, Construction Manager, Subcontractors,~~ material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect shall inform the Owner contemporaneously of any rejection of Work or documents.

§ 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, Construction Manager.~~ The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the 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,~~ Construction Manager, 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 A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor.~~ The Architect shall assist with the resolution of Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.2.6 The Architect will consistently attend weekly construction progress and scheduling meetings at the Project Site, review and approve or reject the Construction Manager's critical path method construction schedule, and address all matters within the scope of the Architect's services for the Project. The Architect shall review and correct minutes and other meeting documentation prepared by others, and preserve copies of appropriate minutes and Project documentation.

§ 3.6.2.7 The Architect will require its consultants and engineers to perform periodic visual inspections necessary to determine whether materials and equipment delivered to the Project Site to be installed or incorporated in the Work conform to the requirements of the Contract Documents.

§ 3.6.3 Certificates for Payment to ~~Contractor~~Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the ~~Contractor~~Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the ~~Contractor's~~Construction Manager'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~~ the Construction Manager has submitted all conditional lien releases, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

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§ 3.6.3.4 The Architect must complete its review of each Application for Payment from the Construction Manager and deliver the Certificate for Payment (or rejection of the Application for Payment) to the Owner within 7 days from the date of the Architect's receipt of the Application for Payment. The Architect will be liable to the Owner for all damages incurred as a result of the Architect's untimely review of the Applications for Payment, including without limitation damages owed to the Contractor, interest charges, attorney fees, indemnification expenses, construction lien costs or losses, suspension of work, and other direct or consequential damages.

§ 3.6.3.5 The Architect or the Owner may withhold approval for payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or the Owner's opinion the representations to the Owner required by Section 3.6.3.1 cannot be made. If the Architect is unable to certify payment equal to the amount requested in the Construction Manager's Application for Payment, the Architect will notify the Construction Manager and Owner as provided in Section 9.4.1 of the General Conditions. If the Construction Manager, the Owner, and the Architect cannot agree on a revised amount, the Architect will promptly approve payment of the amount for which the Architect is able to make such representations to the Owner.

§ 3.6.4.1 The Architect shall review the ~~Contractor's-Construction Manager's~~ submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness to not cause delay in the Work while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the ~~Contractor's-Construction Manager'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 Construction Manager's~~ responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the ~~Contractor-Construction Manager~~ 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 design professional retained by the Construction Manager~~ that bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information.

Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing ~~within any time limits agreed upon, or otherwise with reasonable promptness, with~~ reasonable promptness to not cause delay in the Work, but in all events no later than 7 days after receipt of the request unless otherwise mutually agreed by Owner and Architect before the expiration of the 7 day period. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information. The Architect will maintain a log of requests for information throughout the Project.

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

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§ 3.6.5.1 ~~The Architect~~ Architect, with approval by the Owner, 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, the Architect~~ the Contract Documents, the Architect or the Construction Manager shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce, and distribute Drawings and Specifications to describe Work to be added, deleted, or modified, as appropriate. The Architect's compensation may be equitably adjusted as appropriate for the preparation, reproduction, and distribution of Drawings and Specifications required by Owner-initiated changes.

§ 3.6.5.2 The Architect shall maintain ~~records relative to changes in the Work,~~ a Change Order log for and document changes in the Work.

§ 3.6.5.3 The Architect shall review requests by the Owner or Construction Manager for changes in the Work, including adjustments to the Contract Sum or Contract Time. A request for a change in the Work shall be accompanied by sufficient supporting information to permit the Architect and the Owner to make a reasonable determination without extensive investigation. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. With the Owner's approval, the Architect shall incorporate those costs or estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Construction Manager.

...

§ 3.6.6.1 ~~The Architect~~ Architect, in consultation with the Owner, shall:

...

- .2 establish responsibilities of the Owner and the Construction Manager for security, maintenance, heat, utilities, damage to the Work, and insurance;
- .3 fix the time within which the Construction Manager shall finish all items on the list of items to be corrected prepared under Section 9.8 of the General Conditions;
- .4 inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work;
- .5 issue Certificates of Substantial Completion;
- ~~.3~~ .6 receive from the Construction Manager and 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; assembled by the Construction Manager; and,
- ~~.4~~ .7 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work. ~~[Deleted, See Section 3.6.6.1.4].~~

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner ~~to review the facility operations and performance~~ and the Construction Manager to review the facility and prepare a "punch list" of required corrective actions by the Construction Manager, distribute the written documents to the Construction Manager, and make appropriate recommendations to the Owner.

