

AIA[®] Document B101[™] – 2007

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 Sioux Falls
224 West Ninth Street
PO Box 7402

Sioux Falls, SD 57117-7402 and the Architect:
(Name, legal status, address and other information)

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

Sioux Falls Municipal Center
N Dakota Avenue (between Eighth Street. and Sixth Street. – west side of road)
Administrative office building

The Owner and Architect agree as follows.

A. The Project.

The "Project" means the construction of an office building, in Sioux Falls, South Dakota (the "Municipal Center"), as further described in Section B below.

For purposes of clarification, the Architect will provide a full Scope of Architectural Services for the Municipal Center, Parking Lot, Landscaping, and potential skywalk. With respect to the potential Skywalk, the Architect will provide structural engineering and architectural services, as well as architectural oversight of document preparation for the potential Skywalk project.

B. The Owner has conceptual ideas for the Municipal Center. The Conceptual ideas include an office facility that at least three stories in height and approximately 15,000 square feet per level. The potential skywalk would provide parking access to the Eighth Street and Dakota Avenue parking ramp. T LEED certification shall be considered.

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.

Owner and Architect recognize and agree Architect's performance of the Work (as defined below) for the Construction Phase (as further discussed in Section 3.6 below) is contingent upon the satisfaction of the following events ("Construction Conditions"): (i) The Owner's approval of the Guaranteed Maximum Price and Construction Manager Fees; (ii) the securing of funds necessary to pay the costs of the Project, including but not limited to the authorization and sale of sales tax bonds; (iii) Owner's decision, in its sole discretion to proceed with the Work; (iv) the issuance to the Construction Manager by Owner of a Notice to Proceed with the Work.

The Owner and Architect agree as follows:

The Project consists of two phases, described in general below:

	Reference Guide
Phase I:	
Program Development	Exhibit A
Schematic Design	Sec. 3.2
Phase II:	
Design Development Services	Sec. 3.3
Construction Document Services	Sec. 3.4
Building Services	Sec. 3.5
Construction Services	Sec. 3.6

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

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

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants,

Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.1.1 As discussed in Section B above, Owner has developed conceptual ideas for the Project. The Owner's Conceptual ideas will be further developed and will become the formal program for the Project (the "Program"). The Owner, the Architect and the Construction Manager will mutually agree upon the Program and complete **Exhibit A**. The Program, once agreed upon by the Owner, Architect and Construction Manager, will replace the Conceptual Program. The Program will be prepared by the Architect in consultation with the Construction Manager and the Owner based upon the collective background and experience of the Architect and Construction Manager related to the projects of this type, nature and size and upon interviews with and/or information received from appropriate representatives of the Owner. The Architect will work with the Construction Manager so that the Construction Manager may confirm to the Owner by programmatic estimate that the Program appears to be consistent with the Budget and Schedule. The Program will establish the general criteria and parameters for the Project and will be the information upon which the Schematic Design Documents (as further discussed in Section 3.2 below) will be prepared, approved and measured. The Architect will keep all members of its Design Team (as defined in Exhibit D attached hereto and incorporated herein) and Consultants (as defined in Section 1.1.12.1 below) apprised of the programmatic requirements, schedule timelines and budget constraints, so as to maintain conformance with the Program, Schedule (as defined in Exhibit C attached hereto and incorporated herein) and Budget (as defined in Exhibit B attached hereto and incorporated herein).

After the Schematic Design Documents have been approved by the Owner by written correspondence to the Architect, the Schematic Design Documents will replace the Program, and will establish the criteria and parameters against which the Design Development Documents (as further discussed in Section 3.3 below) will be measured. The Architect will keep all parties apprised of the programmatic requirements, schedule timelines and budget constraints, in terms of their conformance with the Schematic Design Documents, Schedule and Budget. If in preparation of the Schematic Design Documents, the Architect discovers or suspects that there has been or may have been a deviation from the Program, the Architect must promptly advise the Owner and Construction Manager in writing.

After the Design Development Documents have been approved by the Owner by written correspondence to the Architect, the Guaranteed Maximum Price package identified in Section 3.3.4 (the "GMP Package"), which includes the Design Development Documents, will replace both the Program and Schematic Design Documents, and will establish the criteria and parameters against which the Construction Documents (as further discussed in Section 3.4 below) will be prepared, approved and measured. The Architect will keep all parties apprised of the programmatic requirements, schedule timelines and budget constraints, in terms of their conformance with the GMP Package, Schedule and Budget. If in its preparation of the Design Development Documents the Architect discovers or suspects that there has or may have been a deviation from the then current Schematic Design Documents, the Architect must promptly advise the Owner and Construction Manager in writing.

§ 1.1.2 The Owner's initial budget for the entire Project will be developed by the Owner, in consultation with the Architect and Construction Manager during the Preconstruction Phase and will be set forth in **Exhibit B** (the "Budget"), as follows. Prior to the establishment of the Guaranteed Maximum Price ("GMP") at the conclusion of the Design Development Phase as set forth in Section 3.3.5, the Cost of the Work (as defined in Section 6.1 below), including the Owner's contingency, which is separate and distinct from the Construction Manager's contingency and not available for the Architect's or the Construction Manager's use, will be updated from time to time by the Owner in consultation with the Architect and the Construction Manager, with all revisions to be set forth in **Exhibit B**. The Owner, in consultation with the Architect, and the Construction Manager will mutually agree upon the Guaranteed Maximum Price at the conclusion of the Design Development Phase as set forth in Section 3.3.5, which amounts will replace the previous Budget and be set forth in **Exhibit B**. Prior to Owner giving to the Construction Manager a notice to proceed with the Construction Phase ("Notice to Proceed"), the Architect will consult with the Owner and Construction Manager to determine, to the best of the Construction Manager's knowledge and based upon Architect's diligent review, the GMP is sufficient and reasonable and is consistent with the Budget, Schedule, and the Construction Documents. The Architect will, through the Design Development Phase, periodically review and comment on estimates as prepared by the Construction Manager. The Architect will, utilizing available information, develop the design for the Project consistent with the Budget and Schedule, and first the Program, then the Schematic Design Documents and then the GMP package. Through the Schematic Design Phase, the Design

Development Phase, and the Construction Documents Phase, the Architect and its Consultants will, as necessary, and without additional cost to the Owner provide value engineering services as necessary to maintain compliance with the Budget. During the Construction Documents Phase, the Architect and its consultants will incorporate into the Construction Documents all bid alternates and post award options as approved by the Owner. There will be no deviation from the Budget, or ultimately the GMP when confirmed as described above, without the Owner's prior written consent.

§ 1.1.3 The Owner's schedule for the date of commencement of the Project, milestone dates for completion of various portions of the Project and the Date of Substantial Completion of the Project, which is April, 2018, will be developed by mutual agreement of the Owner, the Architect and the Construction Manager during the Preconstruction Phase, and will be set forth in **Exhibit C** (the "Schedule"). Subject to causes outside of the control of Owner, Architect or Construction Manager, the design and construction of the Project must proceed so as to achieve Substantial Completion of the Project in accordance with the Owner's Schedule. Upon mutual agreement between Owner and Architect, the Architect will (i) accept all portions of the Schedule relating to its Services, (ii) agrees, subject to causes outside of Architect's control including but not limited to Owner's own desired modifications, to provide its Services within the time limits established by the Schedule and (iii) will provide recommendations, decisions and information in a timely manner which are critical to maintaining compliance with the Schedule. The Architect will analyze its Services and the Services provided by members of its Design Team and Consultants and keep them apprised of the current and future scheduling requirements for purposes of coordinating their Services so as to maintain compliance with the Schedule. The Construction Manager will periodically update and provide further detail on the Schedule and the Architect will: (i) consult with the Construction Manager as to the schedule for design services and coordinate and integrate the Architect's services with the Construction Manager's services, the Owner's responsibilities, the advertising, bidding and awarding of the various Bid Packages (as further discussed in Section 3.5 below) and the critical milestone dates for the Schedule; and (ii) assist the Construction Manager to identify critical and long lead-time items and implement procedures to coordinate the procurement of these items consistent with the Schedule.

As typical with complex projects of similar scope, multiple bid packages and phased construction may be utilized. The use of multiple bid packages and phased construction does not constitute for this Project what is commonly known in the industry as a fast track schedule. The number of bid packages will be determined upon satisfaction of the Construction Conditions. Following satisfaction of the Construction Conditions, the parties agree (subject to the Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement regarding the Schedule including sequence, content and order of bid packages. During the Construction Phase, the Architect will provide the following meeting and scheduling services:

§ 1.1.3.1 Participate in weekly job site meetings that include the Construction Manager's representatives, appropriate Subcontractors, and the Owner's representatives, to review open issues, and resolve pending or upcoming issues.

§ 1.1.3.2 Comment on the Construction Manager's determination of the adequacy of the Subcontractor's personnel and equipment and the availability of materials and supplies to meet the Schedule.

§ 1.1.3.3 Comment on the Construction Manager's short-term (3 to 4 week look-ahead) schedule delivered to the Architect and Owner on a weekly basis..

The Architect will keep the Owner fully apprised of all updates and reviews of the Schedule and there will be no change to or deviation from the Schedule that would extend Substantial Completion of the Project, without the Owner's prior written consent, except for circumstances beyond the control of the Construction Manager, and then only to the extent expressly provided for in the Contract Documents. While the Architect will not be liable for any failure of the Construction Manager, or the Owner's other contractors to perform their work or services in the conformance with the Schedule, if the Architect observes or suspects that any of those parties have or may deviate from the Schedule, the Architect will promptly advise the Owner and the involved party and will also indicate what action the Architect recommends to avoid, correct or minimize such deviation.

§ 1.1.4 If, during the course of the Project, the Architect discovers or has reason to believe there has been or may be a deviation from the Budget, Schedule or first the Program, then the Schematic Design Documents, then the GMP Package, and finally, the Construction Documents, or if in the Architect's opinion it is in the Owner's best interest to

revise any of the foregoing, the Architect will advise the Owner and the Construction Manager, and will: (i) endeavor to re-establish conformance with the foregoing, including providing further Services (but only those Services as set forth in Articles 3 and 4 of this Agreement) by the Architect and its Consultants, without additional cost to the Owner if such deviation is caused by or the result of an error or omission of the Architect or its Design Team or Consultants; and (ii) consult with the Owner, the Construction Manager and others involved with the Project to identify and recommend, as necessary, other options available to avoid or minimize any adverse impact to the foregoing.

§ 1.1.5 The Owner desires to explore LEED certification for the Project. The Architect, in coordination with the Construction Manager, will provide the services as outlined on the attached Exhibit F with respect to the goal of achieving such LEED certification.

§ 1.1.6 The Architect will: (i) assist the Owner in working with various governing authorities as requested; (ii) work with the Owner and Construction Manager to develop a project communication system that is effective for the participants and meets the Schedule requirements of the Project; and (iii) work cooperatively with the Owner and Construction Manager to develop and implement a strategy for meeting the Project's energy efficiency goals and humidity control goals.

§ 1.1.7 The Owner will retain the services of a Construction Manager to provide the services, duties, and responsibilities as described in AIA Document A133-2009, as modified. AIA Document A201-2007, as modified, will be used as the General Conditions of the contract for construction referenced by AIA Document A133-2009. The term "Contractor" used in both the AIA Document A201-2007 and this Agreement and all corresponding documents of both, will mean the Construction Manager.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.3:

Erin Bofenkamp, PMP
Project Manager
Mayor's Office, City of Sioux Falls
224 West 9th Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
605-367-8622

§ 1.1.10 The Owner will retain the following consultants and contractors:

Construction Manager:	TBD
Geotechnical Engineer:	TBD
Civil Engineer (for topographical survey):	TBD
Environmental Surveyor (for hazardous materials):	TBD
Hazardous Material Abatement Contractor:	TBD

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:

TBD

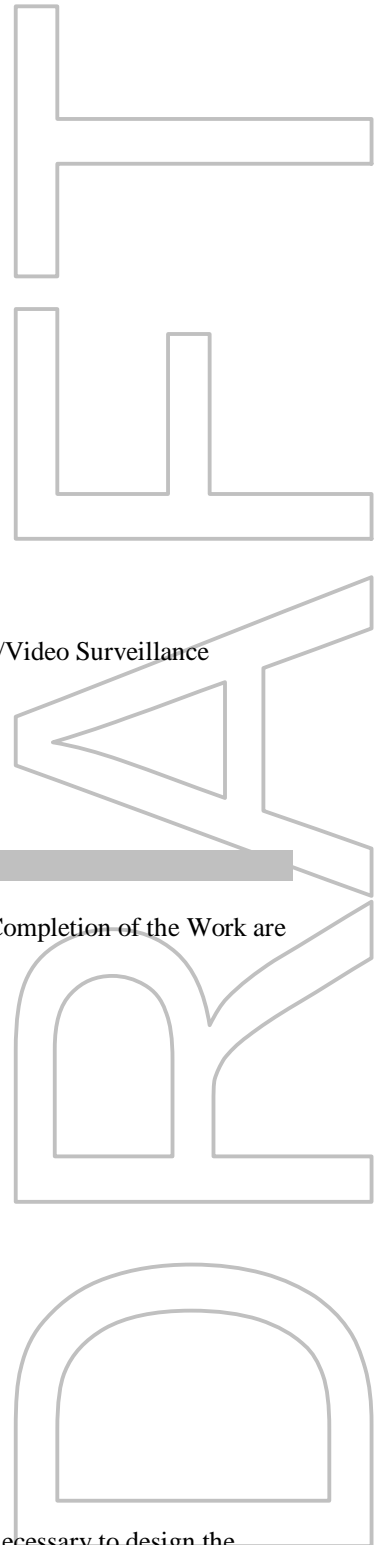
§ 1.1.12 The Architect will retain the consultants as identified in Section 1.1.12.1.

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

TBD

- .2 Mechanical Engineer:
TBD
- .3 Electrical Engineer:
TBD
- .4 Civil Engineer:
TBD
- .5 Landscape Design:
TBD
- .6 LEED Services:
TBD
- .7 Building Envelope Consultant:
TBD
- .8 Audio Systems/Acoustics, Noise and Vibration Control/Access Control/Video Surveillance Systems with Infrastructure:
TBD



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

- .1 Complete schematic design
February 2016
- .2 Complete design development
March 2016
- .3 GMP established
May 2016
- .4 Commencement of construction date:
July 2016
- .5 Substantial Completion date:
April 2018

§ 1.3 Intentionally omitted.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional architectural and engineering services necessary to design the Project, as set forth in this Agreement, including architecture, basic interior design, structural engineering,

mechanical (HVAC and plumbing), fire protection engineering, electrical engineering, parking and landscaping. The Architect's construction documents must describe the Work necessary to bid, price and construct the Project

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

§§ 2.2.1. The Architect acknowledges the critical aspect of timely completion of the Project, and represents that its Services will be performed as expeditiously as possible consistent with the Owner's Schedule. The Architect will provide necessary personnel and supervision to achieve timely completion of each phase of its Services, and, subject to the other provisions in this Agreement, will comply with all deadlines within the Schedule.

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

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

The Architect must purchase and maintain a policy or policies of commercial general liability insurance on account of bodily injury or death or destruction of property, whether real, personal or mixed with minimum liability limits of:

General Aggregate, Per Project	\$2,000,000.
Completed Operations Aggregate	\$2,000,000.
Personal Injury and Advertising Injury	\$1,000,000.
Each Occurrence Limit	\$1,000,000.
Fire Damage (Any One Fire)	\$100,000.
Medical Expense (Any One Person)	\$5,000.

Coverage of the policy or policies must include contractual coverage for liability assumed by the Architect in this Agreement. Completed Operations coverage must be maintained for three (3) years past Substantial Completion of the Project.

.2 Automobile Liability

Automobile Liability covering owned, non-owned, and rented vehicles operated by the Architect with policy limits not less than the following:

Bodily Injury/Property Damage Combined Single Limit (Each Accident)	\$1,000,000.
Medical Payment (Each Person)	\$5,000.
Uninsured Motorist (Each Accident)	\$1,000,000.
Underinsured Motorist (Each Accident)	\$1,000,000.

.3 Workers' Compensation

Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than \$1,000,000 bodily injury by accident each accident, and \$1,000,000 bodily injury by disease each employee.

.4 Professional Liability

During all Phases of the Project, professional liability insurance written on a claims made basis with limits of liability in amounts not less than two million dollars (\$2,000,000) per claim and not less than two million dollars (\$2,000,000) aggregate, insuring the Architect and all persons for whose acts the Architect may be liable, against any and all liabilities arising out of or in connection with negligent acts, errors and omissions of any of the foregoing in connection with the carrying out of the professional responsibilities for the Project. The deductible may not exceed one hundred thousand dollars (\$125,000).

.5 The Architect may furnish these coverages under one policy or separate policies. The Architect must provide to the Owner certificates of insurance evidencing compliance with the requirements of this Section 2.5. The certificates must show the Owner and its elected and appointed officials, agents, officers, city council members, employees and consultants as additional insureds on the Commercial General Liability and Automobile Liability, and must provide that such insurance is primary and that any other insurance available to the Owner is in excess of and non-contributory to the insurance provided by the Architect. Insurance certificates and endorsements must on form reasonably acceptable to the Owner. The Insurance Services Office's (ISO) CG 2010 10 01 and CG 2037 or an equivalent endorsement form is to be used for the Commercial General Liability Policy providing additional insured status for completed operations.

.6 All such insurance must be maintained with responsible insurance carriers legally permitted to do business in the State of South Dakota, having a Best rating reasonably acceptable to the Owner, and otherwise reasonably acceptable to the Owner. Upon the signing of this Agreement, the Architect must deposit with the Owner certificates of insurance evidencing the required coverages, bearing notations or accompanied by other evidence satisfactory to the Owner of the payment of all premiums thereunder.

