



**AIA**<sup>®</sup>

# Document B101<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Architect

*(Paragraphs deleted)*

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, address and other information)*

Sterling Facility Services, LLC  
523 NW Peacock Blvd.  
Port St. Lucie, FL 34986

and the Architect:  
*(Name, address and other information)*

Ewing Cole, Inc.  
Federal Reserve Bank Building  
100 North 6th Street  
Philadelphia, PA 19106-1590  
Florida License No. AA26001677

for the following project (the "Project" and/or "Work":)  
*(Name, location and detailed description)*

Complete Architectural and Engineering Services for the renovation, expansion and modernization of the St. Lucie County Sports Complex in Port St. Lucie, FL.

The existing 100+ acre facility consists of a 7,000-seat stadium (First Data Field), five (5) full-size practice fields, one (1) half-size practice field, one (1) quarter-size practice field, Major League batting, all of the team's Minor League operations, and parking and loading areas.

In general, the Project contemplates five (5) major components:

1. Stadium amenity improvements including a new/expanded entry plaza, new team store and ticket office, concourse enhancements including new restrooms and concessions, widened vomitories, relocated bullpens, vertical transportation upgrades, a new outfield walkway to create a 360-degree concourse, new handrails seat replacement in the stadium bowl.
2. Player amenity and Business Administration improvements within the Stadium including near complete demolition and replacement of the existing MLB/MiLB locker room facilities and support spaces, new multipurpose room, team business offices, operations offices, food service offices, County offices and meeting spaces, commissary, and media facilities.
3. Expansion and upgrade of the existing MiLB Clubhouse including new offices, expanded coaches' locker room, new female staff locker room, renovated umpire locker room(s), renovated roofing and HVAC systems, renovated hydrotherapy areas, new conference rooms, classrooms and tutoring spaces, player dining and kitchen, and upgraded finishes in existing areas.

### ADDITIONS AND DELETIONS:

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

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

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4. New synthetic and/or natural grass outdoor practice fields of varying size, new MLB and MiLB covered batting cages, pitching lanes and other practice facility enhancements, and renovated Spring Training viewing tower(s), as well as (3) or (4) recreation softball fields equipped for future nighttime lighting.
5. Sitework improvements including new parking fields, pedestrian pathways, fencing, landscaping, groundskeeping area, irrigation systems and utilities, as well as signage, wayfinding and graphics throughout the site.

The scope of the Project is set forth in the Amended and Restated Facilities Use Agreement between St. Lucie County ("County") and Sterling Facility Services, LLC. Architect shall familiarize itself with the Facilities Use Agreement and all Amendments thereto in order to assist in carrying out the services.

The Owner and Architect agree as follows.

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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 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.)*

The St. Lucie County Sports Complex is located at 525 NW Peacock Blvd., Port St. Lucie, FL 34986. The basic project program is described on the cover page.

The Stadium renovation/expansion will entail the following:

- Ground Floor:
  - +/-42,600 sf of renovated areas (i.e., 34,200 sf significantly renovated plus 8,400 sf to receive upgraded finishes and lighting)
  - +/-25,000 sf addition
  - +/-13,600 sf new entry plaza
- Main Concourse:
  - +/-35,500 sf of renovations (i.e., restrooms, concessions and open concourse)
  - +/-20,800 sf new outfield concourse (incl. restrooms)

The Minor League Clubhouse renovation/expansion will entail the following:

- +/-22,000 sf of interior renovations (i.e., 8,000 sf significantly renovated plus 14,000 sf to receive upgraded finishes and lighting)
- +/-13,600 sf addition.

The Playing Fields and miscellaneous Sitework will entail approximately 58 acres.

The estimated construction cost is \$49,000,000 including Food Service equipment, Audio Visual equipment, Security, Access Control and Information Technology equipment.

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

- .1 Commencement of construction date:

April 1, 2018

- .2 Substantial Completion date:

December 31, 2019

§ 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 in accord with Articles 4 and 11.

1. § 1.4 The Architect acknowledges that, once construction commences, as set forth in §1.2.1 above, time is of the essence for completion of the construction. The construction must be completed within twenty-four (24) months after commencement of construction, as required by section 288.11631(3)(d)(3), Florida Statutes. This twenty-four (24) month time-period may not be exceeded under any circumstances. The Architect acknowledges that, should the construction not be completed within 24 months from project commencement, the County will suffer extensive damages, including but not limited to, loss of certification under section 288.11631, F.S. and loss of Florida Department of Economic Opportunity ("DEO") grant funding. The Architect shall insert a provision in accordance with this Section in all subcontracts for services in connection with or related to this Agreement.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement (and in accordance with the Architect's proposal attached as Exhibit A – Initial Information). Services not set specifically set forth in this Agreement or Exhibit A are Additional Services.