ARTICLE 4 — SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 3.6.6.6 The Architect with its consultants will review and comment on the draft Record Construction Documents submitted by the Construction Manager at the time of Substantial Completion. The Architect will promptly return the draft Record Construction Documents with its comments to the Construction Manager so that the Construction Manager can prepare final documents and submit them to the Owner within 60 days following Substantial Completion. The Architect will provide electronic and other forms of its Construction Documents for the Construction Manager's use in preparing Record Construction Documents.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
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§ 4.1.1.1	Programming	<u>Architect</u>
§ 4.1.1.2	Multiple preliminary designs	<u>N/A</u>
§ 4.1.1.3	Measured drawings	<u>Architect</u>
§ 4.1.1.4	Existing facilities surveys	<u>Architect</u>
§ 4.1.1.5	Site evaluation and planning	<u>Basic Services, See Section 3.2.5 and Exhibit X</u>
§ 4.1.1.6	Building Information Model management responsibilities	<u>N/A</u>
§ 4.1.1.7	Development of Building Information Models for post construction use	<u>N/A</u>
§ 4.1.1.8	Civil engineering	<u>Architect</u>
§ 4.1.1.9	Landscape design	<u>Architect</u>
§ 4.1.1.10	Architectural interior design	<u>Architect</u>
§ 4.1.1.11	Value analysis	<u>Basic Service</u>
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	<u>Architect</u>
§ 4.1.1.13	On-site project representation	<u>N/A</u>
§ 4.1.1.14	Conformed documents for construction	<u>Architect</u>
§ 4.1.1.15	As-designed record drawings	<u>N/A</u>
§ 4.1.1.16	As-constructed record drawings	<u>Basic Services, See Section 3.6.6.6</u>
§ 4.1.1.17	Post-occupancy evaluation	<u>N/A</u>
§ 4.1.1.18	Facility support services	<u>N/A</u>

§ 4.1.1.19	Tenant-related services	<u>N/A</u>
§ 4.1.1.20	Architect's coordination of the Owner's consultants	<u>N/A</u>
§ 4.1.1.21	Telecommunications/data design	<u>Architect</u>
§ 4.1.1.22	Security evaluation and planning	<u>Architect</u>
§ 4.1.1.23	Commissioning	<u>Owner</u>
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3 Section 4.1.3	[TBD]
§ 4.1.1.25	Fast-track design services	<u>N/A</u>
§ 4.1.1.26	Multiple bid packages	<u>Architect</u>
§ 4.1.1.27	Historic preservation	<u>N/A</u>
§ 4.1.1.28	Furniture, furnishings, and equipment design	<u>Architect</u>
§ 4.1.1.29	Other services provided by specialty Consultants	<u>Acoustics, Building Envelope Services</u>

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§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™ 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2. ~~[Deleted]~~.

...

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

- .1 Services necessitated by a material and unanticipated change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the unanticipated enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by unanticipated official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other material failure of performance on the part of the Owner or the Owner's consultants or ~~contractors~~; contractors for which the Architect can demonstrate an impact to the schedule or Cost of the Work or Project;

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- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the ~~Owner~~; Owner, except as otherwise indicated elsewhere in this Agreement;
- .7 Preparation for, and attendance at, a public presentation, meeting ~~or hearing~~; or hearing (a) that could not reasonably have been anticipated, or (b) that was not needed to obtain approval for the Project or its design elements;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal ~~proceeding~~, except where the Architect is party thereto; proceeding to which the Architect is not a party, but the Owner has no duty to pay for the Architect's services at proceedings to the extent that those services arise from the Architect's negligence;
- .9 ~~Evaluation of the qualifications of entities providing bids or proposals;~~ ~~[Deleted];~~

...