.7 The Architect must not allow insurance policies required by this Agreement to lapse, be canceled, reduced in coverage, non-renewed, or materially changed or have restrictive modifications added at any time, unless necessitated by or as a result of Owner's own requirements or expectations for the Project. As required below, riders or other documentation satisfactory to the Owner providing as follows must be made part of the insurance policies described herein (and 45 days before the expiration date of any required policy), the Architect must provide equivalent satisfactory evidence to the Owner of the payment of the premium and renewal of the policy.

.8 The policies must not be canceled, terminated, reduced in limits by endorsement or non-renewed until thirty (30) days after the Owner's receipt from the Architect's insurance agent or carrier of written notice thereof by certified or registered mail, return receipt requested, addressed to the Owner's Representative.

.9 The representations (or the inaccuracies thereof) of the Owner, the Construction Manager, contractors or any other authorized persons on the Project must not invalidate the policies.

.10 The Owner must be added to the commercial general liability policy and the automobile liability policy as a named additional insured. The negligence, misrepresentations or misconduct by the Architect must not invalidate the commercial general liability policy, the automobile liability policy and the workers' compensation policy as to the Owner as an additional insured.

.11 Insurance policies required by this Agreement must be kept in full force and effect for the following periods:

- .1** Commercial General Liability insurance must be kept in full force and effect until three years after Substantial Completion of the Project.
- .2** Workers Compensation insurance must be kept in full force and effect until receipt of final payment by the Architect hereunder.

- .3** Professional Liability insurance must be kept in full force for three years after Substantial Completion of the Project.
- .12** To the extent allowed by the insurance provider, if the Architect fails to provide or keep in force insurance as required under this Agreement, after thirty (30) days from Architect's receipt of notice from Owner of such failure, the Owner may purchase or pay premiums for such insurance on the Architect's behalf, and the Architect will be liable to and must indemnify the Owner for all of the Owner's costs related thereto, including attorney's fees and costs incurred in collecting and enforcing this sub-section 2.5.12.
- .13** Compliance by the Architect with the insurance requirements of this Agreement will not relieve the Architect from liability for amounts in excess of the limits of insurance.
- .14** The Commercial General Liability policy must be endorsed to provide that the general aggregate applies separately to each project. ISO Endorsement CG 2503 per project endorsement or its equivalent is to be used to satisfy this requirement.
- .15** The Commercial General Liability, Automobile Liability, and Workers Compensation must be endorsed to provide a Waiver of Subrogation endorsement in favor of the Owner and its employees, consultants and representatives.
- .16** The Commercial General Liability policy must be endorsed to provide primary and non-contributing coverage on the Owner's Project.
- .17** The Automobile policy must state that it provides primary coverage.
- .18** Upon request of the Owner, the Architect must furnish the Owner complete and certified copies of all policies required by this Article.
- § 2.6** The Architect represents that all persons who are directly supervising the professional architectural services for the Project, and who execute the Contract Documents for the Project, will be duly licensed to practice under the laws of the State of South Dakota, and all engineering services provided hereunder will be performed under the direct supervision of engineers licensed to practice under the laws of the State of South Dakota.
- § 2.7** The Architect's principals and key management and design personnel, who will provide the Architect's Services for the Project, are identified in **Exhibit D**. The Owner reserves the right to approve the principals and key management and design personnel of the Architect who will provide the Architect's Services for the Project. As of the date of this Agreement, Owner hereby approves the principals and key management and design personnel listed on Exhibit D. The Architect further represents it will commit such personnel for the duration of the Project necessary to complete the Architect's Services under this Agreement, in terms of expertise and fulfillment of its duties and obligations under this Agreement. No substitutions of any key principal or key management and design personnel may be made by the Architect without the Owner's prior written consent. In the event any principal or key management and design personnel are no longer employed by the Architect, the Architect must notify the Owner within five (5) days after learning of such event. The Architect must use its best efforts to provide a permanent replacement within thirty (30) days after such event. The Owner will have the right to approve the proposed replacement in advance of his or her assignment to the Project. The Owner may require the Architect remove from the Project any personnel whose performance under this Agreement is not satisfactory in the Owner's commercially reasonable judgment.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and Article 4 and include usual and customary structural, mechanical, and electrical engineering services required of projects similar in scope, size and complexity to the Project. Services not set forth in this Article 3 and Article 4, are Additional Services and Owner and Architect shall negotiate Architect's performance of such Additional Services if Owner so requires.

§ 3.1.1 The Architect shall manage the Architect's services, meet with and consult with the Owner, obtain the Owner's approval on all design concepts, research applicable design criteria, attend Project meetings, provide printed meeting notes of all meetings between the Architect and the Owner within two (2) business days following each meeting unless otherwise agreed upon between Architect and the Owner.

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

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services for inclusion in the Project Schedule. The schedule shall include milestone dates, anticipated dates when cost estimate reviews or design reviews may occur, and allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Upon the Owner's reasonable request, the Architect will submit information to the Owner and participate in developing and revising the Project Schedule as it relates to the Architect's Services. Once approved by the Owner, time limits established by the Schedule shall not, except for reasonable cause including, but not limited to, those causes outside the actual control of Architect or upon Owner's own request, be exceeded by the Architect or Owner. If necessary to keep the Project on Schedule, the Architect will institute steps necessary to recover lost time, including adding additional staffing and increasing or adding overtime services without additional cost to the Owner. Notwithstanding the foregoing, if such additional steps are necessitated by causes outside of the control of Architect, including but not limited to natural forces or changes requested by Owner, the Owner and Architect shall mutually agree on an amendment to the Schedule or Architect shall be paid an hourly rate for such Additional Services, as provided in Exhibit G attached hereto. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until completed.

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

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall meet with, and make presentations to, individuals, committees, groups, and other entities having jurisdiction over, or otherwise having an interest in, the Project as reasonably requested by the Owner.

§ 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.

§ 3.1.10 Time is of the essence in the performance of the Architect's Services and the Owner's responsibilities for the Project are important to completion of the Project. Therefore, services will be performed in accordance with the Schedule. The deadlines required for performance between the Architect and the Owner will be mutually agreed upon by the parties, will be included in the Schedule, and will be met with reasonable promptness.

§ 3.1.11 The Architect will design the Project with consideration to attain a "LEED" certification under the Leadership in Energy and Environmental Design ("LEED") program administered by the U.S. Green Building Council, as provided in the attached Exhibit F incorporated herein.

§ 3.1.12 The Architect will provide "Programming Services" consisting of consultation to confirm and document the following requirements for the Project including but not limited to (a) design objectives, limitations and criteria, and future expansion (b) development of initial space requirements, (c) space relationships and adjacencies, (d) flexibility and expandability, (e) special equipment and systems, (f) site requirements, (g) materials to allow the Owner and Construction Manager to develop the Budget, (h) security criteria, and (i) humidity control.

§ 3.1.13 The Architect will provide written notice of any potential additional service claims it may make in advance of performing any work that it believes is an Additional Service. Such work will not be performed without the Owner's prior written authorization.

§ 3.1.14 To the extent the Owner elects to engage in formal project partnering sessions involving the Owner's consultants and contractors, each participant will bear its own cost and expense of attendance.

§ 3.1.15 The Architect will prepare computer aided design renderings and graphics in 2-D and 3-D format to assist the Owner in achieving an understanding of the design concepts being advanced by the Architect.

§ 3.1.16 Architect acknowledges the Owner is relying upon the skill and knowledge of the Architect and its Consultants to prepare plans, specifications and other design documents which comply with the standard of care and conform to the laws, rules, regulations and codes applicable to the Project. The Owner's periodic review of plans, specifications and other design documents per the terms of this Agreement will include the Owner's approval of aesthetic aspects, space configuration, floor plan layout and general conformance to the Owner's space utilization requirements. The Owner has no duty, however, to review the technical aspects of plans, specifications or other design documents as developed by the Architect and its Consultants, and the Owner's review and approval of such plans, specifications and other design documents per the terms of this Agreement, will not act to diminish or release the Architect's responsibilities to the Owner as set forth in this Agreement.

§ 3.1.17 The Owner will have no obligation to the Architect's Consultants under a direct contract, third party beneficiary or any other theory. The Owner will not, other than as provided by applicable statutes, if any, be obligated to pay such Consultants nor be liable for the nonpayment of fees, costs and expenses of such Consultants, as such fees, costs and expenses are the obligation of the Architect, unless Architect's failure to pay such fees, costs and expenses is a result of Owner's failure to pay Architect as provided herein. The Architect must, however, provide in all its contracts with its Consultants for this Project written provisions which specifically require (i) each Consultant will be bound by the terms of this Agreement; (ii) each Consultant will assume toward the Owner all the obligations and responsibilities which the Architect, per this Agreement, has assumed toward the Owner; and (iii) each Consultant will be liable on a third party beneficiary basis to the Owner for any act, error or omission which constitutes breach of the Consultant's contractual obligations with respect to the Project, including an acknowledgment of the Owner's right, should the Owner so choose, to directly pursue and enforce claims against the Consultant for any breach of the Consultant's contractual obligations. Should any Consultant refuse to include the above terms in its contract with the Architect, the Architect will notify the Owner, in writing, of such refusal and must not contract with that Consultant unless the Owner gives written permission to do so.

§ 3.1.18 The duties, responsibilities and limitations of authority of the Architect may not be restricted, modified or extended without a written agreement signed by the Owner and Architect and with notice to the Construction Manager.

§ 3.1.19 The Owner and Architect must, in the best interests of the Project, promptly communicate with each other as to the current status, recent developments and the anticipated activities for the Project. Communications of the Owner by and with the Architect's Consultants and other members of its Design Team, will be through the Architect.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

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

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

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

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's schedule, budget, including the Cost of the Work and first, the Program, then the Schematic Design Documents, then the Design Development Documents, and finally the Construction Documents.

§ 3.2.6 At the conclusion of the Schematic Design Phase, the Architect shall submit to the Owner and the Construction Manager, plans and specifications for review and pricing of the Cost of the Work. The package will include the Schematic Design Documents and a written narrative statement which includes the Architect's description of incomplete design elements of the Schematic Design Documents. The Architect will meet with the Owner and Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's estimate of the Cost of the Work at the conclusion of the Schematic Design Phase, the Owner and the Architect will review the Construction Manager's estimate of the Cost of the Work. The Architect, the Owner and the Construction Manager will cooperate with each other until they mutually agree upon the estimate of the Cost of the Work, which amount will then be included in the Owner's Budget. If revisions to the Schematic Design Documents are required to comply with the Owner's Budget, the Architect will make the required revisions to the Schematic Design Documents without additional fee or expense to the Owner until the Schematic Design Documents support completion of the Work in conformity with the Owner's Budget. The Architect will then request the Owner's approval of the Schematic Design Documents.

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

§ 3.3.1.1 The Architect will include additive and deductive alternates into the GMP package that have the potential to increase or decrease the Cost of the Work plus or minus 5% as part of its Basic Services.

§ 3.3.1.2 The Owner, the Architect and the Construction Manager will, at a mutually agreed upon date, discuss and agree upon timing intervals for the Architect to provide drawings and other reasonably appropriate documents which represent the then current progress of Design Development. Such mutual agreement will also describe the deliverables to be provided at the completion of the Design Development Phase.

§ 3.3.2 Upon completion of 60% of the Design Development Documents, the Architect will submit to the Owner and the Construction Manager plans and specifications for review and pricing of the Cost of the Work. The package will include the 60% completed Design Development Documents and a written narrative statement which includes the Architect's description of incomplete design elements of the Design Development Documents. The Architect will meet with the Owner and Construction Manager to review the 60% completed Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's estimate of the Cost of the Work upon completion of 60% of the Design Development Documents, the Owner and the Architect will review the Construction Manager's estimate of

the Cost of the Work. The Architect, the Owner and the Construction Manager will cooperate with each other until they mutually agree upon the Cost of the Work. If revisions to the Design Development Documents are required to comply with the Owner's Budget, including the Cost of the Work, the Architect will make the required revisions to the Design Development Documents without additional fee or expense to the Owner until the Design Development Documents support completion of the Work in conformity with the Owner's Budget, including the Cost of the Work. The Architect will then proceed with the completion of the Design Development Documents in accordance with the Owner's Budget.

§ 3.3.4 Upon 100% completion of the Design Development Documents, the Architect will submit to the Owner and the Construction Manager the plans and specifications for the GMP package. The GMP package will include the Design Development Documents, a written prose statement which includes the Architect's description of incomplete design elements of the Design Development Documents and Construction Manager's statement of the assumptions and clarifications (including anticipated qualities and quantities) with respect to the Design Development Documents. The Architect will meet with the Owner and the Construction Manager to review the GMP package.

§ 3.3.5 Upon the Architect's and the Owner's receipt of the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase, the Owner and the Architect will review the Construction Manager's estimate of the Cost of the Work. The Architect, the Owner and the Construction Manager will cooperate each with the other until they mutually agree upon the Cost of the Work. Upon the mutual agreement of the Architect, the Owner and the Construction Manager, the Cost of the Work will be incorporated into the GMP. The Owner and the Construction Manager will agree upon the Construction Manager's fee. The GMP will consist of the Cost of the Work and the Construction Manager's fee. The GMP will become fixed, will be binding upon the Construction Manager, and will be included in the Owner's Budget by amendment to **Exhibit C**. If revisions to the Design Development Documents are required to comply with the Owner's Budget, including the Cost of the Work represented in part by the GMP at the conclusion of the Design Development Phase, the Architect will make the required revisions without additional fee or expense to the Owner until the Design Development Documents support completion of the Work in conformity with the Owner's Budget, including the Cost of the Work represented by the GMP. The Architect will then request the Owner's approval of the Design Development Documents.

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

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Construction Manager and Owner in the development and preparation of bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms. 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 Upon 45% of completion, and upon 100% of completion, of the Construction Documents, the Architect will submit to the Owner and the Construction Manager the Construction Documents for review, comment and potential approval. At the request of the Owner or Construction Manager, the Architect will meet to assist in the review of the Construction Documents, including providing a detailed presentation with respect to such documents and responding to any questions raised. If revisions to the Construction Documents are required to comply with the Owner's Budget, including the Cost of the Work as a part of the GMP, the Architect will incorporate the required revisions into the Construction Documents without additional fee or expense to the Owner.

§ 3.4.5 The Construction Documents must include a written description of the commissioning requirements for documenting and verifying that the installation and performance of the HVAC, plumbing, electrical,

communication, security, emergency, fire and life safety and other systems which are part of the Project ("MEP Systems"), are in conformity with the Contract Documents. Architect will perform this portion of the Work in coordination with the Architect's commissioning agent.

§ 3.4.6 The Architect will then submit the Construction Documents to the Owner, confirm to the Owner the Construction Documents conform to the GMP, and request the Owner's authorization to release the Construction Documents for bidding. Upon Owner's authorization, the Architect will then release the Construction Documents for bidding.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

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

§ 3.5.2 COMPETITIVE BIDDING

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

§ 3.5.2.2 The Architect shall assist the Owner and the Construction Manager in bidding the Project by

- .1 providing to the Construction Manager electronic copies of the Bidding Documents for distribution to prospective bidders by the Construction Manager; and
- .2 participating in pre-bid conference for prospective bidders; and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

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

(Paragraphs deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

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

§ 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 Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall only 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, errors, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the Owner's issuance of the Notice to Proceed with the Work to be issued to the Construction Manager, and terminates on the date the Architect issues the final Certificate for Payment or the governing authorities issue a final Certificate of Occupancy, whichever event occurs later.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.4, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority, after notification to and consultation with the Owner and Construction Manager, to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to confirm that the Work adheres to the intent of the Contract Documents, the Architect will also have the authority, after notice to and upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect as set forth herein, 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.

§ 3.6.2.3 The Architect shall advise the Owner on 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 In any dispute between the Owner and the Construction Manager, the Architect will, upon request by the Owner, advise the Owner on issues concerning performance under the Contract Documents. The Architect will make recommendations to the Owner regarding issues concerning aesthetics effects which are inconsistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Intentionally omitted.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and either reject the Application for Payment, or a portion thereof, and give the Construction Manager notice thereof, or approve the amounts due the Construction Manager and shall issue to the Owner, certificates in such amounts as have been certified and approved for payment. 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 and that the quality of the Work is in accordance with the Contract Documents as the Construction Manager is entitled to payment in the amount certified by the Architect. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the 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.

§ 3.6.4 SUBMITTALS

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

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the 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 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 shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, 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. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and the GMP Package, and do not involve an adjustment in the Cost of Work or an extension of the Schedule. The Architect shall prepare proposed Change Orders and Construction Change Directives (collectively "Architect's bulletins") for the Owner's approval, with the Construction manager to prepare Final Change Orders and Construction Change Directives for execution in accordance with the Contract Documents. Architect will consult with and provide its recommendations to the Owner and Construction Manager as to the necessity for the change, provide assistance to the Owner and the Construction Manager in negotiating Change Orders and Construction Change Directives, and prepare required plans, specifications and other design documents to be included with Change Orders and Construction Change Directives as part of its Basic Services.

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

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 Substantial Completion or substantially complete will mean the Work is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Work is ready for opening to the general public and fully operational for its intended use or purpose. A minor amount of work, as determined by and at the discretion of the Owner or its designated representative, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustments to the sound systems or completion or correction of minor exterior work ("Punch List Items") that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. In no event will Substantial Completion be deemed to have occurred unless (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities, and (ii) all Work has been approved and accepted by the Architect and the Owner or its designated representative, subject only to the Punch List Items. The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents

required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Upon determining that the Work is Substantially Complete, the Architect will prepare and execute a Certificate of Substantial Completion for the Work, or portions thereof, using AIA Document G704/CMA. The Architect will issue a final Certificate for Payment when, in the Architect's opinion, the Construction Manager has fully complied with all requirements of the Contract Documents. Issuance of a Certificate of Substantial Completion and final Certificate for Payment will constitute a representation by the Architect to the Owner that, to the Architect's reasonable knowledge, information and belief, the Work as referenced therein has been substantially or finally completed, as the case may be, in accordance with the Contract Documents.