**2.1.1** To the extent the Architect has provided any of the professional services described herein prior to the date first stated above, they shall be deemed to have been provided in this Agreement.

§ 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 on a project of the same or similar scale and complexity as the subject Project. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and ensure its subconsultants perform their services in accordance with the professional standard of care governing their trade.

2.2.1 The Architect shall, at no additional cost, modify any drawings and specifications which are deemed by the authority having jurisdiction, not to be in conformance with Applicable Laws, provided that the Applicable Codes, laws or regulations have not been changed within the time frame of the project 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 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. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

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

- .1 Commercial General Liability  
with Products / Completed Operations Liability coverage

\$1,000,000 each occurrence, \$2,000,000 general aggregate.  
Shall not include any ISO Exclusion CG 2294 or Exclusion 2295, or any other exclusion for liability resulting from operations performed by subconsultants

- .2 Automobile Liability

\$1,000,000 combined single limit per accident for bodily injury and property damage for all owned, leased and non-owned vehicles.

- .3 Workers' Compensation

\$1,000,000 per incident.

- .4 Professional Liability

\$5,000,000 per claim, \$5,000,000 aggregate.

- .5 General Liability Umbrella

\$5,000,000 for Commercial General Liability products and Completed Operations and Automobile Liability

6. St. Lucie County shall be named as Additional Insured on all liability policies, except for Professional Liability. The County shall also be named as an Additional Insured on all such liability policies pertaining to all Subconsultants retained by Architect.

Owner may request a copy of all insurance certificates required hereunder, which Architect shall provide within seven (7) days.

§ 2.6 The Architect shall comply with all applicable provisions of the Spring Training Agreement between DEO and the County (the "Grant Agreement"). County and Architect also agree that all acts to be performed by them in connection with the Grant Agreement shall be performed in strict conformity with all applicable local, State and Federal laws and regulations. The Architect shall insert a provision in accordance with this Article in all agreements, assignments, leases, contracts, and subcontracts in connection with or related to this Agreement that are either amended or executed after the effective date of the Grant Agreement.

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

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

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

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

§ 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 also be in reasonable alignment with the preliminary design milestone dates set forth below:

Completion of Schematic Design Phase Services: 08/01/2017  
Completion of Design Development Phase Services: 11/01/2017  
Completion of Construction Documents Phase Services: 03/01/2018

The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

The Architect acknowledges that the Owner will suffer extensive damages if the Architect's services hereunder are not performed pursuant to the schedule. Accordingly, time is of the essence for the performance of this Agreement.

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

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

§ 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.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and the 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 above information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating

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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 as identified within the Architect's proposal. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

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

§ 3.2.6 The Architect shall review and provide commentary on the Owner's estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's review and approval. The Schematic Design documents shall also be submitted to the St. Lucie County Board of County Commissioners who shall have twenty (20) days from delivery thereof, to review, approve or disapprove, if applicable as set forth in the Facilities Use Agreement.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's review and approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's review and 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, electrical and plumbing systems, and such other elements as may be deemed appropriate by the Architect. The Design Development Documents shall also include outline specifications or narratives that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 . The Architect shall review and comment on the Owner's updated estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any required adjustments to the estimate of the Cost of the Work, and request the Owner's review and approval. The Design Development documents shall also be submitted to the St. Lucie Board of County Commissioners, who shall have twenty (20) days from delivery thereof to review, approve or disapprove if applicable, as set forth in the Facilities Use Agreement.

### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall provide input to the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms developed by the Construction Manager; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall review and comment on the Owner's updated estimate of the Cost of the Work.

§ 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 review and approval. The Construction Documents shall also be submitted to the St. Lucie County Commissioners who shall have twenty (20) days from delivery thereof to review, approve or disapprove if applicable, as set forth in the Facilities Use Agreement.

### § 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) reviewing and commenting on 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 in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders if requested by Owner or Owner's representative.
- .2 assist in distributing the Bidding Documents to prospective bidders.
- .3 attend pre-bid conference for prospective bidders and
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.
- .5

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

#### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 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, if requested by Owner or Owner's representative.
- .2 Participate in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, if requested by Owner or Owner's representative.

§ 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 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

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

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

§ 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 and terminates on the date the Architect issues the final Certificate for Payment. However, the Architect shall be entitled to an Additional Services in accordance with Article 4 if Contract Administration Services extend beyond December 31, 2019.