- .11 ~~Assistance to the Initial Decision Maker, if other than the Architect.~~ ~~[Deleted]~~.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, ~~notify the Owner with reasonable promptness, and explain Services for the Project, but only if authorized by the Owner's advance written approval.~~ Architect will notify the Owner with reasonable promptness of the Additional Services listed in this Section 4.2.2 that need to be performed. The notification must be provided no later than two business days after the Architect becomes aware of the need and must include an explanation of the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice. The Additional Services that Architect may submit for Owner's approval are below:

- ~~.1~~ Reviewing a Contractor's submittal Excessive instances of reviewing a Contractor's submittals out of sequence from the submittal schedule ~~approved~~ agreed to by the Architect;
- ~~.2~~ Responding Excessive instances of 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; or
- ~~.3~~ Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- ~~.4~~ Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- ~~.5~~ Evaluating Excessive instances of evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

...

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information necessary and relevant for the Architect to perform 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. Project

§ 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. retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

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

~~benchmark~~ 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. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. 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 budget for the Cost of the Work or in the Project's scope and quality.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. ~~identify a representative who will be authorized to act on the Owner's behalf with respect to the Project (the "Owner's Designated Representative"). Teachers, administrators, and other personnel of the Owner, other than the Owner's Designated Representatives, do not have such authority. Specifically, the Architect and its consultants cannot rely on statements, requests, or purported authorizations made by persons or entities other than the Owner's Designated Representatives for any purpose relating to the Work, the Contract Documents, changes, or payment. The Owner or the Owner's Designated Representative shall render decisions and evaluate, reject, or~~ 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 provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1. ~~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 may include, if reasonably available to the Owner , 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.~~

...

§ 5.9 ~~The Subject to Section 3.1.9, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~

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§ 5.11 The Owner shall provide prompt written notice to the Architect ~~and Construction Manager~~ 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.

§ 5.12 The Owner shall ~~endeavor to include the Architect in all communications with the Contractor-Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any material direct communications between the Owner and the Contractor-Construction Manager otherwise relating to the Project. Communications by and~~ The Owner shall generally endeavor to communicate with the Architect's consultants ~~shall be through the Architect.~~

§ 5.13 Before executing the Contract for Construction, the Owner shall ~~endeavor to 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~~ Architect may request that the Owner provide the Architect a copy of the executed agreement between the Owner and ~~Contractor-Construction Manager~~, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect ~~reasonable~~ access to the Project site prior to commencement of the Work and shall obligate the ~~Contractor-Construction Manager~~ to provide the Architect access to the Work wherever it is in preparation or progress.

...

§ 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' the Construction Manager's~~ 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; ~~does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services,~~ 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 stated in Sections 5.4 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.

...

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

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

§ 6.6 If the Owner's budget for ~~Construction Manager's~~ estimate of 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 exceeds the Owner's budget of the Cost of the Work, the Owner may~~

...

- .2 authorize rebidding or renegotiating of the Project within a reasonable time; ~~[Deleted];~~
- .3 terminate in accordance with Section 9.5; ~~[Deleted];~~

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§ 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~~ The Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

...

§ 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. Instruments of Service are representations, drawings, specifications, and other documents, including those in electronic form of the tangible creative work performed by the Architect and the

Architect's consultants for the Project under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Architect must also provide printed and physically stamped Instruments of Service for this Project. The Architect will be bound by the printed and stamped Instruments of Service and the electronic versions after their delivery to the Owner. The Architect will not be responsible for any change made in electronic forms of its Instruments of Service, whether intentional or unintentional, after the Instruments of Service leave the Architect's control.

...

§ 7.3 The Architect grants to the Owner a-an irrevocable nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar Project for which they are prepared. The Architect shall obtain similar irrevocable nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, 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, subject to any protocols established pursuant to Section 1.3, Service 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, expenses 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. Section 7.3.1. The terms of this Section 7.3.1-Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4. Section 9.4.

§ 7.3.2 Notwithstanding any other provision of Section 7.3, Instruments of Service may be continuously used for construction of the Project during the pendency of any dispute between the Owner and the Architect, including without limitation any dispute for payment. If and upon the date the Architect is in default of this Agreement, the foregoing license shall be supplemented by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project.

§ 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.

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§ 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. **DEFINITION OF CLAIMS** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and the Architect arising out of or relating to this Agreement. The responsibility to substantiate a Claim shall rest with the party making the Claim.

§ 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 A201-2017, 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. **NOTICE OF CLAIMS** A claim by either the Owner or the Architect must be made by written notice to the other party. Claims by either party must be initiated within twenty-one (21) working days after occurrence of the event giving rise to such Claim or within twenty-one (21) working days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner or the Architect must identify known bases for each Claim and the nature and amount of relief sought.