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

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner 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.

§ 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 facility walk through and a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 When the Architect is notified that the Construction Manager believes a portion of the Project is Substantially Complete, the Architect will review the Work performed for that portion of the Project. If the Architect finds such Work to be Substantially Complete, it will so advise the Owner and Construction Manager. In that event the Architect will, in conjunction with the Construction Manager, compare the list of items still to be completed, as developed by the Construction Manager, with the actual condition of the Work as observed by the Architect, the Architect will prepare and deliver to the Owner and the Construction Manager a list of all incomplete and unsatisfactory items as either reported to or observed by the Architect (the "Punch List"). The Architect will also specifically inspect the Work with the Owner and will add to the Punch List any additional items discovered during that review. The Architect, Construction Manager and Owner will agree to a data base on which all Punch Lists for the Project will be prepared to enhance the parties' access to Punch List information.

§ 3.6.6.7 The Architect's responsibility to provide Basic Services for the post-construction phase commences upon Substantial Completion of the Project as a whole and terminates at the earlier of: (i) the date the final payment has been made to the Construction Manager; or (ii) three hundred and sixty five (365) days following Substantial Completion of the Project as a whole. The Architect will also participate in the inspections set forth in Section 3.6.6.8 as Basic Services even if such inspections occur after the time period set forth in the preceding sentence have expired.

§ 3.6.6.8 During the post-construction phase, the Architect will prepare the Punch List for the Project and will confer with and assist the Owner and Construction Manager to pursue and manage the completion of all Punch List items, warranty rights, and correction of Work. In conjunction with the Construction Manager and Owner, the Architect will also conduct observations of the Project, as scheduled by the Construction Manager, identifying items to be added to the Punch List and provide written reports to the Owner and Construction Manager on the Construction Manager's progress in resolving defective or unfinished items of Work.

§ 3.6.6.9 Within one hundred twenty (120) days of Substantial Completion, the Architect will be provided with and must review the as-built drawings as maintained by the Construction Manager and, based upon the information contained therein and the updated record drawings as maintained by the Architect, the Architect will provide the Owner with a universal electronic format and a CAD disk of record drawings for the Project, to include the Construction Manager's as-built drawings, and all construction change directives, change orders and field directives. The Architect will notify the Construction Manager and Owner, in writing, should it observe any error, deficiency or deviation in the as-built drawings supplied by the Construction Manager as compared to the Architect's observation of the Work or the updated record drawings as maintained by the Architect.

§ 3.6.6.10 In addition to the Post-Construction Services required above, the Architect will also, as Basic Services, participate in three further inspections of the HVAC, mechanical, electrical, plumbing and other MEP Systems, which inspections will be scheduled by and performed in conjunction with the Construction Manager as follows: (i) an inspection to be conducted at the end of the first full heating season following Substantial Completion of the Project, (ii) an inspection to be conducted at the end of the first full air conditioning season following Substantial Completion of the Project, and (iii) a warranty inspection of the entire Project to be conducted approximately eleven (11) months following Substantial Completion of the entire Project, with a written report to be delivered to the Owner at least fifteen (15) days before the first anniversary date of Substantial Completion of the entire Project.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Services listed below where an "A" is listed in the responsibility column are included in Basic Services. Any Services requested by the Owner in addition to Basic Services will be considered "Additional Services." Additional Services will be provided by the Architect and paid for by the Owner only if: (i) the Architect gives prior written notice to the Owner of the request for the Additional Services and the anticipated costs thereof, (ii) the Architect advises the Owner who requested the Additional Services or why the Architect believes the Additional Services are necessary or in the best interests of the Project, and (iii) the Owner, in writing, authorizes and directs that the Additional Services be provided. Failure of the Architect to provide the prior notice and to obtain the Owner's prior written approval will constitute a waiver of any claim by the Architect to be paid for Additional Services, unless, however, Architect is required to respond to emergency situations wherein prior notice to Owner is not reasonably practical. In such emergency situations, Architect will notify Owner of the need for such emergency services as soon as reasonably practical, and Architect shall be adequately compensated for its services as Additional Services as provided in this Agreement. If the prior written notice is given and the written approval obtained, the Additional Services will be paid for by the Owner pursuant to either a stipulated sum, as agreed to between the Owner and Architect and as set forth in the Owner's written authorization for the Additional Services, or on an hourly rate basis as provided in Exhibit G, when so designated in the Owner's written authorization. The parties agree to revisit and determine at a later date if the Architect will provide any of the Additional Services listed below as "Not Provided."

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

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming Confirmation	A	3.1.2
§ 4.1.2 Multiple preliminary designs	A	3.2.5
§ 4.1.3 Measured drawings	NP	
§ 4.1.4 Existing facilities surveys	NP	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	NP	
§ 4.1.6 Building Information Modeling (E202™–2008)	A	4.2.1
§ 4.1.7 Civil engineering	A	4.2.2
§ 4.1.8 Landscape design	A	4.2.3
§ 4.1.9 Architectural Interior Design (B252™–2007)	A	Exhibit E
§ 4.1.10 Value Analysis	A	3.1.7
§ 4.1.11 Detailed cost estimating	NP	
§ 4.1.12 Periodic on-site Project Representation	A	4,2,4
§ 4.1.13 Conformed construction documents	NP	
§ 4.1.14 As-Designed Record drawings	NP	
§ 4.1.15 As-Constructed Record drawings	A	3.6.6.9
§ 4.1.16 Post occupancy evaluation	NP	
§ 4.1.17 Facility Support Services (B210™–2007)	O	
§ 4.1.18 Tenant-related services	NP	
§ 4.1.19 Coordination of Owner's consultants	O	

§ 4.1.20	Telecommunications/data design	A	4.2.5
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	NP	
§ 4.1.22	Commissioning (B211™–2007) Basic. Pursuing LEED.	A	3.1.11
§ 4.1.23	Extensive environmentally responsible design	NP	
§ 4.1.24	LEED® Certification (B214™–2012)	A	Exhibit F
§ 4.1.25	Fast-track design services	NP	
§ 4.1.26	Historic Preservation (B205™–2007)	NP	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	A	4.2.7
§ 4.1.28	Foundation Design Services		
		A	4.2.8

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

4.2.1 Building Information Modeling. Architect will document design phases using Revit. Architect’s Revit models will be of sufficient detail to (i) provide three-dimensional views of the interior and exterior of the Municipal Center and other aspects of the Project, and (ii) form the basis for the creation of buildable and constructable documents. The parties specifically acknowledge and agree that Clash Detection Serviceability will not be provided, as this function will be performed by the Construction Manager’s team for constructability review.

§ 4.2.2 Civil Engineering. Architect will cause its Civil Engineer to perform the following services. During the Schematic Design Phase, Civil Engineer shall give consideration of alternate materials and systems, development of conceptual design solutions for utility systems, drainage systems, potential skywalk, and paving. During the Design Development Phase, Civil Engineer shall continue development and expansion of Schematic Design Documents, development of outline specifications and materials lists, preliminary details for civil engineering work. During the Contract Document Phase, Civil Engineer will finalize civil engineering calculations, drawings and specifications based on approved Design Development Documents, setting forth in detail the civil construction requirements for the Project.

§ 4.2.3 Landscape Design. Architect will cause its landscape designer to perform the following services. During the Schematic Design Phase, the landscape designer will give consideration to alternate materials, systems, equipment and development of conceptual design solutions for land forms, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants. During the Design Development Phase, the landscape designer will continue the development and expansion of the landscape Schematic Design Documents and the development of outline specifications and material lists to establish final scope and preliminary details for landscape work. During the Contract Document Phase, the landscape designer will prepare plans and specifications based upon approved Design Development Documents, setting forth in detail the landscape requirements of the Project.

§ 4.2.4 Periodic On-Site Project Representation. Architect and its Consultants will provide on-site representation as needed to provide missing information and/or clarifications of conflicting information within the Contract Documents, and as necessary to fully perform Architect’s Services and satisfy governing and licensing requirements.

§ 4.2.5 Telecommunications/Data. Architect to provide drawings and specifications for all telecommunications/data conduit raceways, cameras, card readers and door monitors, will specify all electronic components for TVs, and will coordinate door hardware with the security system.

§ 4.2.6 Architect will provide Phase Construction design services as required to achieve Construction Manager’s schedule at no additional cost to Owner, which will include, but not be limited to (i) site preparation, (ii) a structure and enclosure package, and (iii) a final fit-out package.

§ 4.2.7 Architect will provide furniture, furnishings and equipment design services including aquatic related equipment as provided in the attached Exhibit E.

§ 4.2.8 Architect will provide design services for all subsurface systems and improvements, including, but not limited to, foundations, footings, retaining walls, dewatering systems, etc., based on the Soils Report attached as Exhibit H and any additional soils reports provided by the Owner.

§ 4.2.9 Architect will provide fundamental commissioning as required by LEED as decided by owner.

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

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs and in-depth material research;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations enacted after the issuance and acceptance of the final GMP. For purposes of this Agreement, "Instruments of Service" shall be representations, in any medium now known or later developed, of the tangible and intangible creative work performed by the Architect, and the Architect's Consultants and Design Team, or the Owner, under their respective professional services, which may include, without limitation, studies, surveys, models, sketches, drawings, specifications and other similar materials;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner subject to the provisions of Section 3.3.1.1;

(Paragraph deleted)

- .6 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .7 Evaluation of the qualifications of bidders or persons providing proposals;
- .8 Consultation concerning replacement of Work resulting from fire or other cause during construction;

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

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to any unreasonable or repetitive requests for information from the Construction Manager 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, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Intentionally omitted.
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or

(Paragraph deleted)

- .5 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 365 days after the date of Substantial Completion of the Work and issuance by governing authorities or a final Certificate of Occupancy, whichever occurs later, except as provided in Section 3.6.6.5.

(Paragraphs deleted)

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 5.3 The Owner 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.

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

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

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

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

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

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

§ 5.10 Intentionally omitted.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction, as modified.

§ 5.12 The Owner shall provide the Architect 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.

§ 5.13 During both phases of the Project, the Owner shall purchase and maintain liability insurance, including waivers of subrogation, as set forth in Section 10.20 below. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 5.13.1 Property Insurance in an amount equivalent to the total value for the entire Project, exclusive of footings, foundations, landscaping, excavation, park improvements, and West water detention pond, on a replacement cost basis without optional deductibles.

§ 5.13.2 Boiler and Machinery Insurance in an amount equivalent to the total value for the entire Project, exclusive of footings, foundations, landscaping, excavation, park improvements, and West water detention pond, on a replacement cost basis without optional deductibles.

§ 5.13.3 Commercial general liability insurance: \$2,000,000.00 per occurrence.

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 and shall include Construction Manager's general conditions costs, fee, and contingency.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project as required by the Owner, until such time as the final GMP has been established. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Construction Manager, and reviewed by the Architect, represent the Architect's judgment as a design professional.

§ 6.3 The Owner will require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work contained in the GMP.

§ 6.4 If at any time the Construction Manager's estimates of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect will cooperate with the Owner and Construction Manager to adjust the Project's size, quality or budget for the Cost of the Work, and will cooperate with the Owner and Construction Manager in making such adjustments.

6.6 Intentionally omitted

(Paragraphs deleted)

§ 6.7 Intentionally omitted.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 Any Instruments of Service in electronic form will be in the format requested by the Owner and reasonably acceptable to the Architect. Any Instruments of Service in electronic form will be in the format requested by the Owner and reasonably acceptable to the Architect. The Architect's 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 All Plans, Drawings, Specifications and other documents prepared by the Architect or its Consultants in connection with the Project constitute documents prepared for hire and will become the property of the Owner upon payment of the compensation due hereunder, including the transfer of all rights, title, copyrights, trademarks, licenses, intellectual property rights and all other tangible and intangible property interests. In the event such design documents, or any portion thereof, is not deemed to be made on a "work for hire" basis, the Architect and its Consultants irrevocably assign all right, title and interest, including copyright and intellectual property rights, in said

design documents to the Owner. The Architect agrees to execute such additional documents as may hereafter be reasonably requested by Owner to further evidence such ownership by and/or assignment to the Owner and agrees to include provisions in all its contracts with Consultants that are consistent with and implement the requirements of this Section. As a clarification to the ownership and assignment rights set forth above, the Owner acknowledges that the Plans, Specifications and other design documents prepared by the Architect for this Project will contain innumerable design details and typical specifications which, collectively, form part of the design for the Project but which, separately, are not Project specific, are primarily related to function as compared to design form, are repetitive in nature and/or were not specifically developed for or identifiable with the Project ("Architect's Standard Details/Specifications"). The Owner acknowledges and agrees that the Architect's Standard Details/Specifications shall remain the Property of the Architect and may be used by the Architect on other projects, in other contexts or for other clients, so long as they are not collectively used in a manner which replicates the overall design concepts of the Project.

(Paragraph deleted)

§ 7.4 The Architect hereby waives the existence of any statutory moral rights arising under 17 U.S.C. § 106A and any rights arising under other federal or state laws that convey rights of the same nature as those arising under 17 U.S.C. § 106A, or any other type of moral right or droit moral, that may apply to the design of the Architect as to any and all uses and applications in which either the right of attribution or the right of integrity may be implicated. The Architect further agrees not to institute, support, maintain or authorize any lawsuit on the ground that any subsequent action of the Owner in any way constitutes an infringement of any of the rights mentioned in this Section 7.4 or a defamation or mutilation of any part thereof or certain unauthorized variations, alterations, modifications, changes or translations.

§ 7.5 A complete record set of Plans, Specifications and other design documents for the Project (in electronic format) must be delivered by the Architect to the Owner upon completion of the Project. The Architect, however, will have the right to retain copies of design documents for this Project in its files and include in its promotional materials a description of its involvement with and depictions of the Project. The Architect may market their services but will not, however, have any rights to sell or license the design documents or any pictures, renderings or other depictions of the Project.

§ 7.6 The Owner will not have the right to use the design documents on any unrelated project or to sell or convey the design documents to a third party for use in an unrelated project, without the prior written consent of the Architect. The Owner must indemnify and hold harmless the Architect and the Architect's Consultants, from claims, losses and damages, including attorneys' fees, arising out of the Owner's alteration or reuse of the design documents on other projects without the Architect's consent.

§ 7.7 During the performance of the Architect's Services, the Architect will be responsible for any loss or damage to all design documents while they are in the Architect's possession and any such loss or damage thereto must be restored at the Architect's expense. Notwithstanding the foregoing, the Architect will not be responsible for any loss or damage caused by Owner, or any individual, entity, or governmental agency authorized by, or acting on behalf of, the Owner in accessing the design documents. The Owner will be allowed unrestricted access during normal business hours to the documents during the term of this Agreement and, at the sole discretion of the Owner, other individuals, entities or governmental agencies involved in the Project may have access to such documents. All documents prepared by the Architect pursuant to this Agreement must be in reproducible form.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General

Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

8.1.4 The Architect and Architect's Consultants shall defend, indemnify and hold the Owner and its elected and appointed officials, agents, officers, city council members, employees, and consultants harmless from and against damages, costs, and expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, on account of any claim for injury to or death or illness of any person or damage to or destruction or loss of any property arising from the negligent errors, acts or omissions of the Architect, its employees and its Consultants in the performance of services under this Agreement. In the event a third party brings a claim against the Owner alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Architect, its employees and its Consultants in the performance of services under this Agreement, then nothing in this Section or otherwise in this Agreement will prevent the Owner from tendering to the Architect the defense of the claim, or will prevent the Owner from availing itself of its common law rights to indemnification and contribution. Upon the Owner's tender of the claim to the Architect, the Architect will defend the claim alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Architect, its employees and its Consultants in the performance of services under this Agreement, but the Architect will not have any obligation to defend the Owner with respect to other claims brought by the third party against the Owner. The Architect will also be liable to and must defend, indemnify the Owner and its elected and appointed officials, agents, officers, city council members, employees, and consultants, and must hold each of the foregoing harmless from and against claims made against any of the foregoing for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings, or specifications furnished by the Architect in the performance of this Agreement, unless the Owner has given its written approval of the use of the system, method, or equipment in connection therewith after explicit warning that there may be an infringement.

§ 8.1.5 The Architect acknowledges that the Work is to proceed as a no-lien Project in accordance with the laws of the State of South Dakota regarding public projects. No party, therefore, will have the right to assert a mechanic's or other lien as against the Project. The Architect for itself, its Design Team, Consultants and for all who claim through the Architect, acknowledge and agree that the Project is a public project and that no lien may be asserted against or attach to the real estate on which the Project is to be performed or to any improvements now existing or to be constructed hereon. The Architect must provide written notice to its Design Team, Consultants and to any other persons with whom the Architect contracts with respect to Services provided pursuant to this Agreement, that this is a public project against which liens cannot be filed. The Architect must indemnify and hold harmless the Owner and City of Sioux Falls for costs, expenses and reasonable attorneys' fees, should an attempt to assert a lien be made on the Architect's behalf or on behalf of its Consultants, Design Team or any other person for whom the Architect is responsible.