### § 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 4.3.3, 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. The Architect shall report to the Owner, (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. This authority of the Architect to reject portions of the Work shall not create a duty to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. 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 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 disputes between the Owner and Contractor as provided in the Contract Documents.

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### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

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

### § 3.6.4 SUBMITTALS

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

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

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

§ 3.6.4.4 Subject to the provisions of Section 4.3, 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 Contractor in accordance with the requirements of the Contract Documents.

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### § 3.6.5 CHANGES IN THE WORK

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

3.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may accept a minor change in the Work or make a recommendation to the Owner.

3.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall review the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

### § 3.6.6 PROJECT COMPLETION

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

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

§ 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, 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: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

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

3.6.6.6 If an action or duty is not specified in Article 3 or 4, it is specifically excluded from the scope of the Architect's responsibilities.

## ARTICLE 4 ADDITIONAL SERVICES

§ 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.

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(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 <b>Programming</b> (B202™–2009)	Not Provided	
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Additional Services	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Base Scope	
§ 4.1.6 Building Information Modeling (E202™–2008)	Not Provided	
§ 4.1.7 Civil engineering	Base Scope	
§ 4.1.8 Landscape design	Base Scope	
§ 4.1.9 Architectural Interior Design (B252™–2007)	Base Scope	
§ 4.1.10 Value Analysis (B204™–2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Not Provided	
§ 4.1.12 On-site Project Representation (B207™–2008)	Additional Services	B-101
§ 4.1.13 Conformed construction documents	Additional Services	
§ 4.1.14 As-Designed Record drawings	Additional Services	
§ 4.1.15 As-Constructed Record drawings	Additional Services	
§ 4.1.16 Post occupancy evaluation	Not Provided	
§ 4.1.17 Facility Support Services (B210™–2007)	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner’s consultants	Not Provided	
§ 4.1.20 Telecommunications/data design	Base Scope	
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided	
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® Certification (B214™–2012)	Additional Services	
§ 4.1.25 Fast-track design services	Base Scope	
§ 4.1.26 Historic Preservation (B205™–2007)	Not Provided	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	See Exhibit "A"	
§ 4.1.28 Signage and wayfinding design	Base Scope	

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

§ 4.3 Additional Services may be added or 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 in writing and with reasonable promptness to explain the facts and circumstances giving rise to the need. After

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such notice, the Architect shall proceed to provide, and be compensated for the following services unless instructed by the Owner in writing not to provide such services :

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 deleted
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 deleted
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 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 Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Disputes as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 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.

§ 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 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Thirty-six (36) visits to the site by the Architect over the duration of the Project during construction
- .3 Four (4) visits for the purpose of evaluating 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 Two (2) visits for the purpose of evaluating any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed by December 31, 2019 through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 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 in addition to Commercial General Liability, Automotive, and Worker Compensation Insurance. The Owner, County and Architect shall be named as additional insureds on all insurance policies other than Professional Liability policies. Copies of insurance certificates shall be made available upon request.

§ 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 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall communicate with the Architect's Consultants through the Architect. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 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 Architect and Owner shall mutually agree on the General Conditions of the Contract for Construction as they

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pertain to the Architect's duties and responsibilities under this Agreement. The Architect shall also review the General Conditions of the Contract for Construction and advise the Owner of any suggested revisions required for the benefit of the Project prior to execution.

**5.11.1** The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction. The Architect shall promptly identify to the Owner in writing any services required of the Architect under the proposed Contract for Construction that the Architect asserts are not included in compensation and shall provide a proposal for pricing of such services. If the Owner disputes the Architect's assertion at any time, whether before executing the Contract for Construction or after the affected services have been rendered, such dispute shall be resolved in accordance with Article 8. The Owner shall provide the Architect with an executed copy of the Contract for Construction and the Architect shall provide all services required of it thereunder.

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

## ARTICLE 6 COST OF THE WORK

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

**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, review of and comment on the preliminary estimate of the Cost of the Work and updated reviews of and comments on the estimates of the Cost of the Work prepared by the Owner's consultant, Construction Manager, Owner's Representative, 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 review of the Cost of the Work or evaluation prepared or agreed to by the Architect.

**§ 6.3** In preparing estimates of the Cost of Work, the Owner's consultant, Construction Manager, Owner's Representative shall 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 estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

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

**§ 6.5** If at any time the 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

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.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6. The Architect shall be compensated for such revisions if cost fluctuations are caused by market conditions outside the Architect's control, unless it is determined that the Construction Documents do not conform to the scope and program as established at the conclusion of the Design Development Phase.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner agree 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 solely 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 have a separate written agreement establishing the specific conditions governing the format and use of such electronic Instrument of Service. A copy of such agreement is attached to this agreement as Exhibit A.