§ 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. **CONTINUING CONTRACT PERFORMANCE** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 9, the Architect shall proceed diligently with performance of its services under this Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 8.1.4 **INITIAL RESOLUTION** To facilitate the resolution of Claims between the Architect and the Owner, the parties shall attempt in good faith first to resolve Claims that are made before final payment by the following dispute-resolution process. The parties agree not to proceed to arbitration until the following process has been attempted. Neither party's rights, defenses, Claims, or remedies shall be considered waived, released, or adversely affected by its participation in this process, but this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

- .1 All reasonable efforts will be made by the Owner's Designated Representatives and the Architect's Designated Representative to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Architect's senior executive responsible for the Project.
- .2 The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in this Agreement.
- .3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to arbitration under Section 8.2.

§ 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. The parties may endeavor to resolve disputes by mediation at any time and as they may agree.

§ 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. [Deleted].

§ 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. ~~[Deleted]~~.

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

...

[] ~~Litigation in a court of competent jurisdiction~~ X] Litigation conducted in Tillamook County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

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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 ~~[Deleted.]~~

~~§ 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.

...

§ 9.1 If the Owner fails to make payments to the Architect ~~in accordance with this Agreement, such failure shall when due in accordance with this Agreement for more than 70 calendar days, such failure may 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 for this Project 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, Project~~ Project for more than 30 consecutive days (not related to phasing of 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 reasonable 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 consecutive~~ days for reasons other than the fault of the ~~Architect, Architect~~ Architect (unless related to phasing of the Project), the Architect may terminate this Agreement by giving not less than seven days' written notice.

...

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, ~~and and, unless terminated because Owner will not be authorizing Phase 2 of the Project,~~ 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:

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

[Deleted].

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

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article ~~7 and Section 9.7.7.~~

...

~~§ 10.1 This Agreement shall be governed by and construed in accordance with 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.~~located.

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, the General Conditions identified in Section 2.1. The term "day" as used in the Agreement shall mean calendar day unless otherwise specifically defined. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.~~

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~~§ 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.~~Architect, except for persons or entities indemnified under the terms of this Agreement.

~~§ 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. Notwithstanding the foregoing sentence:~~

- ~~1~~ To the extent that the Architect's duties include examination of existing conditions at the Project site where hazardous materials are used or are present, the Architect is responsible, with respect to its or its consultants' actions, to use proper precautions to avoid dissemination of hazardous materials and maintain a safe working environment; and
- ~~2~~ To the extent that the Architect's duties include (a) specification of the use of hazardous materials in construction work or (b) the design of systems to carry hazardous materials for use in the Owner's operations, the Architect is responsible to incorporate into its services proper precautions and design elements to contain or abate (as appropriate) hazardous materials and to maximize the safe use and transmission of hazardous materials as part of the continuation or planned use of the Owner's operations.

~~§ 10.7 The Architect shall have the right to may, subject to the Owner's prior review and approval (which shall not be unreasonably withheld) 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. Prior to entering onto Owner's property to make such representations, the Architect shall notify the Owner and the Owner and the Architect shall agree on a schedule for such access. The Architect shall provide the Owner with copies of all photographic or artistic representations of the completed Project. 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 information, except as may be approved by the Owner. 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 If the Architect or Owner receives information specifically designated as that is "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1-10.8.1 or as my be required under the Oregon Public Records Law (ORS 192.410 to 505) . This Section 10.8 shall survive the termination of this Agreement.~~

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~~§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the~~In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Compliance with Public Contracting Code. The Architect will comply with all federal, state, and local laws applicable to the Work under this Agreement, including without limitation the following requirements of the Oregon Public Contracting Code.

§ 10.10.1 Payment of Laborers (ORS 279B.220 and 279C.505): The Architect shall:

- .1 Make payment promptly, as due, to all persons supplying to such Architect labor or material for the prosecution of the work provided for this contract.
- .2 Pay all contributions or amounts due the Industrial Accident Fund by the Architect or subcontractors, if permitted, incurred in the performance of this contract.
- .3 Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished by Architect.
- .4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- .5 If Architect neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Agreement as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Architect. Owner's payment of such a claim shall not relieve Architect or Architect's surety, if any, from its obligation to any unpaid claims.