§ 8.1.6 Owner and Owner's employees, consultants and agents shall defend, indemnify and hold Architect harmless from and against any and all damages, costs and expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, on account of any claim for injury to or death or illness of any person or damage to or destruction or loss of any property arising from the negligence of Owner, or any of Owner's acts or omissions. In the event a third party brings a claim against the Architect alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Owner, its employees and its consultants in the performance of services under this Agreement, then nothing in this Section or otherwise in this Agreement will prevent the Architect from tendering to the Owner the defense of the claim, or will prevent the Architect from availing itself of its common law rights to indemnification and contribution. Upon the Architect's tender of the claim to the Owner, the Owner will defend the claim alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Owner, its employees and its consultants in the performance of services under this Agreement, but the Owner will not have any obligation to defend the Architect with respect to other claims brought by the third party against the Architect.

§ 8.2 MEDIATION

§ 8.2.1 Neither party may initiate litigation to pursue a claim arising out of or related to this Agreement, or the performance thereof, without first exhausting the two-stage resolution mechanism set forth in this Section 8.2. Exhaustion of such dispute resolution mechanism is a condition precedent to the filing of any litigation on such claim; provided, however, that either party may file an appropriate action in a state or federal court where the Project is located for the sole purpose of preserving and protecting its lien rights or avoiding a statute of limitations cut-off, with both parties thereafter proceeding to exhaust the dispute resolution mechanism set forth herein before proceeding to prosecute or defend the pending judicial proceedings, except as necessary to avoid prejudice in such litigation.

§ 8.2.2 Stage One: Informal Negotiation. Either party may initiate informal negotiation of its claim, assuming the claim has been asserted within the time limits set forth in this Agreement by giving the other party written notice of such demand. Within ten (10) days of receipt of a demand for informal negotiation, representatives of the parties with authority to settle the claim will meet to determine if the claim can be resolved informally.

§ 8.2.3 Stage Two: Mediation. If informal negotiation fails to resolve the claim, either party may give written demand for mediation. Within ten (10) days of receipt of such demand, the parties must confer to determine if they are both willing to participate in the mediation process and can agree on a single mediator to handle the mediation session. In the event the parties cannot agree on a mediator, they will jointly file a request with the circuit court for Minnehaha County to appoint an experienced impartial mediator for that purpose. Such mediation session must take place, absent extraordinary circumstances or a mutually agreed decision to continue the mediation session to a later date, within ten (10) days of the appointment of the mediator. The mediation session must not last more than eight hours in length and the parties will equally share in the cost of the mediator for the mediation session. Should mediation fail, either party may thereafter file suit in the state or federal court having jurisdiction where the Project is located to prosecute its claim.

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

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

(Paragraphs deleted)

§ 8.2.5 The Architect and the Owner agree the dispute resolution provisions of this Article 8 control for all claims and disputes arising under this Agreement. The parties waive the administrative appeals requirements as found in Sections 30.04 through 30.046 of the Code of Ordinances of Sioux Falls, South Dakota.

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. This provision will not apply to an interruption in the performance of the Architect's Services due to a failure to satisfy the Construction Conditions, unless the Construction Conditions have not been successfully completed by _____.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than a failure to satisfy the Construction Conditions as set forth in Section 9.2, or the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

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

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

§ 10.4

The Architect agrees to sign, acknowledge, certify and notarize any documents reasonably required by the Owner, the Construction Manager or other party selected by the Owner and their respective agents and representatives in connection with the performance of the Architect's Services hereunder. If Architect is requested to sign any such documents, the proposed language of such documents shall be submitted to the Architect for review at least ten (10) days prior to the requested date of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

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

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

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

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order

to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 The failure of one party to insist upon or enforce, in any instance, strict performance by the other party of any of the terms of this Agreement, may not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or right on any future occasion.

§ 10.10 The parties agree that the terms of this Agreement must be construed neutrally and not against the Owner as drafter of this Agreement.

§ 10.11 All notices required under this Agreement must be made in writing and be served by personal delivery, prepaid registered or certified mail, overnight delivery and/or electronic transmission, with such notices to be deemed effective upon delivery, address to the respect parties as follows:

As to the Owner: Ms. Erin Bofenkamp, PMP
Project Manager
Mayor's Office, City of Sioux Falls
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117
605-367-8825
Email – ebofenkamp@siouxfalls.org

With copies to: Ms. Karen Leonard
Deputy City Attorney
City of Sioux Falls
224 West Ninth Street
Sioux Falls, SD 57117
Email – kleonard@siouxfalls.org

As to the Architect: TBD

Copy to: TBD

§ 10.12 The Owner and Architect each covenant, warrant and represent: (i) the individual executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement on behalf of the party for whom he or she signs, (ii) this Agreement is binding upon such party, and (iii) the execution and delivery of this Agreement will not result in any breach of or constitute a default under any agreement, contract or other instrument to which it is a party or by which it may be bound.

§ 10.13 Civil Rights Requirements. The Architect agrees as follows:

§ 10.13.1 With respect to any and all business conducted or acts performed pursuant to this Agreement, the Architect will be deemed an employer within the meaning of Chapter 98 of the Code of Ordinances of Sioux Falls entitled "Human Relations" and will be subject to the provisions of such chapter.

§ 10.13.2 If the Architect fails to perform these provisions, this Agreement may forthwith be terminated and canceled in whole or in part by the Owner and the Architect will be liable for any costs or expense incurred by Owner in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the Owner under this Agreement so terminated or canceled. Notwithstanding the foregoing, Architect shall only be liable to Owner for those damages incurred by Owner in good faith and upon commercially reasonable diligence to mitigate such damages.

§ 10.13.3 Should the Human Relations Commission in a proceeding brought as provided in Chapter 98 of the Code of Ordinances of Sioux Falls find that the Architect has engaged in discrimination in connection with this Agreement and issues a cease and desist order with respect thereto, the Owner will withhold up to 15 percent of the

Architect's fee until such time as the Commission's order has been complied with or the Architect has been adjudicated not guilty of such discrimination.

§ 10.13.4 The Architect will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Human Relations Commission, its agencies or representatives, to ascertain compliance with the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls applicable to the Architect.

§ 10.13.5 Section 10.15 is binding on all of the Architect's Design Team, Consultants and others performing the Services for the Architect.

§ 10.14 Architect hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota.

§ 10.15 The parties agree the Architect operates an independent business and is contracting to do work according to its own methods, without being subject to the control of the Owner, except as to the product or the result of the work. The relationship between the Owner and the Architect is that as between an independent contractor and an owner and not as an employer-employee relationship.

§ 10.16 Funds Appropriation. If funds are not budgeted or appropriated for any fiscal year for Services provided under the terms of this Agreement, this Agreement will impose no obligation on the Owner for payment, and Architect shall be excused from any further performance under this Agreement until such funds are reallocated to the Project. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage may accrue to the benefit of the Architect, its successors or assignees, for any further payments.

§ 10.17 Records. When fees or reimbursable expenses are not contracted for as lump sum amounts, the Architect will maintain, and also endeavor to require that its Consultants and subcontractors maintain, all books, documents, papers, accounting records, and other evidence which supports the charges invoiced to the Owner relating to this Agreement, and will make all such evidence, if available, available for audit by the Owner at its offices at all reasonable times during the term of this Agreement, and for a period of three years from the date of final payment for the Services rendered under this Agreement.

§ 10.18 Audit. The Owner will have the right to audit all books and records (in whatever form they may be kept, whether written, electronic, or other) relating or pertaining to this Agreement (including any and all documents and other materials in whatever form they may be kept, which support or underlie those books and records) kept by or under the control of the Architect, including but not limited to those kept by the Architect, its employees, agents, Consultants, assigns, successors and subcontractors. The Architect must maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement. This section may not be construed to limit, revoke, or abridge any other rights, powers or obligations relating to audit which the Owner may have by state, city or federal statute, ordinance, regulation or agreement, whether those rights, powers or obligations are expressed or implied.

Such audit may be performed by either an internal or external auditor, or both, approved by the Owner and must be conducted in accordance with generally accepted auditing standards. Costs associated with obtaining such certified audit reports will be paid by the Owner. The Owner or its authorized auditors, agents, employees, representatives or other designees will have the right to audit and inspect such records and books, together with the supporting or underlying documents and materials, from time to time during the term of this Agreement, upon reasonable notice to the Architect and during ordinary business hours.

§ 10.19 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of the Agreement, and the application of this Agreement to other circumstances will not be affected thereby, and each remaining term will be valid and enforceable to the fullest extent permitted by law.

§ 10.20 Waiver of Subrogation. The Owner and Architect waive all rights against (1) each other and any of their consultants, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent

covered by property insurance obtained pursuant to this Agreement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Architect, as appropriate, shall require of the Construction Manager, Construction Manager's contractors, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 11 COMPENSATION

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

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

Phase I – Lump Sum

Phase II - ___% of the GMP. The Phase II fee shall be converted to a fixed fee at the time of the final GMP on the date of the Construction Manager's Notice to Proceed.

(Paragraphs deleted)

§ 11.1.1 The Architect's inclusion of additive and deductive alternates into the GMP package that have the potential to increase the Cost of the Work plus or minus 5% is part of the Basic Services, and the Architect's compensation will not change because of the incorporation of such alternates in the Project.

§ 11.1.2 The Architect will include services for construction change directives, change orders and field directives that increase or decrease the Cost of the Work plus or minus 5% as part of its Basic Services, and the Architect's compensation will not change because of the issuance of the construction change directives, change orders and field directives.

§

Intentionally omitted.

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

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

Per the hourly rates set forth in **Exhibit G**

stated below:

§

Intentionally omitted.

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

(Table deleted)

Phase I

Program Development

Schematic Design

\$(insert lump sum)

This fixed fee for Phase I includes all reimbursable expenses listed in Section 11.8.

Phase II compensation will be ___% of the Cost of the Work (See Section 6.1 of this Agreement)

Design Development Phase	_____%
Construction Documents Phase	___%
Bidding or Negotiation Phase	___%
Construction Phase	___%
Total Basic Compensation for Phase II	100%

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

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

See Exhibit G.

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- .1 Transportation and authorized out-of-town travel and subsistence when approved by the Owner;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Websites, and extranets;
- .3 Intentionally omitted;
- .4 Printing, reproductions, plots, standard form documents. Copies of documents will be made for the Owner, when requested by the Owner. In order to minimize the costs of reproductions and plots, the Architect will, unless requested otherwise by the Owner, provide the Owner and Construction Manager with a reproducible set of Contract Documents and Design Development Documents from which to make copies and also in electronic or computer format if requested by the Owner;
- .5 Postage, handling and delivery;
- .6 Intentionally omitted;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner; and
- .8 Intentionally omitted;
- .9 All taxes, if any, levied on Basic services are included in Basic Services;
- .10 Intentionally omitted.
- .11 Intentionally omitted.

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

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

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows. No fee required.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the Owner's receipt of the invoice 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.)

2%

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

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. The Architect must maintain and require all of its Consultants to maintain, complete and correct books and records relating to all of its fees, expenses, and compensation and records related to the Project. The Architect must make all such records available to the Owner and its representatives for review, copying, and audit at all such reasonable times as the Owner may from time to time direct.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1.1 The Architect agrees that all communications with the general public and press will be handled by the Owner, and Architect agrees to make no communication, be it official or unofficial, concerning the design of the Municipal Center without first obtaining the Owner's consent and approval. Architect understands and acknowledges that in an attempt to coordinate media and other public interactions to the benefit of both Parties, any effort by Architect to publicize via its website, print media, press release, interviews with the news media, or prominent clients or partners regarding Architect's relationship with the Owner and the design and development of the Municipal Center shall proceed only after obtaining consent of and in coordination with the Owner.

§ 12.1.2 The Architect and the Owner acknowledge that in the performance of this Agreement it may be necessary for the either party to disclose information to the other that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but not limited to, the details and financial information related to elements or potential elements of the Project including but not limited to advertising, naming rights, third party tenants, and or other aspects of the Project. If the Owner or Architect considers the information to be Confidential Information, it must be identified as such in writing or marked "Confidential". If orally disclosed to or observed by the Architect or Owner, as applicable, a description of the Confidential Information will be reduced to writing, marked "Confidential" and delivered to the receiving party within thirty (30) days of disclosure. The Architect and Owner agree to keep in confidence and not to disclose Confidential Information to any person outside those authorized persons and entities involved in the Project. Notwithstanding the foregoing, the parties recognize certain information is required to be made public by the Owner pursuant to open records laws and ordinances.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 :

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

Exhibit	Description	Section Reference
A	Owner's Program	1.1.1
B	Owners Budget	1.1.2
C	Owner's Schedule	1.1.3
D	Design Team Personnel	2.7.1
E	Architectural Interior Design (B252™-2007 as modified)	4.1.9
F	LEED® Certification	4.1.24
G	2015 (Insert Name of Architect) Standard Billing Rates	11.3
H	Soils Report	4.2.8

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

OWNER

(Signature)
 Mike Huether, Mayor
(Printed name and title)

ARCHITECT

(Signature)

(Printed name and title)







**EXHIBIT A
TO AIA DOCUMENT B101™-2007**

Owner's Program

[To be Developed and Added Post-Execution]











**EXHIBIT B
TO AIA DOCUMENT B101™-2007**

Owner's Budget

[To be Developed and Added Post-Execution]





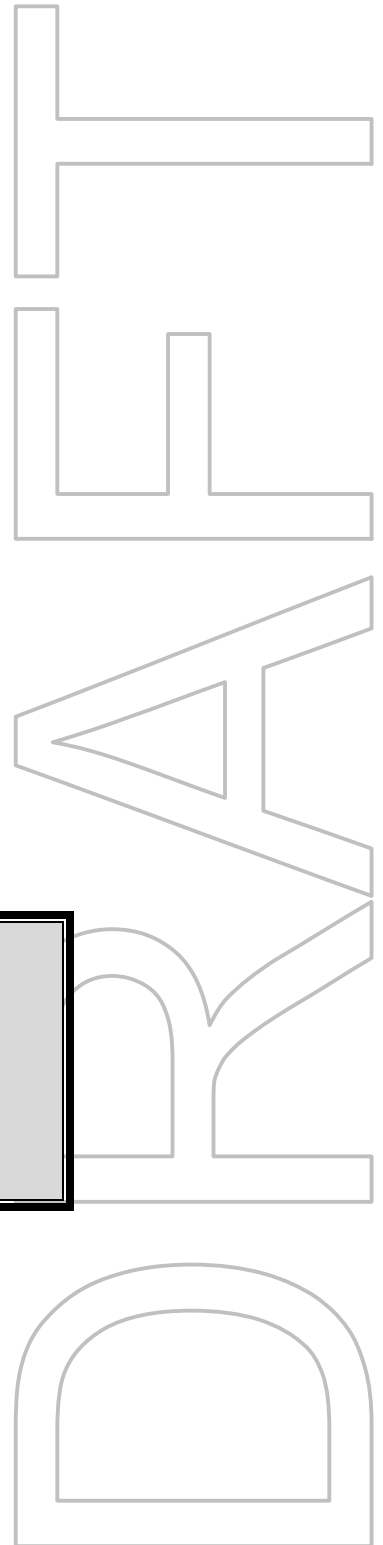




**EXHIBIT C
TO AIA DOCUMENT B101™-2007**

Owner's Schedule

[To be Developed and Added Post-Execution]









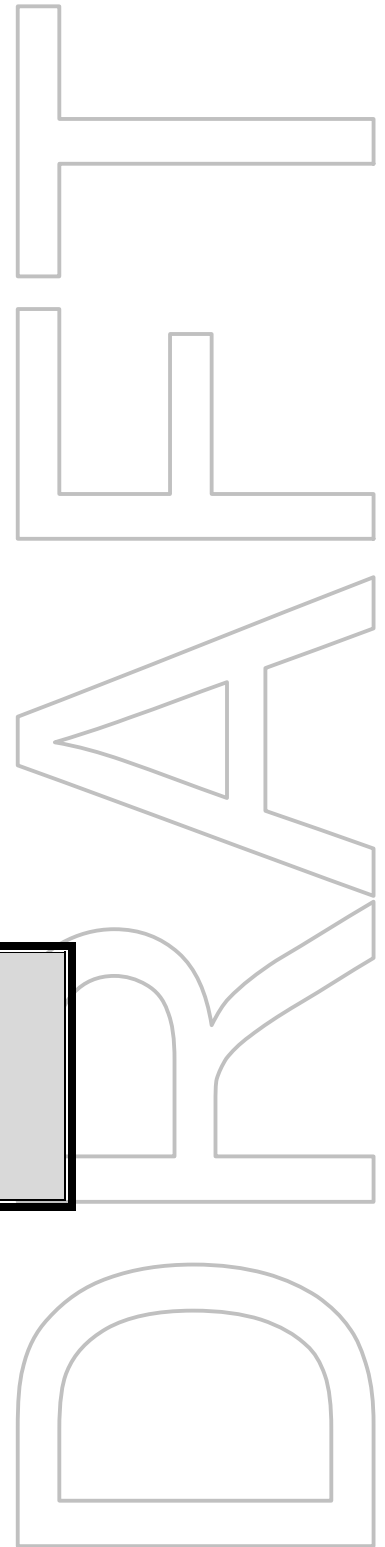


EXHIBIT D
TO AIA DOCUMENT B101™-2007

Design Team Personnel







**EXHIBIT E
TO AIA DOCUMENT B101™-2007**

**B252-2007
Standard Form of Architect's Services
Architectural Interior Design**

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 08:10:37 on 06/12/2015.

PAGE 1

City of Sioux Falls
224 West Ninth Street
PO Box 7402

Sioux Falls, SD 57117-7402 and the Architect:

...

Sioux Falls Municipal Center
N Dakota Avenue (between Eighth Street. and Sixth Street. – west side of road)
Administrative office building

The Owner and Architect agree as follows.