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

§ 7.3 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. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify, defend, 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.

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

#### ARTICLE 8 CLAIMS AND DISPUTES

##### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law. 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 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, and only to the extent of insurance proceeds actually received. The Owner or the Architect, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other

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parties enumerated herein. The Owner agrees to obtain the necessary property insurance as set forth in the General Conditions.

§ 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, except to the limits of available insurance coverage required by the Agreement, such claims being reserved by the parties.

§ 8.1.4 To the fullest extent permitted by law the Architect shall indemnify and hold harmless the Owner and St. Lucie County from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property or non-performance of the Work, but only to the extent any of the foregoing was caused by the negligent acts or omissions by of the Architect, or the Architect's agents, employees, partners, contractors, or subcontractors. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Article 8.1.3. Architect's indemnification obligations hereunder shall survive completion of the Work or any earlier termination of the Contract made in accordance with Article 9.

## § 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to other legal recourse. 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 other legal recourse.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation to be administered by a mutually agreeable private party i. 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.

§ 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.

§ 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.)*

]

] Litigation in a court of competent jurisdiction in the County where the Project is located

] Other (Specify)

## ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments due to the Architect in accordance with the terms of the Agreement, and if such failure continues after thirty (30) days written notice to the Owner of such failure providing a detailed explanation of why such failure constitutes a violation of 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 for such failure by the Owner to make payments, the Architect shall give seven days' written notice to the Owner, and opportunity to cure within that

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period, before suspending services. In the event of a suspension of services, the Owner agrees that the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services provided such suspension is not due to Architect's failure to perform. Before resuming services, the Architect shall be paid all reasonable 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, for more than 30 days without fault of the Architect, 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. The Architect's compensation for expenses associated with any suspension and resumption of the Architects' services shall be calculated as shown on Exhibit "B" to this Agreement. The Architect shall be entitled to receive reasonable expenses associated with the suspension notwithstanding the Owner's decision to abandon the Project or otherwise terminate this Agreement.

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7. Under no circumstances shall Architect or any Subconsultants be entitled to any compensation, fees or profits on any services not performed as of the date of termination.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include reasonable expenses directly attributable to termination for which the Architect is not otherwise compensated.

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

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Florida.

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

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

It shall be recognized in the assignment agreement that all due and unpaid professional service fees and reimbursable expenses incurred by the Architect prior to the date of such assignment shall be an obligation to the Owner.

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect except that St. Lucie County is an intended third-party beneficiary of this Agreement.

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

§ 10.7 Subject to Owner's written consent, 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.

#### 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.)*

Owner shall pay Architect a Fee equal to \$4,275,000 to directly perform, and/or subcontract with others to perform, the Basic Services. This Fee includes a cap of \$500,000 for subconsultant compensation.

The Architect is also entitled to reimbursement by the Owner for reasonable, out-of-pocket expenditures made by the Architect and the Architect's employees and subconsultants in the interest and for the direct benefit of the Project, Reimbursable Expenses related to the performance of Basic Services, which shall not exceed \$250,000 without the Owner's prior written consent.

§ 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.)*

On a time and materials basis per the attached hourly rate schedule (Exhibit B) unless negotiated as a fixed lump sum fee.

§ 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.)*

On a time and materials basis per the attached hourly rate schedule (Exhibit B).

§ 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 ( ), or as otherwise stated below:



§ 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:

Schematic Design Phase	85,500	percent (	2	%)
Design Development Phase	1,068,750	percent (	25	%)
Construction Documents Phase	2,030,750	percent (	48	%)
Bidding or Negotiation Phase	60,000	percent (	1	%)
Construction Phase	855,000	percent (	20	%)
Punchlist/Close-out	175,000		4	
Total Basic Compensation	one hundred	percent (	100	%)

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

§ 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.)*

Refer to Exhibit B

Employee or Category	Rate
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**§ 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;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents, creating disks, cd-roms or copies of media for electronic delivery distribution;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner beyond any renderings specifically noted within the Architect’s proposal;
- .8 Architect’s Consultant’s expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect’s consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 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

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the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

15% of the Construction Document Phase fee.

#### § 11.10 PAYMENTS TO THE ARCHITECT

##### § 11.10.1

§ 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 sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

statutory rate

§ 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.