§ 10.11.2 Payment for Medical Care and Workers' Compensation (ORS 279B.230 and 279C.530):

- .1 Architect shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Architect, of all sums that Architect agrees to pay for such services and all moneys and sums that Architect collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for such service.
- .2 All subject employers working under the Agreement are either employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

§ 10.11.3 Hours of Labor (ORS 279B.020(5), 279B.235(3), 279C.520(3), and 279C.540(6)):

- .1 Maximum Hours: Architect shall pay its employees at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
- .2 Exemption: The requirements of 1.4.2.4.3.1 do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC. 201 to 209 from receiving overtime.
- .3 Discrimination Prohibition. The Construction Manager shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause.
- .4 Salary Discussion. The Construction Manager may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

- .5 Notice to Employees: Architect must give notice in writing to its employees who perform work on this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 10.11.4 Time Limitation on Claim for Overtime (ORS 279C.545): Any worker employed by Architect shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Architect within 90 days from the completion of this Contract, providing Architect has

- .1 Posted circular: Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
- .2 Maintaining posted circular: Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

§ 10.12 When Work Is Performed on Owner's property (including school buildings) Architect Shall Comply With the Following:

- .1 Identification. Architect performing work on Owner's property or for Owner shall carry photo identification and will present such, to anyone on request. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the Owner in its sole discretion determines is required to easily identify Contractors.
- .2 Sign-in Required. As required by schools and other Owner facilities, each day of work Architect employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are in the school or other location.
- .3 No Smoking. Smoking or other use of tobacco is prohibited on the Owner property..
- .4 No Weapons or Firearms. Except as provided by Oregon Statutes and Owner policy, weapons and firearms are prohibited on Owner property.

§ 10.13 When Work Is Performed in or on School Sites, Architect Shall Comply With the Following:

- .1 **No Unsupervised Contact with Students.** Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Architect will ensure that Architect, any consultants, and their officers, agents and employees will have no direct unsupervised contact with students while on Owner's property. Architect will work with the Owner to ensure compliance with this requirement. If Architect is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contract with students in a particular circumstance or circumstances, Architect shall so notify the Owner before performing any services that could result in such contact. Architect authorizes Owner to obtain information about Architect and Architect's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Architect that will have unsupervised contact with students. Architect also agrees to cause Architect's employees and/or subcontractors, if any, to authorize Owner to conduct such background checks. Architect shall pay all fees assessed by Oregon Department of Education for processing the background check. Owner may deduct the cost of such fees from a progress or final payment to the Architect under this contract, unless the Architect elects to pay such fees directly.
- .2 **Confidentiality.** The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Architect or its consultants in the performance of this Agreement may not be re-disclosed to third parties without written consent of

the students' parents/guardians; and must be used only for the purposes identified in this Agreement.

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

...

[TBD]

...

[TBD]

...

[TBD]

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~~§ 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.~~ 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 Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager 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.

~~§ 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.~~ [Deleted].

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review ~~practices-practices,~~ which may occur no more than once each year and which may not occur until 12 months following the Effective Date.

...

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses reasonably and necessarily 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;~~ in connection with the Project and pre-authorized out-of-town travel and subsistence subject to the following:
 - (a) Expenses of commuting to and from the Project site are excluded from reimbursable expenses.
 - (b) Routine fax, cellular telephone, e-mail, and postage charges are not reimbursable, and
 - (c) Reimbursement for transportation and commuting will not exceed the Internal Revenue Service's rate per mile for reimbursement of business transportation in effect at the time of travel.
- ~~.2 Long distance services, dedicated-Dedicated~~ data and communication services, teleconferences, Project web sites, and extranets;

- ...
- 3 ~~Permitting and other fees required by~~ Fees paid for securing approval of authorities having jurisdiction over the Project;
 - ...
 - 5 Postage, handling, and ~~Extraordinary~~ postage, handling, and delivery such as Fed ex, UPS, overnight, or other expedited delivery;
 - 6 Expense of overtime work requiring higher than regular rates, only if authorized in advance by the Owner;
 - 7 Renderings, physical models, mock-ups, professional photography, and non-typical presentation materials requested by the Owner or required for the Project;
 - 8 ~~If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;[Deleted];~~
 - 9 ~~All taxes levied on professional services and on reimbursable expenses;[Deleted];~~
 - 10 ~~Site office expenses;[Deleted];~~
 - ...
 - 12 Other similar Project-related ~~expenditures.~~expenditures as preapproved by the Owner pursuant to Section 11.8.3.