A. The Project.

The "Project" means the construction of an office building, in Sioux Falls, South Dakota (the "Municipal Center"), as further described in Section B below.

For purposes of clarification, the Architect will provide a full Scope of Architectural Services for the Municipal Center, Parking Lot, Landscaping, and potential skywalk. With respect to the potential Skywalk, the Architect will provide structural engineering and architectural services, as well as architectural oversight of document preparation for the potential Skywalk project.

B. The Owner has conceptual ideas for the Municipal Center. The Conceptual ideas include an office facility that at least three stories in height and approximately 15,000 square feet per level. The potential skywalk would provide parking access to the Eighth Street and Dakota Avenue parking ramp. T LEED certification shall be considered.

Owner and Architect recognize and agree Architect's performance of the Work (as defined below) for the Construction Phase (as further discussed in Section 3.6 below) is contingent upon the satisfaction of the following events ("Construction Conditions"): (i) The Owner's approval of the Guaranteed Maximum Price and Construction Manager Fees; (ii) the securing of funds necessary to pay the costs of the Project, including but not limited to the authorization and sale of sales tax bonds; (iii) Owner's decision, in its sole discretion to proceed with the Work; (iv) the issuance to the Construction Manager by Owner of a Notice to Proceed with the Work.

The Owner and Architect agree as follows:

The Project consists of two phases, described in general below:

	<u>Reference Guide</u>
<u>Phase I:</u>	
<u>Program Development</u>	<u>Exhibit A</u>
<u>Schematic Design</u>	<u>Sec. 3.2</u>
<u>Phase II:</u>	
<u>Design Development Services</u>	<u>Sec. 3.3</u>
<u>Construction Document Services</u>	<u>Sec. 3.4</u>
<u>Building Services</u>	<u>Sec. 3.5</u>
<u>Construction Services</u>	<u>Sec. 3.6</u>

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§ 1.1.1 As discussed in Section B above, Owner has developed conceptual ideas for the Project. The Owner's Conceptual ideas will be further developed and will become the formal program for the Project (the "Program"). The Owner, the Architect and the Construction Manager will mutually agree upon the Program and complete Exhibit A. The Program, once agreed upon by the Owner, Architect and Construction Manager, will replace the Conceptual Program. The Program will be prepared by the Architect in consultation with the Construction Manager and the Owner based upon the collective background and experience of the Architect and Construction Manager related to the projects of this type, nature and size and upon interviews with and/or information received from appropriate representatives of the Owner. The Architect will work with the Construction Manager so that the Construction Manager may confirm to the Owner by programmatic estimate that the Program appears to be consistent with the Budget and Schedule. The Program will establish the general criteria and parameters for the Project and will be the information upon which the Schematic Design Documents (as further discussed in Section 3.2 below) will be prepared, approved and measured. The Architect will keep all members of its Design Team (as defined in Exhibit D attached hereto and incorporated herein) and Consultants (as defined in Section 1.1.12.1 below) apprised of the programmatic requirements, schedule timelines and budget constraints, so as to maintain conformance with the Program, Schedule (as defined in Exhibit C attached hereto and incorporated herein) and Budget (as defined in Exhibit B attached hereto and incorporated herein).

After the Schematic Design Documents have been approved by the Owner by written correspondence to the Architect, the Schematic Design Documents will replace the Program, and will establish the criteria and parameters against which the Design Development Documents (as further discussed in Section 3.3 below) will be measured. The Architect will keep all parties apprised of the programmatic requirements, schedule timelines and budget constraints, in terms of their conformance with the Schematic Design Documents, Schedule and Budget. If in preparation of the Schematic Design Documents, the Architect discovers or suspects that there has been or may have been a deviation from the Program, the Architect must promptly advise the Owner and Construction Manager in writing.

After the Design Development Documents have been approved by the Owner by written correspondence to the Architect, the Guaranteed Maximum Price package identified in Section 3.3.4 (the "GMP Package"), which includes the Design Development Documents, will replace both the Program and Schematic Design Documents, and will establish the criteria and parameters against which the Construction Documents (as further discussed in Section 3.4 below) will be prepared, approved and measured. The Architect will keep all parties apprised of the programmatic requirements, schedule timelines and budget constraints, in terms of their conformance with the GMP Package, Schedule and Budget. If in its preparation of the Design Development Documents the Architect discovers or

suspects that there has or may have been a deviation from the then current Schematic Design Documents, the Architect must promptly advise the Owner and Construction Manager in writing.

§ 1.1.2 The Owner's initial budget for the entire Project will be developed by the Owner, in consultation with the Architect and Construction Manager during the Preconstruction Phase and will be set forth in **Exhibit B** (the "Budget"), as follows. Prior to the establishment of the Guaranteed Maximum Price ("GMP") at the conclusion of the Design Development Phase as set forth in Section 3.3.5, the Cost of the Work (as defined in Section 6.1 below), including the Owner's contingency, which is separate and distinct from the Construction Manager's contingency and not available for the Architect's or the Construction Manager's use, will be updated from time to time by the Owner in consultation with the Architect and the Construction Manager, with all revisions to be set forth in **Exhibit B**. The Owner, in consultation with the Architect, and the Construction Manager will mutually agree upon the Guaranteed Maximum Price at the conclusion of the Design Development Phase as set forth in Section 3.3.5, which amounts will replace the previous Budget and be set forth in **Exhibit B**. Prior to Owner giving to the Construction Manager a notice to proceed with the Construction Phase ("Notice to Proceed"), the Architect will consult with the Owner and Construction Manager to determine, to the best of the Construction Manager's knowledge and based upon Architect's diligent review, the GMP is sufficient and reasonable and is consistent with the Budget, Schedule, and the Construction Documents. The Architect will, through the Design Development Phase, periodically review and comment on estimates as prepared by the Construction Manager. The Architect will, utilizing available information, develop the design for the Project consistent with the Budget and Schedule, and first the Program, then the Schematic Design Documents and then the GMP package. Through the Schematic Design Phase, the Design Development Phase, and the Construction Documents Phase, the Architect and its Consultants will, as necessary, and without additional cost to the Owner provide value engineering services as necessary to maintain compliance with the Budget. During the Construction Documents Phase, the Architect and its consultants will incorporate into the Construction Documents all bid alternates and post award options as approved by the Owner. There will be no deviation from the Budget, or ultimately the GMP when confirmed as described above, without the Owner's prior written consent.

§ 1.1.3 The Owner's schedule for the date of commencement of the Project, milestone dates for completion of various portions of the Project and the Date of Substantial Completion of the Project, which is April, 2018, will be developed by mutual agreement of the Owner, the Architect and the Construction Manager during the Preconstruction Phase, and will be set forth in **Exhibit C** (the "Schedule"). Subject to causes outside of the control of Owner, Architect or Construction Manager, the design and construction of the Project must proceed so as to achieve Substantial Completion of the Project in accordance with the Owner's Schedule. Upon mutual agreement between Owner and Architect, the Architect will (i) accept all portions of the Schedule relating to its Services, (ii) agrees, subject to causes outside of Architect's control including but not limited to Owner's own desired modifications, to provide its Services within the time limits established by the Schedule and (iii) will provide recommendations, decisions and information in a timely manner which are critical to maintaining compliance with the Schedule. The Architect will analyze its Services and the Services provided by members of its Design Team and Consultants and keep them apprised of the current and future scheduling requirements for purposes of coordinating their Services so as to maintain compliance with the Schedule. The Construction Manager will periodically update and provide further detail on the Schedule and the Architect will: (i) consult with the Construction Manager as to the schedule for design services and coordinate and integrate the Architect's services with the Construction Manager's services, the Owner's responsibilities, the advertising, bidding and awarding of the various Bid Packages (as further discussed in Section 3.5 below) and the critical milestone dates for the Schedule; and (ii) assist the Construction Manager to identify critical and long lead-time items and implement procedures to coordinate the procurement of these items consistent with the Schedule.

As typical with complex projects of similar scope, multiple bid packages and phased construction may be utilized. The use of multiple bid packages and phased construction does not constitute for this Project what is commonly known in the industry as a fast track schedule. The number of bid packages will be determined upon satisfaction of the Construction Conditions. Following satisfaction of the Construction Conditions, the parties agree (subject to the Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement regarding the Schedule including sequence, content and order of bid packages. During the Construction Phase, the Architect will provide the following meeting and scheduling services:

§ 1.1.3.1 Participate in weekly job site meetings that include the Construction Manager's representatives, appropriate Subcontractors, and the Owner's representatives, to review open issues, and resolve pending or upcoming issues.

§ 1.1.3.2 Comment on the Construction Manager's determination of the adequacy of the Subcontractor's personnel and equipment and the availability of materials and supplies to meet the Schedule.

§ 1.1.3.3 Comment on the Construction Manager's short-term (3 to 4 week look-ahead) schedule delivered to the Architect and Owner on a weekly basis..

The Architect will keep the Owner fully apprised of all updates and reviews of the Schedule and there will be no change to or deviation from the Schedule that would extend Substantial Completion of the Project, without the Owner's prior written consent, except for circumstances beyond the control of the Construction Manager, and then only to the extent expressly provided for in the Contract Documents. While the Architect will not be liable for any failure of the Construction Manager, or the Owner's other contractors to perform their work or services in the conformance with the Schedule, if the Architect observes or suspects that any of those parties have or may deviate from the Schedule, the Architect will promptly advise the Owner and the involved party and will also indicate what action the Architect recommends to avoid, correct or minimize such deviation.

§ 1.1.4 If, during the course of the Project, the Architect discovers or has reason to believe there has been or may be a deviation from the Budget, Schedule or first the Program, then the Schematic Design Documents, then the GMP Package, and finally, the Construction Documents, or if in the Architect's opinion it is in the Owner's best interest to revise any of the foregoing, the Architect will advise the Owner and the Construction Manager, and will: (i) endeavor to re-establish conformance with the foregoing, including providing further Services (but only those Services as set forth in Articles 3 and 4 of this Agreement) by the Architect and its Consultants, without additional cost to the Owner if such deviation is caused by or the result of an error or omission of the Architect or its Design Team or Consultants; and (ii) consult with the Owner, the Construction Manager and others involved with the Project to identify and recommend, as necessary, other options available to avoid or minimize any adverse impact to the foregoing.

§ 1.1.5 The Owner desires to explore LEED certification for the Project. The Architect, in coordination with the Construction Manager, will provide the services as outlined on the attached Exhibit F with respect to the goal of achieving such LEED certification.

§ 1.1.6 The Architect will: (i) assist the Owner in working with various governing authorities as requested; (ii) work with the Owner and Construction Manager to develop a project communication system that is effective for the participants and meets the Schedule requirements of the Project; and (iii) work cooperatively with the Owner and Construction Manager to develop and implement a strategy for meeting the Project's energy efficiency goals and humidity control goals.

§ 1.1.7 The Owner will retain the services of a Construction Manager to provide the services, duties, and responsibilities as described in AIA Document A133-2009, as modified. AIA Document A201-2007, as modified, will be used as the General Conditions of the contract for construction referenced by AIA Document A133-2009. The term "Contractor" used in both the AIA Document A201-2007 and this Agreement and all corresponding documents of both, will mean the Construction Manager.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.3:

Erin Bofenkamp, PMP
Project Manager
Mayor's Office, City of Sioux Falls
224 West 9th Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
605-367-8622

§ 1.1.10 The Owner will retain the following consultants and contractors:

Construction Manager: TBD

Geotechnical Engineer: TBD

Civil Engineer (for topographical survey): TBD

Environmental Surveyor (for hazardous materials): TBD

Hazardous Material Abatement Contractor: TBD

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:

TBD

§ 1.1.12 The Architect will retain the consultants as identified in Section 1.1.12.1.

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

TBD

.2 Mechanical Engineer:

TBD

.3 Electrical Engineer:

TBD

.4 Civil Engineer:

TBD

.5 Landscape Design:

TBD

.6 LEED Services:

TBD

.7 Building Envelope Consultant:

TBD

.8 Audio Systems/Acoustics, Noise and Vibration Control/Access Control/Video Surveillance Systems with Infrastructure:

TBD



- .1 Complete schematic design
February 2016
- .2 Complete design development
March 2016
- .3 GMP established
May 2016
- .4 Commencement of construction date:
July 2016
- ~~.2~~ .5 Substantial Completion date:
April 2018

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

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~~§ 2.1 The Architect shall provide the professional services as set forth in this Agreement architectural and engineering services necessary to design the Project, as set forth in this Agreement, including architecture, basic interior design, structural engineering, mechanical (HVAC and plumbing), fire protection engineering, electrical engineering, parking and landscaping. The Architect's construction documents must describe the Work necessary to bid, price and construct the Project~~

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~~§§ 2.2.1. The Architect acknowledges the critical aspect of timely completion of the Project, and represents that its Services will be performed as expeditiously as possible consistent with the Owner's Schedule. The Architect will provide necessary personnel and supervision to achieve timely completion of each phase of its Services, and, subject to the other provisions in this Agreement, will comply with all deadlines within the Schedule.~~

...

~~§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:~~

...

- .1 General Liability

The Architect must purchase and maintain a policy or policies of commercial general liability insurance on account of bodily injury or death or destruction of property, whether real, personal or mixed with minimum liability limits of:

General Aggregate, Per Project	\$2,000,000.
Completed Operations Aggregate	\$2,000,000.
Personal Injury and Advertising Injury	\$1,000,000.
Each Occurrence Limit	\$1,000,000.
Fire Damage (Any One Fire)	\$100,000.
Medical Expense (Any One Person)	\$5,000.

Coverage of the policy or policies must include contractual coverage for liability assumed by the Architect in this Agreement. Completed Operations coverage must be maintained for three (3) years past Substantial Completion of the Project.

.2 Automobile Liability

Automobile Liability covering owned, non-owned, and rented vehicles operated by the Architect with policy limits not less than the following:

<u>Bodily Injury/Property Damage Combined Single Limit (Each Accident)</u>	<u>\$1,000,000.</u>
<u>Medical Payment (Each Person)</u>	<u>\$5,000.</u>
<u>Uninsured Motorist (Each Accident)</u>	<u>\$1,000,000.</u>
<u>Underinsured Motorist (Each Accident)</u>	<u>\$1,000,000.</u>

Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than \$1,000,000 bodily injury by accident each accident, and \$1,000,000 bodily injury by disease each employee.

.4 Professional Liability

During all Phases of the Project, professional liability insurance written on a claims made basis with limits of liability in amounts not less than two million dollars (\$2,000,000) per claim and not less than two million dollars (\$2,000,000) aggregate, insuring the Architect and all persons for whose acts the Architect may be liable, against any and all liabilities arising out of or in connection with negligent acts, errors and omissions of any of the foregoing in connection with the carrying out of the professional responsibilities for the Project. The deductible may not exceed one hundred thousand dollars (\$125,000).

.5 The Architect may furnish these coverages under one policy or separate policies. The Architect must provide to the Owner certificates of insurance evidencing compliance with the requirements of this Section 2.5. The certificates must show the Owner and its elected and appointed officials, agents, officers, city council members, employees and consultants as additional insureds on the Commercial General Liability and Automobile Liability, and must provide that such insurance is primary and that any other insurance available to the Owner is in excess of and non-contributory to the insurance provided by the Architect. Insurance certificates and endorsements must on form reasonably acceptable to the Owner. The Insurance Services Office's (ISO) CG 2010 10 01 and CG 2037 or an equivalent endorsement form is to be used for the Commercial General Liability Policy providing additional insured status for completed operations.

.6 All such insurance must be maintained with responsible insurance carriers legally permitted to do business in the State of South Dakota, having a Best rating reasonably acceptable to the Owner, and otherwise reasonably acceptable to the Owner. Upon the signing of this Agreement, the Architect must deposit with the Owner certificates of insurance evidencing the required coverages, bearing notations or accompanied by other evidence satisfactory to the Owner of the payment of all premiums thereunder.

.7 The Architect must not allow insurance policies required by this Agreement to lapse, be canceled, reduced in coverage, non-renewed, or materially changed or have restrictive modifications added at any time, unless necessitated by or as a result of Owner's own requirements or expectations for the Project. As required below, riders or other documentation satisfactory to the Owner providing as follows must be made part of the insurance policies described herein (and 45 days before the expiration date of any required policy), the Architect must provide equivalent satisfactory evidence to the Owner of the payment of the premium and renewal of the policy.

- .8 The policies must not be canceled, terminated, reduced in limits by endorsement or non-renewed until thirty (30) days after the Owner's receipt from the Architect's insurance agent or carrier of written notice thereof by certified or registered mail, return receipt requested, addressed to the Owner's Representative.
- .9 The representations (or the inaccuracies thereof) of the Owner, the Construction Manager, contractors or any other authorized persons on the Project must not invalidate the policies.
- .10 The Owner must be added to the commercial general liability policy and the automobile liability policy as a named additional insured. The negligence, misrepresentations or misconduct by the Architect must not invalidate the commercial general liability policy, the automobile liability policy and the workers' compensation policy as to the Owner as an additional insured.
- .11 Insurance policies required by this Agreement must be kept in full force and effect for the following periods:
- .1 Commercial General Liability insurance must be kept in full force and effect until three years after Substantial Completion of the Project.
- .2 Workers Compensation insurance must be kept in full force and effect until receipt of final payment by the Architect hereunder.
- .3 Professional Liability insurance must be kept in full force for three years after Substantial Completion of the Project.
- .12 To the extent allowed by the insurance provider, if the Architect fails to provide or keep in force insurance as required under this Agreement, after thirty (30) days from Architect's receipt of notice from Owner of such failure, the Owner may purchase or pay premiums for such insurance on the Architect's behalf, and the Architect will be liable to and must indemnify the Owner for all of the Owner's costs related thereto, including attorney's fees and costs incurred in collecting and enforcing this sub-section 2.5.12.
- .13 Compliance by the Architect with the insurance requirements of this Agreement will not relieve the Architect from liability for amounts in excess of the limits of insurance.
- .14 The Commercial General Liability policy must be endorsed to provide that the general aggregate applies separately to each project. ISO Endorsement CG 2503 per project endorsement or its equivalent is to be used to satisfy this requirement.
- .15 The Commercial General Liability, Automobile Liability, and Workers Compensation must be endorsed to provide a Waiver of Subrogation endorsement in favor of the Owner and its employees, consultants and representatives.
- .16 The Commercial General Liability policy must be endorsed to provide primary and non-contributing coverage on the Owner's Project.
- .17 The Automobile policy must state that it provides primary coverage.
- .18 Upon request of the Owner, the Architect must furnish the Owner complete and certified copies of all policies required by this Article.