#### ARTICLE 12 PUBLIC RECORDS & SPECIAL TERMS AND CONDITIONS

§ 12.1 When the Architect receives any request to inspect or copy any records that relate to this Agreement, it shall promptly provide the County with a copy of the request. The County will respond to each such request on behalf of itself and the Architect and the Architect agrees to fully cooperate with the County with regard to all records requests and comply with all decisions made by the County regarding the production/disclosure. The Architect shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services being performed by the Architect.
2. Provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, as amended, or as otherwise provided by law.
3. Except as authorized by law, ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed for the duration of the Agreement, as well as following completion or termination of the Agreement if the Architect does not transfer the records to the County.
4. Meet all requirements for retaining public records and upon completion or termination of the Agreement, transfer, at no cost, to the County all public records in possession of the Architect or keep and maintain the public records required by the County and the law to perform the services being performed by the Architect. If the Architect transfers all public records to the County upon completion or termination of the Agreement, the Architect shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. If the Architect keeps and maintains public records upon completion or termination of the Agreement, the Architect shall meet all applicable requirements for retaining public records.
5. Failure to grant such public access or otherwise comply with the County's request for records may be grounds for immediate termination of this Agreement.
6. Failure to provide the public records to the County within a reasonable time may also subject the Architect to penalties under section 119.10, Florida Statutes.
7. The Architect shall include provisions in accordance with this Section, chapter 119, F.S., and all applicable Florida public records law, including the forgoing paragraph, in 14-point font, in all agreements, assignments, leases, contracts, and subcontracts executed or amended after the effective date of the Grant Agreement for the expenditure of funds from, related to, in connection with, or in furtherance of this

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Agreement.

IF THE ARCHITECT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO THE ARCHITECT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (772) 462-1441, [bellamys@stlucieco.org](mailto:bellamys@stlucieco.org) COUNTY ATTORNEY'S OFFICE, 2300 VIRGINIA AVENUE, PORT PIERCE, FL 34982.

§ 12.2 Architect understands and acknowledges that the Project is a significant public-private infrastructure project where principals of cooperation, accountability, transparency and fairness are paramount. Architect will provide its services with these principles in force. Architect will specifically involve the County's Program Manager, in all project development interaction, including but not limited to design review meetings with SFS or contractor, site inspections and any stakeholder meeting held during design and construction.

§ 12.3 County shall have the right to review, verify, and audit if necessary, all requests for disbursements of any 2017 Improvements Budget Funds, including invoices from the Architect and Contractor. SFS shall reasonably ensure that all requests for disbursement are sufficiently documented and accompanied by supporting invoices and time records, and in the case of Architect and Contractor, that they (i) maintain an "open book" project accounting practice, (ii) make all files and accounting records available for review and auditing upon reasonable request, and (iii) allow for back charging for any erroneous billing.

#### 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 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
  
- .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 A - Initial Information  
Exhibit B - Hourly Rate Schedule  
Exhibit C - Agreement for Delivery of Documents in Electronic Form  
Exhibit D - St. Lucie County Sports Complex, Amended and Restated Facilities Use Agreement  
Exhibit E - Schedule

#### ARTICLE 14 AUDIT

1. § 14.1 The County shall have audit rights pursuant to Attachment A, Audit Requirements, as applicable.
2. The Architect shall retain and maintain all records so as to sufficiently and properly reflect all expenditures of funds distributed under this Agreement, in accordance with generally accepted accounting procedures and practices. Records shall include, but are not limited to, independent auditor working papers, notes, books, vouchers, bills, invoices, requests for payment, receipts, and other supporting, source documentation, including electronic storage media. Such records shall be subject at all times to inspection,

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review, and audit by, as well as transfer to, representatives of the County, DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, or representatives of the Federal government and their duly authorized representatives upon request.

3. The Architect agrees to comply with all applicable audit requirements of section 215.97, F.S., and those found in Attachment A, Audit Requirements; and, if an audit is required, the Architect shall disclose all related transactions to the County.
4. The Architect shall maintain and retain all records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this Agreement, as well as all financial records related to funds paid by the County to any parties for work on the matters that are the subject of this Agreement, in accordance with the record retention requirements of Part V of Attachment A, Audit Requirements. The Architect shall cooperate with DEO to facilitate the duplication and transfer of such records or documents upon request of DEO.
5. If applicable, the County or the Architect shall submit a written independent audit report to DEO specifically covering the period of Agreement expenditures pursuant to sections 215.97 and 11.45, F.S., and other relevant laws.
6. The Architect must provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to the County within 15 calendar days of receipt by the Architect.
7. The Architect will comply with section 20.055(5), F.S., including, but not limited to, the duty of the Architect, to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S. The Architect agrees to reimburse the County for the reasonable costs of investigation incurred by the County, the Inspector General or other authorized State official for investigations of the County's beneficiary, contractors' or subcontractors' compliance with the terms of this Agreement or Grant Agreement which results in a finding of noncompliance, fraud, illegality, or financial misuse, in connection with this Agreement by the Architect, its beneficiary, contractor(s), or subcontractor(s). Such reasonable costs shall include, but shall not be limited to: attorney's fees, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.
8. The Architect shall include the audit and record keeping requirements aforementioned in this Article and in Attachment A, Audit Requirements, in all contracts, subcontracts, leases, assignments, and agreements executed for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement that are either amended or executed after the effective date of the Grant Agreement.