§ 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 without markup.~~ Notwithstanding the foregoing sentence, the Architect may include a markup of up to 10 percent of the actual fees assessed by government agencies for Project permits that the Architect pays on the Owner's behalf, conditioned upon submission of the receipt of payment for the fees assessed. The Architect shall not issue a bill to the Owner for payment of Reimbursable Expenses unless the aggregate Reimbursable Expenses exceed \$100.00.

§ 11.8.3 The Architect has provided and the Owner has approved a detailed estimate of anticipated Reimbursable Expenses. The estimate of [\$TBD] is based upon the rates outlined in the Fee Proposal incorporated under Section 13.2 of this Agreement. Costs may not be incurred for Reimbursable Expenses in excess of this amount without prior written approval of the Owner. If, subject to Section 4.2, Additional Services are required during the course of the Project that were not previously identified and anticipated, the Architect shall prepare a detailed estimate of the cost of reimbursable expenses arising from such Additional Services and submit it to the Owner for approval before the services are rendered. Thereafter, costs may not be incurred in excess of the approved written estimate without prior written approval of the Owner. Compliance with this Section 11.8.3 is a condition precedent to payment for Reimbursable Expenses.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

~~[Deleted].~~
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§ 11.10.1 Initial Payments~~[Deleted].~~

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

§ 11.10.1.2 ~~If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ —) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.[Deleted].~~

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~upon presentation~~ within 30 days of Owner's acceptance 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.

...

~~%~~ Interest will accrue at an annual rate of one percent over the prime lending rate published by The Wall Street Journal on the date on which interest begins to accrue.

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

...

§ 12.1 INDEMNIFICATION

§ 12.1.1 Indemnity – Claims for Other Than Professional Liability:

§ 12.1.1.1 To the fullest extent permitted by law, the Architect shall defend, indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them for, from, and against claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, resulting from or arising out of the activities of the Architect or its consultants, agents or employees under this Agreement, including without limitation (a) the Architect's breach of this Agreement; (b) death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders caused in whole or in part by the Architect's performance under this Agreement; (c) any alleged violation or infringement of third-party trade rights arising out of services provided by the Architect; (d) any negligent or willful acts or omissions by the Architect or persons for whom the Architect is responsible; and (e) claims asserted by employees of the Architect or of any entity for whom the Architect is responsible (including wage or benefit claims) or for any violation of federal, state, or local wage and labor laws and regulations thereunder by the Architect or other persons acting on behalf of the Architect. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 12.1.

§ 12.1.1.2 No indemnification or insurance provided by the Architect under this Section 12.1.1 will be required to indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Architect or those entities or persons for whom the Architect is responsible.

§ 12.1.2. Indemnity – Claims for Professional Liability.

§ 12.1.2.1 To the fullest extent permitted by law, Architect shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them for, from, and against claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, resulting from our arising out of the professionally negligent acts, errors, or omissions, whether alleged or actual, of the Architect or its subconsultants, agents or employees in the performance of professional services under this Agreement, including without limitation (a) the Architect's breach of this Agreement; (b) death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders caused in whole or in part by the Architect's performance under this Agreement; (c) any alleged violation or infringement of third-party trade rights arising out of services provided by the Architect; (d) any negligent acts or omissions by the Architect or persons for whom the Architect is responsible; and (e) claims asserted by employees of the Architect or of any entity for whom the Architect is responsible (including wage or benefit claims) or for any violation of federal, state, or local wage and labor laws and regulations thereunder by the Architect or other persons acting on behalf of the Architect. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 12.1.

§ 12.1.3 No indemnification or insurance provided by the Architect under this Section 12.1.2 will be required to indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the negligence of the Architect or those entities or persons for whom the Architect is responsible.

§ 12.1.4 In claims against any person or entity indemnified under this Section 12.1 by an employee of the Architect or of any entity for whom the Architect is responsible, the indemnification obligation under Section 12.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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.1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect, as amended

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Exhibit X: Owner's Request for Proposal

...

CITY OF MANZANITA

[TBD]

...

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, 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 15:33:49 ET on 12/14/2021 under Order No. 1392312354 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™ – 2017, 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)