§ 2.6 The Architect represents that all persons who are directly supervising the professional architectural services for the Project, and who execute the Contract Documents for the Project, will be duly licensed to practice under the laws of the State of South Dakota, and all engineering services provided hereunder will be performed under the direct supervision of engineers licensed to practice under the laws of the State of South Dakota.

§ 2.7 The Architect's principals and key management and design personnel, who will provide the Architect's Services for the Project, are identified in **Exhibit D**. The Owner reserves the right to approve the principals and key management and design personnel of the Architect who will provide the Architect's Services for the Project. As

of the date of this Agreement, Owner hereby approves the principals and key management and design personnel listed on Exhibit D. The Architect further represents it will commit such personnel for the duration of the Project necessary to complete the Architect's Services under this Agreement, in terms of expertise and fulfillment of its duties and obligations under this Agreement. No substitutions of any key principal or key management and design personnel may be made by the Architect without the Owner's prior written consent. In the event any principal or key management and design personnel are no longer employed by the Architect, the Architect must notify the Owner within five (5) days after learning of such event. The Architect must use its best efforts to provide a permanent replacement within thirty (30) days after such event. The Owner will have the right to approve the proposed replacement in advance of his or her assignment to the Project. The Owner may require the Architect remove from the Project any personnel whose performance under this Agreement is not satisfactory in the Owner's commercially reasonable judgment.

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§ 3.1 The Architect's Basic Services consist of those described in Article 3 and Article 4 and include usual and customary structural, mechanical, and electrical engineering ~~services~~ services required of projects similar in scope, size and complexity to the Project. Services not set forth in this Article 3 ~~are Additional Services~~ and Article 4, are Additional Services and Owner and Architect shall negotiate Architect's performance of such Additional Services if Owner so requires.

§ 3.1.1 The Architect shall manage the Architect's services, ~~meet with and consult with the Owner, obtain the Owner's approval on all design concepts,~~ research applicable design criteria, attend Project meetings, ~~communicate with members of the Project team and report progress to provide printed meeting notes of all meetings between the Architect and the Owner~~ within two (2) business days following each meeting unless otherwise agreed upon between Architect and the Owner.

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§ 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 ~~services for inclusion in the Project Schedule~~. The schedule shall include milestone dates, anticipated dates when cost estimate reviews or design reviews may occur, and allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Upon the Owner's reasonable request, the Architect will submit information to the Owner and participate in developing and revising the Project Schedule as it relates to the Architect's Services. Once approved by the Owner, time limits established by the ~~schedule shall not, except for reasonable cause,~~ Schedule shall not, except for reasonable cause including, but not limited to, those causes outside the actual control of Architect or upon Owner's own request, be exceeded by the Architect or Owner. If necessary to keep the Project on Schedule, the Architect will institute steps necessary to recover lost time, including adding additional staffing and increasing or adding overtime services without additional cost to the Owner. Notwithstanding the foregoing, if such additional steps are necessitated by causes outside of the control of Architect, including but not limited to natural forces or changes requested by Owner, the Owner and Architect shall mutually agree on an amendment to the Schedule or Architect shall be paid an hourly rate for such Additional Services, as provided in Exhibit G attached hereto. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until ~~the commencement of construction, completed.~~

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

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall meet with, and make presentations to, individuals, committees, groups, and other entities having jurisdiction over, or otherwise having an interest in, the Project as reasonably requested by the Owner.

...

§ 3.1.10 Time is of the essence in the performance of the Architect's Services and the Owner's responsibilities for the Project are important to completion of the Project. Therefore, services will be performed in accordance with the Schedule. The deadlines required for performance between the Architect and the Owner will be mutually agreed upon by the parties, will be included in the Schedule, and will be met with reasonable promptness.

§ 3.1.11 The Architect will design the Project with consideration to attain a "LEED" certification under the Leadership in Energy and Environmental Design ("LEED") program administered by the U.S. Green Building Council, as provided in the attached Exhibit F incorporated herein.

§ 3.1.12 The Architect will provide "Programming Services" consisting of consultation to confirm and document the following requirements for the Project including but not limited to (a) design objectives, limitations and criteria, and future expansion (b) development of initial space requirements, (c) space relationships and adjacencies, (d) flexibility and expandability, (e) special equipment and systems, (f) site requirements, (g) materials to allow the Owner and Construction Manager to develop the Budget, (h) security criteria, and (i) humidity control.

§ 3.1.13 The Architect will provide written notice of any potential additional service claims it may make in advance of performing any work that it believes is an Additional Service. Such work will not be performed without the Owner's prior written authorization.

§ 3.1.14 To the extent the Owner elects to engage in formal project partnering sessions involving the Owner's consultants and contractors, each participant will bear its own cost and expense of attendance.

§ 3.1.15 The Architect will prepare computer aided design renderings and graphics in 2-D and 3-D format to assist the Owner in achieving an understanding of the design concepts being advanced by the Architect.

§ 3.1.16 Architect acknowledges the Owner is relying upon the skill and knowledge of the Architect and its Consultants to prepare plans, specifications and other design documents which comply with the standard of care and conform to the laws, rules, regulations and codes applicable to the Project. The Owner's periodic review of plans, specifications and other design documents per the terms of this Agreement will include the Owner's approval of aesthetic aspects, space configuration, floor plan layout and general conformance to the Owner's space utilization requirements. The Owner has no duty, however, to review the technical aspects of plans, specifications or other design documents as developed by the Architect and its Consultants, and the Owner's review and approval of such plans, specifications and other design documents per the terms of this Agreement, will not act to diminish or release the Architect's responsibilities to the Owner as set forth in this Agreement.

§ 3.1.17 The Owner will have no obligation to the Architect's Consultants under a direct contract, third party beneficiary or any other theory. The Owner will not, other than as provided by applicable statutes, if any, be obligated to pay such Consultants nor be liable for the nonpayment of fees, costs and expenses of such Consultants, as such fees, costs and expenses are the obligation of the Architect, unless Architect's failure to pay such fees, costs and expenses is a result of Owner's failure to pay Architect as provided herein. The Architect must, however, provide in all its contracts with its Consultants for this Project written provisions which specifically require (i) each Consultant will be bound by the terms of this Agreement; (ii) each Consultant will assume toward the Owner all the obligations and responsibilities which the Architect, per this Agreement, has assumed toward the Owner; and (iii) each Consultant will be liable on a third party beneficiary basis to the Owner for any act, error or omission which constitutes breach of the Consultant's contractual obligations with respect to the Project, including an acknowledgment of the Owner's right, should the Owner so choose, to directly pursue and enforce claims against the Consultant for any breach of the Consultant's contractual obligations. Should any Consultant refuse to include the above terms in its contract with the Architect, the Architect will notify the Owner, in writing, of such refusal and must not contract with that Consultant unless the Owner gives written permission to do so.

§ 3.1.18 The duties, responsibilities and limitations of authority of the Architect may not be restricted, modified or extended without a written agreement signed by the Owner and Architect and with notice to the Construction Manager.

§ 3.1.19 The Owner and Architect must, in the best interests of the Project, promptly communicate with each other as to the current status, recent developments and the anticipated activities for the Project. Communications of the Owner by and with the Architect's Consultants and other members of its Design Team, will be through the Architect.

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

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

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

Work

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work, schedule, budget, including the Cost of the Work and first, the Program, then the Schematic Design Documents, then the Design Development Documents, and finally the Construction Documents.

§ 3.2.6 The At the conclusion of the Schematic Design Phase, the Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3, and the Construction Manager, plans and specifications for review and pricing of the Cost of the Work. The package will include the Schematic Design Documents and a written narrative statement which includes the Architect's description of incomplete design elements of the Schematic Design Documents. The Architect will meet with the Owner and Construction Manager to review the Schematic Design Documents.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Upon receipt of the Construction Manager's estimate of the Cost of the Work at the conclusion of the Schematic Design Phase, the Owner and the Architect will review the Construction Manager's estimate of the Cost of the Work. The Architect, the Owner and the Construction Manager will cooperate with each other until they mutually agree upon the estimate of the Cost of the Work, which amount will then be included in the Owner's Budget. If revisions to the Schematic Design Documents are required to comply with the Owner's Budget, the Architect will make the required revisions to the Schematic Design Documents without additional fee or expense to the Owner until the Schematic Design Documents support completion of the Work in conformity with the Owner's Budget. The Architect will then request the Owner's approval of the Schematic Design Documents.

...

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

§ 3.3.1.1 The Architect will include additive and deductive alternates into the GMP package that have the potential to increase or decrease the Cost of the Work plus or minus 5% as part of its Basic Services.

§ 3.3.1.2 The Owner, the Architect and the Construction Manager will, at a mutually agreed upon date, discuss and agree upon timing intervals for the Architect to provide drawings and other reasonably appropriate documents which represent the then current progress of Design Development. Such mutual agreement will also describe the deliverables to be provided at the completion of the Design Development Phase.

§ 3.3.2 ~~The Architect shall update the estimate~~ Upon completion of 60% of the Design Development Documents, the Architect will submit to the Owner and the Construction Manager plans and specifications for review and pricing of the Cost of the Work. The package will include the 60% completed Design Development Documents and a written narrative statement which includes the Architect's description of incomplete design elements of the Design Development Documents. The Architect will meet with the Owner and Construction Manager to review the 60% completed Design Development Documents.

§ 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.~~ Upon receipt of the Construction Manager's estimate of the Cost of the Work upon completion of 60% of the Design Development Documents, the Owner and the Architect will review the Construction Manager's estimate of the Cost of the Work. The Architect, the Owner and the Construction Manager will cooperate with each other until they mutually agree upon the Cost of the Work. If revisions to the Design Development Documents are required to comply with the Owner's Budget, including the Cost of the Work, the Architect will make the required revisions to the Design Development Documents without additional fee or expense to the Owner until the Design Development Documents support completion of the Work in conformity with the Owner's Budget, including the Cost of the Work. The Architect will then proceed with the completion of the Design Development Documents in accordance with the Owner's Budget.

§ 3.3.4 Upon 100% completion of the Design Development Documents, the Architect will submit to the Owner and the Construction Manager the plans and specifications for the GMP package. The GMP package will include the Design Development Documents, a written prose statement which includes the Architect's description of incomplete design elements of the Design Development Documents and Construction Manager's statement of the assumptions and clarifications (including anticipated qualities and quantities) with respect to the Design Development Documents. The Architect will meet with the Owner and the Construction Manager to review the GMP package.

§ 3.3.5 Upon the Architect's and the Owner's receipt of the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase, the Owner and the Architect will review the Construction Manager's estimate of the Cost of the Work. The Architect, the Owner and the Construction Manager will cooperate each with the other until they mutually agree upon the Cost of the Work. Upon the mutual agreement of the Architect, the Owner and the Construction Manager, the Cost of the Work will be incorporated into the GMP. The Owner and the Construction Manager will agree upon the Construction Manager's fee. The GMP will consist of the Cost of the Work and the Construction Manager's fee. The GMP will become fixed, will be binding upon the Construction Manager, and will be included in the Owner's Budget by amendment to Exhibit C. If revisions to the Design Development Documents are required to comply with the Owner's Budget, including the Cost of the Work represented in part by the GMP at the conclusion of the Design Development Phase, the Architect will make the required revisions without additional fee or expense to the Owner until the Design Development Documents support completion of the Work in conformity with the Owner's Budget, including the Cost of the Work represented by the GMP. The Architect will then request the Owner's approval of the Design Development Documents.

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§ 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 requirements, Schedule, and the budget, including the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product

Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4. The Construction Documents must describe the Work necessary to bid and construct the Project in accordance with the Owner's Budget.

...

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Construction Manager and Owner in the development and preparation of ~~(1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) forms.~~ 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. Upon 45% of completion, and upon 100% of completion, of the Construction Documents, the Architect will submit to the Owner and the Construction Manager the Construction Documents for review, comment and potential approval. At the request of the Owner or Construction Manager, the Architect will meet to assist in the review of the Construction Documents, including providing a detailed presentation with respect to such documents and responding to any questions raised. If revisions to the Construction Documents are required to comply with the Owner's Budget, including the Cost of the Work as a part of the GMP, the Architect will incorporate the required revisions into the Construction Documents without additional fee or expense to the Owner.~~

§ 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. Construction Documents must include a written description of the commissioning requirements for documenting and verifying that the installation and performance of the HVAC, plumbing, electrical, communication, security, emergency, fire and life safety and other systems which are part of the Project ("MEP Systems"), are in conformity with the Contract Documents. Architect will perform this portion of the Work in coordination with the Architect's commissioning agent.~~

§ 3.4.6 The Architect will then submit the Construction Documents to the Owner, confirm to the Owner the Construction Documents conform to the GMP, and request the Owner's authorization to release the Construction Documents for bidding. Upon Owner's authorization, the Architect will then release the Construction Documents for bidding.

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§ 3.5.2.2 The Architect shall assist the Owner and the Construction Manager in bidding the Project by

- ~~.1 procuring the reproduction of providing to the Construction Manager electronic copies of the Bidding Documents for distribution to prospective bidders;~~
- ~~.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders; bidders by the Construction Manager; and~~
- ~~.3 organizing and conducting a .2 participating in pre-bid conference for prospective bidders; and~~
- ~~.4 .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and addenda.~~
- ~~.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.~~

...

§ 3.5.3 NEGOTIATED PROPOSALS

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

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

- ~~.1~~ procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- ~~.2~~ organizing and participating in selection interviews with prospective contractors; and
- ~~.3~~ participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

...

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

~~§ 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 Construction Manager’s~~ failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall only 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, errors, acts or omissions of the Contractor-Construction Manager or of any other persons or entities performing portions of the Work.

~~§ 3.6.1.3~~ Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the ~~award of the Contract for Construction~~ Owner’s issuance of the Notice to Proceed with the Work to be issued to the Construction Manager, and terminates on the date the Architect issues the final Certificate for ~~Payment~~–Payment or the governing authorities issue a final Certificate of Occupancy, whichever event occurs later.

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~~§ 3.6.2.1~~ The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section ~~4.3.3, 4.2.4~~, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the ~~Contractor, Construction Manager~~, and (2) defects and deficiencies observed in the Work.

~~§ 3.6.2.2~~ The Architect has the ~~authority~~–authority, after notification to and consultation with the Owner and Construction Manager, 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~~ advisable to confirm that the Work adheres to the intent of the Contract Documents, the Architect will also have the authority, after notice to and upon written authorization from the Owner, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect as set forth herein, nor a decision made in good faith either to exercise or not to exercise such ~~authority~~–authority, shall give rise to a duty or responsibility of the Architect to the ~~Contractor, Construction Manager~~. Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

~~§ 3.6.2.3~~ The Architect shall ~~interpret and decide~~ advise the Owner on 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, 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. In any dispute between the Owner and the Construction Manager, the Architect will, upon request by the Owner, advise the Owner on issues concerning performance under the Contract Documents. The Architect will make recommendations to the Owner regarding issues concerning aesthetics effects which are inconsistent with the intent expressed in the Contract Documents.

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

...

~~§ 3.6.3.1~~ The Architect shall review and ~~certify the amounts due the Contractor and shall issue certificates in such amounts~~ either reject the Application for Payment, or a portion thereof, and give the Construction Manager notice thereof, or approve the amounts due the Construction Manager and shall issue to the Owner, certificates in such amounts as have been certified and approved for payment. 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 and that the quality of the Work is in accordance with the Contract Documents. Documents as the Construction Manager is entitled to payment in the amount certified by the Architect. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

~~§ 3.6.3.2~~ The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the ~~Contractor's 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.

...

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

~~§ 3.6.4.2~~ In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the ~~Contractor's 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the ~~Contractor~~ 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the ~~Contractor~~ Construction Manager that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

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§ 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.

...

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and the GMP Package, and do not involve an adjustment in the ~~Contract Sum or an extension of the Contract Time.~~ Subject to the provisions of Section 4.3, the Architect shall prepare Cost of Work or an extension of the Schedule. The Architect shall prepare proposed Change Orders and Construction Change Directives for the Owner's approval and (collectively "Architect's bulletins") for the Owner's approval, with the Construction manager to prepare Final Change Orders and Construction Change Directives for execution in accordance with the Contract Documents.

Architect will consult with and provide its recommendations to the Owner and Construction Manager as to the necessity for the change, provide assistance to the Owner and the Construction Manager in negotiating Change Orders and Construction Change Directives, and prepare required plans, specifications and other design documents to be included with Change Orders and Construction Change Directives as part of its Basic Services.

...