1. ARTICLE 15 CONFIDENTIAL INFORMATION

2. § 15.1 The provisions of chapter 119, F.S., and other applicable Florida and federal laws govern the disclosure of any confidential information received by the County and the Architect.
3. If the Architect or its affiliates, or the Architect's agents, employees, partners, contractors, or subcontractors submit records to the County or to DEO that the Architect or its affiliates, or the Architect's contractors or subcontractors, deems legally confidential and/or exempt from public disclosure, as trade secrets, proprietary confidential business information, or for any other valid legal exemption under applicable Florida or Federal law, such records must be properly identified as such prior to submission to the County or DEO. Failure to identify the legal basis for and the specific content of each claim of exemption and/or confidentiality from the requirements of chapter 119, F.S. or other law, prior to submittal of the record to the County or DEO, may serve as a waiver of a claim of exemption and/or confidentiality of that record.
4. The Architect shall ensure that public records in the custody and/or control of the Architect, its affiliates, or the Architect's agents, employees, partners, contractors or subcontractors that are confidential are not disclosed except as authorized by law.
5. The Architect shall not disclose to third parties any confidential information obtained by the Architect or its affiliates, or the Architect's agents, employees, officers, contractors or subcontractors in furtherance of this Agreement.
6. The Architect shall notify the County verbally within 24 hours, and in writing within 72 hours of any improper disclosure or unauthorized use of confidential information related to this Agreement by the Architect, its employees, agents, or representatives which is not in compliance with the terms of this Agreement or Federal or State law or if any information related to this Agreement is subpoenaed.
7. The Architect shall make a report to the County not more than five (5) calendar days after the Architect learns of such an improper disclosure or unauthorized use of confidential information. The Architect's

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report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the confidential information disclosed or used, who made the disclosure of or used the information, what the Architect has done or shall do to mitigate any deleterious effect of the improper disclosure or unauthorized use, and what corrective action the Architect has taken or shall take to prevent future similar unauthorized use or improper disclosure. The Architect shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by the County or the DEO. The Architect shall take all steps the County or the DEO deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of confidential information shared or exchanged by the County, the Architect, and their affiliates in connection with this Agreement.

8. The Architect shall include the foregoing provisions of this Article and in accordance with chapter 119, F.S. and all applicable Florida public records law, in all agreements, assignments, leases, contracts, and subcontracts executed or amended after the effective date of the Grant Agreement for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement.
9. To the extent allowable by law, the Architect shall be fully liable for the actions of its agents, employees, partners, contractors, and subcontractors and shall fully indemnify, defend, and hold harmless the County and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the Architect, its agents, employees, partners, contractors, or subcontractors, provided, however, that the Architect does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the County, State or DEO. The County, in its sole discretion, has the right, but the not obligation, to enforce this indemnification provision.
10. **ARTICLE 16 GRANT REQUIRED PROVISIONS**
11. § 16.1 **DISCRIMINATORY VENDOR:** The Architect acknowledges the provisions of section 287.134, F.S. The Architect shall disclose to the County if any of its affiliates, as defined by section 287.134(1)(a.), F.S. appears on the discriminatory vendor list. The Architect shall ensure provisions in accordance with section 287.143, F.S., are present in all agreements, assignments, leases, contracts, and subcontracts in furtherance of or related to this Agreement.
12. § 16.2 **NON-DISCRIMINATION:** The Architect shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, sex, creed, color, handicap, national origin, or marital status. The Architect shall insert a provision in accordance with this Article in all subcontracts for services in relation to this Agreement.
13. § 16.3 **HARASSMENT-FREE WORKPLACE:** The Architect shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Architect shall insert a provision in accordance with this Article in all subcontracts for services in relation to this Agreement,
14. § 16.4 **PUBLIC ENTITY CRIMES:** The Architect affirms that it is aware of the provisions of section 287.133, F.S., and that at no time has the Architect or its affiliates, as defined by section 287.133(1)(a), F.S., been convicted of a Public Entity Crime. The Architect agrees that it shall not violate such law. The Architect shall insert a provision in accordance with this Article and the applicable Florida Statutes in all agreements, assignments, leases, contracts, and subcontracts in connection with or related to this Agreement.
15. § 16.5 **LOBBYING:** Pursuant to sections 11.062 and 216.347, F.S., the Architect shall not use any funds received under this Agreement for lobbying the Legislature, the judicial branch, or any state agency.
16. The Architect will keep the County and DEO apprised of any requests for testimony or its participation in any Congressional, legislative and other State or Federal hearings, or agency, committee, or task force meetings or the like, related to this Agreement.
17. The Architect shall insert a provision in accordance with this Article, in all agreements, assignments, leases, contracts, or subcontracts related to this Agreement or for which funds distributed pursuant to this Agreement are to be expended.
18. § 16.6 **INFORMATION RELEASE AND ADVERTISING:** The County and DEO do not endorse any commodity, service, project, or entity. Subject to chapters 119 and 286, F.S., the Architect shall not publicly disclose or disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking the Architect and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized

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contractors, subcontractors, distributors, dealers, resellers, or service representatives.

- 19. § 16.7 CONFLICT OF INTEREST: This Agreement and the use of funds distributed pursuant to this Agreement are subject to chapter 112, F.S. The Architect shall disclose the name of any officer, director, employee, or other agent of the Architect who is also an employee of the County or the State. The Architect shall disclose to the County the name of any Architect employee or agent who owns, directly or indirectly, more than 5 percent of the total assets or capital stock of the Architect and any business entity or its affiliates receiving funds from this Agreement. The Architect shall insert a provision in accordance with this Article and the applicable Florida Statutes in all agreements, assignments, leases, contracts, and subcontracts in connection with or related to this Agreement.
- 20. 16.8 INDEPENDENT CONTRACTOR: The Architect agrees to take such action as may be necessary to ensure that each contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the County or the State of Florida.

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

OWNER  
STERLING FACILITY SERVICES, INC.

ARCHITECT  
EWING COLE, INC.

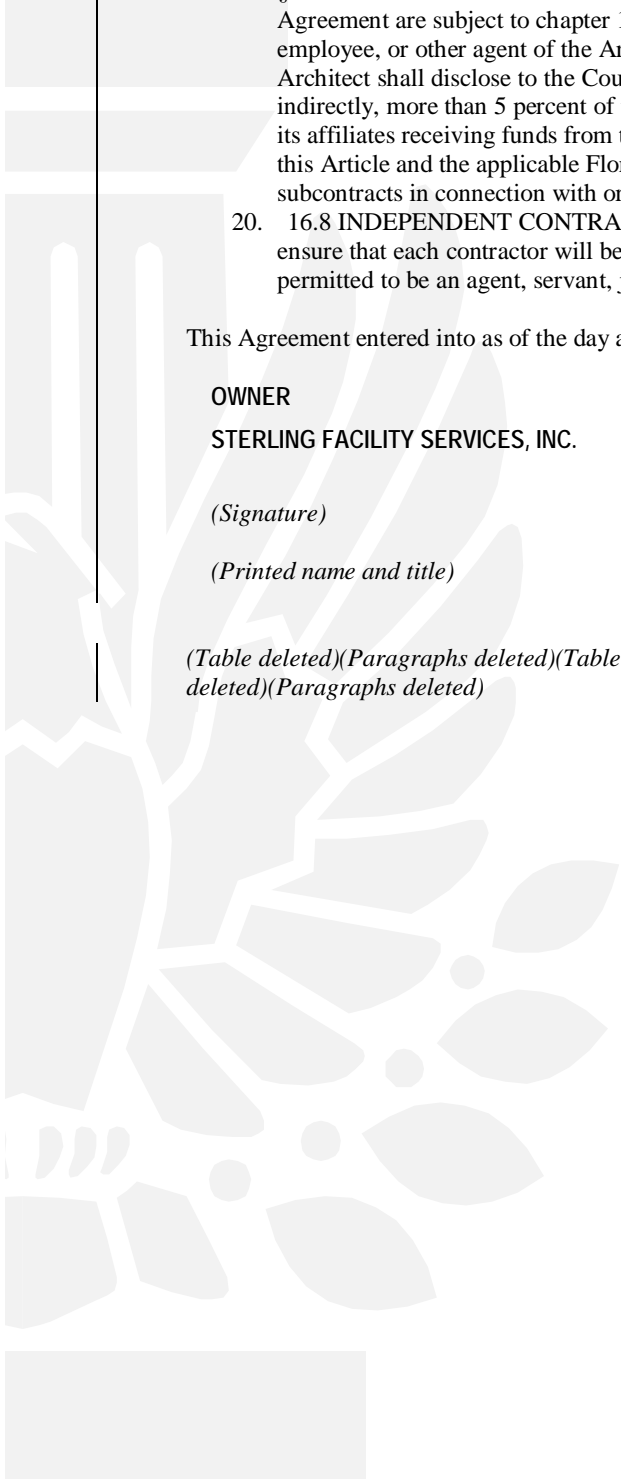
*(Signature)*

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# Additions and Deletions Report for AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:44:31 on 08/18/2017.