§ 3.6.6.1 Substantial Completion or substantially complete will mean the Work is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Work is ready for opening to the general public and fully operational for its intended use or purpose. A minor amount of work, as determined by and at the discretion of the Owner or its designated representative, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, minor adjustments to the sound systems or completion or correction of minor exterior work ("Punch List Items") that cannot be completed due to weather conditions, will not delay determination of Substantial Completion. In no event will Substantial Completion be deemed to have occurred unless (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities, and (ii) all Work has been approved and accepted by the Architect and the Owner or its designated representative, subject only to the Punch List Items. The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Upon determining that the Work is Substantially Complete, the Architect will prepare and execute a Certificate of Substantial Completion for the Work, or portions thereof, using AIA Document G704/CMA. The Architect will issue a final Certificate for Payment when, in the Architect's opinion, the Construction Manager has fully complied with all requirements of the Contract Documents. Issuance of a Certificate of Substantial Completion and final Certificate for Payment will constitute a representation by the Architect to the Owner that, to the Architect's reasonable knowledge, information and belief, the Work as referenced therein has been substantially or finally completed, as the case may be, in accordance with the Contract Documents.

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

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

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the ~~Contractor~~: 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 ~~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 facility walk through and a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 When the Architect is notified that the Construction Manager believes a portion of the Project is Substantially Complete, the Architect will review the Work performed for that portion of the Project. If the Architect finds such Work to be Substantially Complete, it will so advise the Owner and Construction Manager. In that event the Architect will, in conjunction with the Construction Manager, compare the list of items still to be completed, as developed by the Construction Manager, with the actual condition of the Work as observed by the Architect, the Architect will prepare and deliver to the Owner and the Construction Manager a list of all incomplete and unsatisfactory items as either reported to or observed by the Architect (the "Punch List"). The Architect will also specifically inspect the Work with the Owner and will add to the Punch List any additional items discovered during that review. The Architect, Construction Manager and Owner will agree to a data base on which all Punch Lists for the Project will be prepared to enhance the parties' access to Punch List information.

§ 3.6.6.7 The Architect's responsibility to provide Basic Services for the post-construction phase commences upon Substantial Completion of the Project as a whole and terminates at the earlier of: (i) the date the final payment has been made to the Construction Manager; or (ii) three hundred and sixty five (365) days following Substantial Completion of the Project as a whole. The Architect will also participate in the inspections set forth in Section 3.6.6.8 as Basic Services even if such inspections occur after the time period set forth in the preceding sentence have expired.

§ 3.6.6.8 During the post-construction phase, the Architect will prepare the Punch List for the Project and will confer with and assist the Owner and Construction Manager to pursue and manage the completion of all Punch List items, warranty rights, and correction of Work. In conjunction with the Construction Manager and Owner, the Architect will also conduct observations of the Project, as scheduled by the Construction Manager, identifying items to be added to the Punch List and provide written reports to the Owner and Construction Manager on the Construction Manager's progress in resolving defective or unfinished items of Work.

§ 3.6.6.9 Within one hundred twenty (120) days of Substantial Completion, the Architect will be provided with and must review the as-built drawings as maintained by the Construction Manager and, based upon the information contained therein and the updated record drawings as maintained by the Architect, the Architect will provide the Owner with a universal electronic format and a CAD disk of record drawings for the Project, to include the Construction Manager's as-built drawings, and all construction change directives, change orders and field directives. The Architect will notify the Construction Manager and Owner, in writing, should it observe any error, deficiency or deviation in the as-built drawings supplied by the Construction Manager as compared to the Architect's observation of the Work or the updated record drawings as maintained by the Architect.

§ 3.6.6.10 In addition to the Post-Construction Services required above, the Architect will also, as Basic Services, participate in three further inspections of the HVAC, mechanical, electrical, plumbing and other MEP Systems, which inspections will be scheduled by and performed in conjunction with the Construction Manager as follows: (i) an inspection to be conducted at the end of the first full heating season following Substantial Completion of the Project, (ii) an inspection to be conducted at the end of the first full air conditioning season following Substantial Completion of the Project, and (iii) a warranty inspection of the entire Project to be conducted approximately eleven (11) months following Substantial Completion of the entire Project, with a written report to be delivered to the Owner at least fifteen (15) days before the first anniversary date of Substantial Completion of the entire Project.

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§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Services listed below where an "A" is listed in the responsibility column are included in Basic Services. Any Services requested by the Owner in addition to Basic Services will be considered "Additional Services." Additional Services will be provided by the Architect and paid for by the Owner only if: (i) the Architect gives prior written notice to the Owner of the request for the Additional Services and the anticipated costs thereof, (ii) the Architect advises the Owner who requested the Additional Services or why the Architect believes the Additional Services are necessary or in the best interests of the Project, and (iii) the Owner, in writing, authorizes and directs that the Additional Services be provided. Failure of the Architect to provide the prior notice and to obtain the Owner's prior written approval will constitute a waiver of any claim by the Architect to be paid for Additional Services, unless, however, Architect is required to respond to emergency situations wherein prior notice to Owner is not reasonably practical. In such emergency situations, Architect will notify Owner of the need for such emergency services as soon as reasonably practical, and Architect shall be adequately compensated for its services as Additional Services as provided in this Agreement. If the prior written notice is given and the written approval obtained, the Additional Services will be paid for by the Owner pursuant to either a stipulated sum, as agreed to between the Owner and Architect and as set forth in the Owner's written authorization for the Additional Services, or on an hourly rate basis as provided in Exhibit G, when so designated in the Owner's written authorization. The parties agree to revisit and determine at a later date if the Architect will provide any of the Additional Services listed below as "Not Provided."

...

§ 4.1.1	Programming (B202™-2009)Confirmation	A	3.1.2
§ 4.1.2	Multiple preliminary designs	A	3.2.5
§ 4.1.3	Measured drawings	NP	
§ 4.1.4	Existing facilities surveys	NP	
§ 4.1.5	Site Evaluation and Planning (B203™-2007)	NP	
§ 4.1.6	Building Information Modeling (E202™-2008)	A	4.2.1
§ 4.1.7	Civil engineering	A	4.2.2
§ 4.1.8	Landscape design	A	4.2.3
§ 4.1.9	Architectural Interior Design (B252™-2007)	A	Exhibit E
§ 4.1.10	Value Analysis(B204™-2007)	A	3.1.7
§ 4.1.11	Detailed cost estimating	NP	
§ 4.1.12	On-site Periodic on-site Project Representation (B207™-2008)	A	4.2.4
§ 4.1.13	Conformed construction documents	NP	
§ 4.1.14	As-Designed Record drawings	NP	
§ 4.1.15	As-Constructed Record drawings	A	3.6.6.9
§ 4.1.16	Post occupancy evaluation	NP	
§ 4.1.17	Facility Support Services (B210™-2007)	O	
§ 4.1.18	Tenant-related services	NP	
§ 4.1.19	Coordination of Owner's consultants	O	
§ 4.1.20	Telecommunications/data design	A	4.2.5
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	NP	
§ 4.1.22	Commissioning (B211™-2007) <u>Basic</u> . Pursuing LEED.	A	3.1.11
§ 4.1.23	Extensive environmentally responsible design	NP	
§ 4.1.24	LEED® Certification (B214™-2012)	A	Exhibit F
§ 4.1.25	Fast-track design services	NP	
§ 4.1.26	Historic Preservation (B205™-2007)	NP	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	A	4.2.7
§ 4.1.28	Foundation Design Services		
		A	4.2.8

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

4.2.1 Building Information Modeling. Architect will document design phases using Revit. Architect's Revit models will be of sufficient detail to (i) provide three-dimensional views of the interior and exterior of the Municipal Center and other aspects of the Project, and (ii) form the basis for the creation of buildable and constructable documents. The parties specifically acknowledge and agree that Clash Detection Serviceability will not be provided, as this function will be performed by the Construction Manager's team for constructability review.

§ 4.2.2 Civil Engineering. Architect will cause its Civil Engineer to perform the following services. During the Schematic Design Phase, Civil Engineer shall give consideration of alternate materials and systems, development of conceptual design solutions for utility systems, drainage systems, potential skywalk, and paving. During the Design Development Phase, Civil Engineer shall continue development and expansion of Schematic Design Documents, development of outline specifications and materials lists, preliminary details for civil engineering work. During the Contract Document Phase, Civil Engineer will finalize civil engineering calculations, drawings and specifications based on approved Design Development Documents, setting forth in detail the civil construction requirements for the Project.

§ 4.2.3 Landscape Design. Architect will cause its landscape designer to perform the following services. During the Schematic Design Phase, the landscape designer will give consideration to alternate materials, systems, equipment and development of conceptual design solutions for land forms, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants. During the Design Development Phase, the landscape designer will continue the development and expansion of the landscape Schematic Design Documents and the development of outline specifications and material lists to establish final scope and preliminary details for landscape work. During the Contract Document Phase, the landscape designer will prepare plans and specifications based upon approved Design Development Documents, setting forth in detail the landscape requirements of the Project.

§ 4.2.4 Periodic On-Site Project Representation. Architect and its Consultants will provide on-site representation as needed to provide missing information and/or clarifications of conflicting information within the Contract Documents, and as necessary to fully perform Architect's Services and satisfy governing and licensing requirements.

§ 4.2.5 Telecommunications/Data. Architect to provide drawings and specifications for all telecommunications/data conduit raceways, cameras, card readers and door monitors, will specify all electronic components for TVs, and will coordinate door hardware with the security system.

§ 4.2.6 Architect will provide Phase Construction design services as required to achieve Construction Manager's schedule at no additional cost to Owner, which will include, but not be limited to (i) site preparation, (ii) a structure and enclosure package, and (iii) a final fit-out package.

§ 4.2.7 Architect will provide furniture, furnishings and equipment design services including aquatic related equipment as provided in the attached Exhibit E.

§ 4.2.8 Architect will provide design services for all subsurface systems and improvements, including, but not limited to, foundations, footings, retaining walls, dewatering systems, etc., based on the Soils Report attached as Exhibit H and any additional soils reports provided by the Owner.

§ 4.2.9 Architect will provide fundamental commissioning as required by LEED as decided by owner.

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- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification; designs and in-depth material research;

~~.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations; interpretations enacted after the issuance and acceptance of the final GMP. For purposes of this Agreement, "Instruments of Service" shall be representations, in any medium now known or later developed, of the tangible and intangible creative work performed by the Architect, and the Architect's Consultants and Design Team, or the Owner, under their respective professional services, which may include, without limitation, studies, surveys, models, sketches, drawings, specifications and other similar materials;~~

~~.5 Preparing digital data 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; Owner subject to the provisions of Section 3.3.1.1;~~

~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~

~~.8 .6 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~

~~.9 .7 Evaluation of the qualifications of bidders or persons providing proposals;~~

~~.10 .8 Consultation concerning replacement of Work resulting from fire or other cause during construction; or~~

~~.11 Assistance to the Initial Decision Maker, if other than the Architect.~~

~~.1 Reviewing a Contractor's Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;~~

~~.2 Responding to the Contractor's requests for information any unreasonable or repetitive requests for information from the Construction Manager 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 Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;~~

~~.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service; Intentionally omitted.~~

~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or~~

~~.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~

~~.5 To the extent the Architect's Basic Services are affected, providing Construction Phase Services ~~60~~ 365 days after ~~(1)~~ the date of Substantial Completion of the Work or ~~(2)~~ the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier, and issuance by governing authorities or a final Certificate of Occupancy, whichever occurs later, except as provided in Section 3.6.6.5.~~

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

~~.1 () reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~

~~.2 () visits to the site by the Architect over the duration of the Project during construction~~

~~.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~~

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

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

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

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and ~~Contractor, Construction Manager,~~ including the General Conditions of the Contract for ~~Construction.~~ Construction, as modified.

§ 5.12 The Owner shall provide the Architect 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.

§ 5.13 During both phases of the Project, the Owner shall purchase and maintain liability insurance, including waivers of subrogation, as set forth in Section 10.20 below. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 5.13.1 Property Insurance in an amount equivalent to the total value for the entire Project, exclusive of footings, foundations, landscaping, excavation, park improvements, and West water detention pond, on a replacement cost basis without optional deductibles.

§ 5.13.2 Boiler and Machinery Insurance in an amount equivalent to the total value for the entire Project, exclusive of footings, foundations, landscaping, excavation, park improvements, and West water detention pond, on a replacement cost basis without optional deductibles.

§ 5.13.3 Commercial general liability insurance: \$2,000,000.00 per occurrence.

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

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

~~prepared or agreed to by the Architect.~~ prepared by the Construction Manager, and reviewed by the Architect, 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 make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate. The Owner will require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4. contained in the GMP.~~

~~§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, at any time the Construction Manager's estimates of the Cost of the Work exceeds 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. Work, the Architect will cooperate with the Owner and Construction Manager to adjust the Project's size, quality or budget for the Cost of the Work, and will cooperate with the Owner and Construction Manager in making such adjustments.~~

6.6 Intentionally omitted

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

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

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

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

...

~~§ 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. Any Instruments of Service in electronic form will be in the format requested by the Owner and reasonably acceptable to the Architect. Any Instruments of Service in electronic form will be in the format requested by the Owner and reasonably acceptable to the Architect. The Architect's 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 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the~~

Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. 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. All Plans, Drawings, Specifications and other documents prepared by the Architect or its Consultants in connection with the Project constitute documents prepared for hire and will become the property of the Owner upon payment of the compensation due hereunder, including the transfer of all rights, title, copyrights, trademarks, licenses, intellectual property rights and all other tangible and intangible property interests. In the event such design documents, or any portion thereof, is not deemed to be made on a "work for hire" basis, the Architect and its Consultants irrevocably assign all right, title and interest, including copyright and intellectual property rights, in said design documents to the Owner. The Architect agrees to execute such additional documents as may hereafter be reasonably requested by Owner to further evidence such ownership by and/or assignment to the Owner and agrees to include provisions in all its contracts with Consultants that are consistent with and implement the requirements of this Section. As a clarification to the ownership and assignment rights set forth above, the Owner acknowledges that the Plans, Specifications and other design documents prepared by the Architect for this Project will contain innumerable design details and typical specifications which, collectively, form part of the design for the Project but which, separately, are not Project specific, are primarily related to function as compared to design form, are repetitive in nature and/or were not specifically developed for or identifiable with the Project ("Architect's Standard Details/Specifications"). The Owner acknowledges and agrees that the Architect's Standard Details/Specifications shall remain the Property of the Architect and may be used by the Architect on other projects, in other contexts or for other clients, so long as they are not collectively used in a manner which replicates the overall design concepts of the Project.

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

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants. The Architect hereby waives the existence of any statutory moral rights arising under 17 U.S.C. § 106A and any rights arising under other federal or state laws that convey rights of the same nature as those arising under 17 U.S.C. § 106A, or any other type of moral right or droit moral, that may apply to the design of the Architect as to any and all uses and applications in which either the right of attribution or the right of integrity may be implicated. The Architect further agrees not to institute, support, maintain or authorize any lawsuit on the ground that any subsequent action of the Owner in any way constitutes an infringement of any of the rights mentioned in this Section 7.4 or a defamation or mutilation of any part thereof or certain unauthorized variations, alterations, modifications, changes or translations.

§ 7.5 A complete record set of Plans, Specifications and other design documents for the Project (in electronic format) must be delivered by the Architect to the Owner upon completion of the Project. The Architect, however, will have the right to retain copies of design documents for this Project in its files and include in its promotional materials a description of its involvement with and depictions of the Project. The Architect may market their services but will not, however, have any rights to sell or license the design documents or any pictures, renderings or other depictions of the Project.

§ 7.6 The Owner will not have the right to use the design documents on any unrelated project or to sell or convey the design documents to a third party for use in an unrelated project, without the prior written consent of the Architect. The Owner must indemnify and hold harmless the Architect and the Architect's Consultants, from claims, losses and damages, including attorneys' fees, arising out of the Owner's alteration or reuse of the design documents on other projects without the Architect's consent.

§ 7.7 During the performance of the Architect's Services, the Architect will be responsible for any loss or damage to all design documents while they are in the Architect's possession and any such loss or damage thereto must be restored at the Architect's expense. Notwithstanding the foregoing, the Architect will not be responsible for any loss or damage caused by Owner, or any individual, entity, or governmental agency authorized by, or acting on behalf of, the Owner in accessing the design documents. The Owner will be allowed unrestricted access during normal business hours to the documents during the term of this Agreement and, at the sole discretion of the Owner, other individuals, entities or governmental agencies involved in the Project may have access to such documents. All documents prepared by the Architect pursuant to this Agreement must be in reproducible form.

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8.1.4 The Architect and Architect's Consultants shall defend, indemnify and hold the Owner and its elected and appointed officials, agents, officers, city council members, employees, and consultants harmless from and against damages, costs, and expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, on account of any claim for injury to or death or illness of any person or damage to or destruction or loss of any property arising from the negligent errors, acts or omissions of the Architect, its employees and its Consultants in the performance of services under this Agreement. In the event a third party brings a claim against the Owner alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Architect, its employees and its Consultants in the performance of services under this Agreement, then nothing in this Section or otherwise in this Agreement will prevent the Owner from tendering to the Architect the defense of the claim, or will prevent the Owner from availing itself of its common law rights to indemnification and contribution. Upon the Owner's tender of the claim to the Architect, the Architect will defend the claim alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Architect, its employees and its Consultants in the performance of services under this Agreement, but the Architect will not have any obligation to defend the Owner with respect to other claims brought by the third party against the Owner. The Architect will also be liable to and must defend, indemnify the Owner and its elected and appointed officials, agents, officers, city council members, employees, and consultants, and must hold each of the foregoing harmless from and against claims made against any of the foregoing for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings, or specifications furnished by the Architect in the performance of this Agreement, unless the Owner has given its written approval of the use of the system, method, or equipment in connection therewith after explicit warning that there may be an infringement.

§ 8.1.5 The Architect acknowledges that the Work is to proceed as a no-lien Project in accordance with the laws of the State of South Dakota regarding public projects. No party, therefore, will have the right to assert a mechanic's or other lien as against the Project. The Architect for itself, its Design Team, Consultants and for all who claim through the Architect, acknowledge and agree that the Project is a public project and that no lien may be asserted against or attach to the real estate on which the Project is to be performed or to any improvements now existing or to be constructed hereon. The Architect must provide written notice to its Design Team, Consultants and to any other persons with whom the Architect contracts with respect to Services provided pursuant to this Agreement, that this is a public project against which liens cannot be filed. The Architect must indemnify and hold harmless the Owner and City of Sioux Falls for costs, expenses and reasonable attorneys' fees, should an attempt to assert a lien be made on the Architect's behalf or on behalf of its Consultants, Design Team or any other person for whom the Architect is responsible.

§ 8.1.6 Owner and Owner's employees, consultants and agents shall defend, indemnify and hold Architect harmless from and against any and all damages, costs and expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, on account of any claim for injury to or death or illness of any person or damage to or destruction or loss of any property arising from the negligence of Owner, or any of Owner's acts or omissions. In the event a third party brings a claim against the Architect alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Owner, its employees and its consultants in the performance of services under this Agreement, then nothing in this Section or otherwise in this Agreement will prevent the Architect from tendering to the Owner the defense of the claim, or will prevent the Architect from availing itself of its common law rights to indemnification and contribution. Upon the Architect's tender of the claim to the Owner, the Owner will defend the claim alleging damages and losses caused by or arising out of the negligent errors, acts or omissions of the Owner, its employees and its consultants in the performance of services under this Agreement, but the Owner will not have any obligation to defend the Architect with respect to other claims brought by the third party against the Architect.

~~§ 8.2.1 Any claim, dispute or other matter in question. Neither party may initiate litigation to pursue a claim 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. This Agreement, or the performance thereof, without first exhausting the two-stage resolution mechanism set forth in this Section 8.2. Exhaustion of such dispute resolution mechanism is a condition precedent to the filing of any litigation on such claim; provided, however, that either party may file an appropriate action in a state or federal court where the Project is located for the sole purpose of preserving and protecting its lien rights or avoiding a statute of limitations cut-off, with both parties thereafter proceeding to exhaust the dispute resolution mechanism set forth herein before proceeding to prosecute or defend the pending judicial proceedings, except as necessary to avoid prejudice in such litigation.~~

~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Stage One: Informal Negotiation. Either party may initiate informal negotiation of its claim, assuming the claim has been asserted within the time limits set forth in this Agreement by giving the other party written notice of such demand. Within ten (10) days of receipt of a demand for informal negotiation, representatives of the parties with authority to settle the claim will meet to determine if the claim can be resolved informally.~~

~~§ 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. Stage Two: Mediation. If informal negotiation fails to resolve the claim, either party may give written demand for mediation. Within ten (10) days of receipt of such demand, the parties must confer to determine if they are both willing to participate in the mediation process and can agree on a single mediator to handle the mediation session. In the event the parties cannot agree on a mediator, they will jointly file a request with the circuit court for Minnehaha County to appoint an experienced impartial mediator for that purpose. Such mediation session must take place, absent extraordinary circumstances or a mutually agreed decision to continue the mediation session to a later date, within ten (10) days of the appointment of the mediator. The mediation session must not last more than eight hours in length and the parties will equally share in the cost of the mediator for the mediation session. Should mediation fail, either party may thereafter file suit in the state or federal court having jurisdiction where the Project is located to prosecute its claim.~~

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Litigation in a court of competent jurisdiction

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§ 8.3 ARBITRATION

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

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

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

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

~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

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

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

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

§ 8.2.5 The Architect and the Owner agree the dispute resolution provisions of this Article 8 control for all claims and disputes arising under this Agreement. The parties waive the administrative appeals requirements as found in Sections 30.04 through 30.046 of the Code of Ordinances of Sioux Falls, South Dakota.

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§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted. This provision will not apply to an interruption in the performance of the Architect's Services due to a failure to satisfy the Construction Conditions, unless the Construction Conditions have not been successfully completed by _____.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than a failure to satisfy the Construction Conditions as set forth in Section 9.2, or the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

...

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

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.~~

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

~~§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that 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 A201-2007, General Conditions of the Contract for Construction.~~
Construction, as modified.

...

~~§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates~~
The Architect agrees to sign, acknowledge, certify and notarize any documents reasonably required by the Owner, the Construction Manager or other party selected by the Owner and their respective agents and representatives in connection with the performance of the Architect's Services hereunder. If Architect is requested to sign any such documents, the proposed language of such documents 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 ten (10) days prior to the requested date of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services-services, or responsibilities beyond the scope of this Agreement.

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~~§ 10.9 The failure of one party to insist upon or enforce, in any instance, strict performance by the other party of any of the terms of this Agreement, may not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or right on any future occasion.~~

~~§ 10.10 The parties agree that the terms of this Agreement must be construed neutrally and not against the Owner as drafter of this Agreement.~~

~~§ 10.11 All notices required under this Agreement must be made in writing and be served by personal delivery, prepaid registered or certified mail, overnight delivery and/or electronic transmission, with such notices to be deemed effective upon delivery, address to the respect parties as follows:~~

As to the Owner: Ms. Erin Bofenkamp, PMP

Project Manager

Mayor's Office, City of Sioux Falls

224 West Ninth Street

P.O. Box 7402

Sioux Falls, SD 57117

605-367-8825

Email – ebofenkamp@siouxfalls.org

With copies to: Ms. Karen Leonard

Deputy City Attorney

City of Sioux Falls

224 West Ninth Street

Sioux Falls, SD 57117

Email – kleonard@siouxfalls.org

As to the Architect: TBD

Copy to: TBD

§ 10.12 The Owner and Architect each covenant, warrant and represent: (i) the individual executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement on behalf of the party for whom he or she signs, (ii) this Agreement is binding upon such party, and (iii) the execution and delivery of this Agreement will not result in any breach of or constitute a default under any agreement, contract or other instrument to which it is a party or by which it may be bound.

§ 10.13 Civil Rights Requirements. The Architect agrees as follows:

§ 10.13.1 With respect to any and all business conducted or acts performed pursuant to this Agreement, the Architect will be deemed an employer within the meaning of Chapter 98 of the Code of Ordinances of Sioux Falls entitled "Human Relations" and will be subject to the provisions of such chapter.

§ 10.13.2 If the Architect fails to perform these provisions, this Agreement may forthwith be terminated and canceled in whole or in part by the Owner and the Architect will be liable for any costs or expense incurred by Owner in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the Owner under this Agreement so terminated or canceled. Notwithstanding the foregoing, Architect shall only be liable to Owner for those damages incurred by Owner in good faith and upon commercially reasonable diligence to mitigate such damages.

§ 10.13.3 Should the Human Relations Commission in a proceeding brought as provided in Chapter 98 of the Code of Ordinances of Sioux Falls find that the Architect has engaged in discrimination in connection with this Agreement and issues a cease and desist order with respect thereto, the Owner will withhold up to 15 percent of the Architect's fee until such time as the Commission's order has been complied with or the Architect has been adjudicated not guilty of such discrimination.

§ 10.13.4 The Architect will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Human Relations Commission, its agencies or representatives, to ascertain compliance with the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls applicable to the Architect.

§ 10.13.5 Section 10.15 is binding on all of the Architect's Design Team, Consultants and others performing the Services for the Architect.

§ 10.14 Architect hereby represents and warrants that it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota.

§ 10.15 The parties agree the Architect operates an independent business and is contracting to do work according to its own methods, without being subject to the control of the Owner, except as to the product or the result of the work. The relationship between the Owner and the Architect is that as between an independent contractor and an owner and not as an employer-employee relationship.

§ 10.16 Funds Appropriation. If funds are not budgeted or appropriated for any fiscal year for Services provided under the terms of this Agreement, this Agreement will impose no obligation on the Owner for payment, and Architect shall be excused from any further performance under this Agreement until such funds are reallocated to the Project. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage may accrue to the benefit of the Architect, its successors or assignees, for any further payments.

§ 10.17 Records. When fees or reimbursable expenses are not contracted for as lump sum amounts, the Architect will maintain, and also endeavor to require that its Consultants and subcontractors maintain, all books, documents, papers, accounting records, and other evidence which supports the charges invoiced to the Owner relating to this

Agreement, and will make all such evidence, if available, available for audit by the Owner at its offices at all reasonable times during the term of this Agreement, and for a period of three years from the date of final payment for the Services rendered under this Agreement.

§ 10.18 Audit. The Owner will have the right to audit all books and records (in whatever form they may be kept, whether written, electronic, or other) relating or pertaining to this Agreement (including any and all documents and other materials in whatever form they may be kept, which support or underlie those books and records) kept by or under the control of the Architect, including but not limited to those kept by the Architect, its employees, agents, Consultants, assigns, successors and subcontractors. The Architect must maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement. This section may not be construed to limit, revoke, or abridge any other rights, powers or obligations relating to audit which the Owner may have by state, city or federal statute, ordinance, regulation or agreement, whether those rights, powers or obligations are expressed or implied.

Such audit may be performed by either an internal or external auditor, or both, approved by the Owner and must be conducted in accordance with generally accepted auditing standards. Costs associated with obtaining such certified audit reports will be paid by the Owner. The Owner or its authorized auditors, agents, employees, representatives or other designees will have the right to audit and inspect such records and books, together with the supporting or underlying documents and materials, from time to time during the term of this Agreement, upon reasonable notice to the Architect and during ordinary business hours.

§ 10.19 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of the Agreement, and the application of this Agreement to other circumstances will not be affected thereby, and each remaining term will be valid and enforceable to the fullest extent permitted by law.

§ 10.20 Waiver of Subrogation. The Owner and Architect waive all rights against (1) each other and any of their consultants, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Agreement or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Architect, as appropriate, shall require of the Construction Manager, Construction Manager's contractors, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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Phase I – Lump Sum

Phase II - ____% of the GMP. The Phase II fee shall be converted to a fixed fee at the time of the final GMP on the date of the Construction Manager's Notice to Proceed.

...

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

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

§ 11.1.1 The Architect's inclusion of additive and deductive alternates into the GMP package that have the potential to increase the Cost of the Work plus or minus 5% is part of the Basic Services, and the Architect's compensation will not change because of the incorporation of such alternates in the Project.

§ 11.1.2 The Architect will include services for construction change directives, change orders and field directives that increase or decrease the Cost of the Work plus or minus 5% as part of its Basic Services, and the Architect's compensation will not change because of the issuance of the construction change directives, change orders and field directives.

§

Intentionally omitted.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus _____ percent (_____ %), or as otherwise stated below: For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Per the hourly rates set forth in **Exhibit G**

stated below:

§

Intentionally omitted.

...

Schematic Design Phase	_____	percent (_____ %)
Design Development Phase	_____	percent (_____ %)
Construction Documents Phase	_____	percent (_____ %)
Bidding or Negotiation Phase	_____	percent (_____ %)
Construction Phase	_____	percent (_____ %)
Total Basic Compensation	one hundred	percent (100 %)

Phase I

Program Development

Schematic Design _____ \$(insert lump sum)

This fixed fee for Phase I includes all reimbursable expenses listed in Section 11.8.

Phase II compensation will be _____ % of the Cost of the Work (See Section 6.1 of this Agreement)

_____	Design Development Phase	_____ %
_____	Construction Documents Phase	_____ %
_____	Bidding or Negotiation Phase	_____ %
_____	Construction Phase	_____ %

Total Basic Compensation for 100%

Phase II

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See Exhibit G.

...

- .1 Transportation and authorized out-of-town travel and ~~subsistence~~; subsistence when approved by the Owner;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project ~~Web sites, Websites, and extranets;~~
- .3 ~~Fees paid for securing approval of authorities having jurisdiction over the Project; Intentionally omitted;~~
- .4 Printing, reproductions, plots, standard form documents; documents. Copies of documents will be made for the Owner, when requested by the Owner. In order to minimize the costs of reproductions and plots, the Architect will, unless requested otherwise by the Owner, provide the Owner and Construction Manager with a reproducible set of Contract Documents and Design Development Documents from which to make copies and also in electronic or computer format if requested by the Owner;

...

- .6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; Intentionally omitted;~~
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner; and
- .8 ~~Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; Intentionally omitted;~~
- .9 All taxes levied on professional services and on reimbursable expenses; taxes, if any, levied on Basic services are included in Basic Services;
- .10 Site office expenses; and Intentionally omitted.
- .11 Other similar Project related expenditures. Intentionally omitted.

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

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If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as ~~follows~~; follows. No fee required.

...

§ 11.10.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30)

days after the ~~invoice date~~ Owner's receipt of the invoice 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.

...

% 2%

...

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. The Architect must maintain and require all of its Consultants to maintain, complete and correct books and records relating to all of its fees, expenses, and compensation and records related to the Project. The Architect must make all such records available to the Owner and its representatives for review, copying, and audit at all such reasonable times as the Owner may from time to time direct.

...

§ 12.1.1 The Architect agrees that all communications with the general public and press will be handled by the Owner, and Architect agrees to make no communication, be it official or unofficial, concerning the design of the Municipal Center without first obtaining the Owner's consent and approval. Architect understands and acknowledges that in an attempt to coordinate media and other public interactions to the benefit of both Parties, any effort by Architect to publicize via its website, print media, press release, interviews with the news media, or prominent clients or partners regarding Architect's relationship with the Owner and the design and development of the Municipal Center shall proceed only after obtaining consent of and in coordination with the Owner.

§ 12.1.2 The Architect and the Owner acknowledge that in the performance of this Agreement it may be necessary for the either party to disclose information to the other that is considered proprietary or confidential ("Confidential Information"). Confidential Information includes, but not limited to, the details and financial information related to elements or potential elements of the Project including but not limited to advertising, naming rights, third party tenants, and or other aspects of the Project. If the Owner or Architect considers the information to be Confidential Information, it must be identified as such in writing or marked "Confidential". If orally disclosed to or observed by the Architect or Owner, as applicable, a description of the Confidential Information will be reduced to writing, marked "Confidential" and delivered to the receiving party within thirty (30) days of disclosure. The Architect and Owner agree to keep in confidence and not to disclose Confidential Information to any person outside those authorized persons and entities involved in the Project. Notwithstanding the foregoing, the parties recognize certain information is required to be made public by the Owner pursuant to open records laws and ordinances.

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

...

<u>Exhibit</u>	<u>Description</u>	<u>Section Reference</u>
<u>A</u>	<u>Owner's Program</u>	<u>1.1.1</u>
<u>B</u>	<u>Owners Budget</u>	<u>1.1.2</u>
<u>C</u>	<u>Owner's Schedule</u>	<u>1.1.3</u>
<u>D</u>	<u>Design Team Personnel</u>	<u>2.7.1</u>
<u>E</u>	<u>Architectural Interior Design (B252™-2007 as modified)</u>	<u>4.1.9</u>
<u>F</u>	<u>LEED® Certification</u>	<u>4.1.24</u>
<u>G</u>	<u>2015 (Insert Name of Architect) Standard Billing Rates</u>	<u>11.3</u>
<u>H</u>	<u>Soils Report</u>	<u>4.2.8</u>

...

OWNER

ARCHITECT

(Signature)

Mike Huether, Mayor

(Printed name and title)

(Signature)

(Printed name and title)

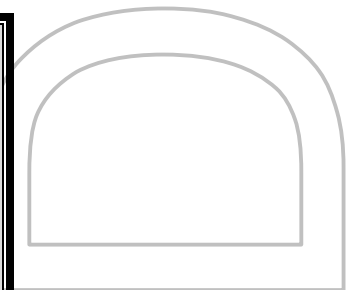
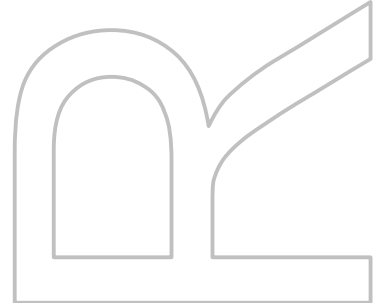
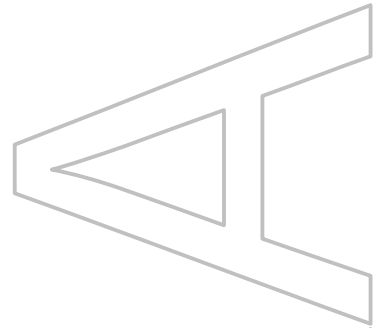
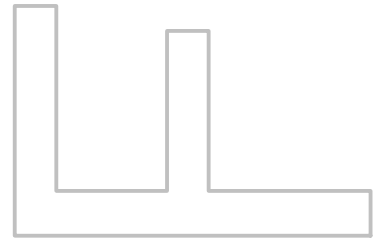
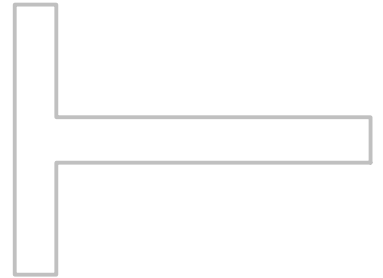


EXHIBIT A
TO AIA DOCUMENT B101™-2007

Owner's Program

[To be Developed and Added Post-Execution]



OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

EXHIBIT B
TO AIA DOCUMENT B101™-2007

Owner's Budget

[To be Developed and Added Post-Execution]



EXHIBIT C
TO AIA DOCUMENT B101™-2007

Owner's Schedule

[To be Developed and Added Post-Execution]



EXHIBIT D
TO AIA DOCUMENT B101™-2007

Design Team Personnel



EXHIBIT E
TO AIA DOCUMENT B101™-2007

B252-2007
Standard Form of Architect's Services
Architectural Interior Design