## PAGE 1

~~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)*

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

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

~~The Owner and Architect agree as follows.~~

TABLE OF ARTICLES

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

EXHIBIT A — INITIAL INFORMATION

ARTICLE 1 — INITIAL INFORMATION 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, address and other information)

Sterling Facility Services, LLC  
523 NW Peacock Blvd.  
Port St. Lucie, FL 34986

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

Ewing Cole, Inc.  
Federal Reserve Bank Building  
100 North 6th Street  
Philadelphia, PA 19106-1590  
Florida License No. AA26001677

for the following project (the "Project" and/or "Work"):  
(Name, location and detailed description)

Complete Architectural and Engineering Services for the renovation, expansion and modernization of the St. Lucie County Sports Complex in Port St. Lucie, FL.

The existing 100+ acre facility consists of a 7,000-seat stadium (First Data Field), five (5) full-size practice fields, one (1) half-size practice field, one (1) quarter-size practice field, Major League batting, all of the team's Minor League operations, and parking and loading areas.

In general, the Project contemplates five (5) major components:

1. Stadium amenity improvements including a new/expanded entry plaza, new team store and ticket office, concourse enhancements including new restrooms and concessions, widened vomitories, relocated bullpens, vertical transportation upgrades, a new outfield walkway to create a 360-degree concourse, new handrails seat replacement in the stadium bowl.
2. Player amenity and Business Administration improvements within the Stadium including near complete demolition and replacement of the existing MLB/MiLB locker room facilities and support spaces, new multipurpose room, team business offices, operations offices, food service offices, County offices and meeting spaces, commissary, and media facilities.
3. Expansion and upgrade of the existing MiLB Clubhouse including new offices, expanded coaches' locker room, new female staff locker room, renovated umpire locker room(s), renovated roofing and HVAC systems, renovated hydrotherapy areas, new conference rooms, classrooms and tutoring spaces, player dining and kitchen, and upgraded finishes in existing areas.
4. New synthetic and/or natural grass outdoor practice fields of varying size, new MLB and MiLB covered batting cages, pitching lanes and other practice facility enhancements, and renovated Spring Training viewing tower(s), as well as (3) or (4) recreation softball fields equipped for future nighttime lighting.
5. Sitework improvements including new parking fields, pedestrian pathways, fencing, landscaping, groundskeeping area, irrigation systems and utilities, as well as signage, wayfinding and graphics throughout the site.

The scope of the Project is set forth in the Amended and Restated Facilities Use Agreement between St. Lucie County ("County") and Sterling Facility Services, LLC. Architect shall familiarize itself with the Facilities Use Agreement and all Amendments thereto in order to assist in carrying out the services.

The Owner and Architect agree as follows.

#### TABLE OF ARTICLES

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

12 SPECIAL TERMS AND CONDITIONS

13 SCOPE OF THE AGREEMENT

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 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.)

The St. Lucie County Sports Complex is located at 525 NW Peacock Blvd., Port St. Lucie, FL 34986. The basic project program is described on the cover page.

The Stadium renovation/expansion will entail the following:

• Ground Floor:

+/-42,600 sf of renovated areas (i.e., 34,200 sf significantly renovated plus 8,400 sf to receive upgraded finishes and lighting)

+/-25,000 sf addition

+/-13,600 sf new entry plaza

• Main Concourse:

+/-35,500 sf of renovations (i.e., restrooms, concessions and open concourse)

+/-20,800 sf new outfield concourse (incl. restrooms)

The Minor League Clubhouse renovation/expansion will entail the following:

• +/-22,000 sf of interior renovations (i.e., 8,000 sf significantly renovated plus 14,000 sf to receive upgraded finishes and lighting)

• +/-13,600 sf addition.

The Playing Fields and miscellaneous Sitework will entail approximately 58 acres.

The estimated construction cost is \$49,000,000 including Food Service equipment, Audio Visual equipment, Security, Access Control and Information Technology equipment.

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

.1 Commencement of construction date:

April 1, 2018

.2 Substantial Completion date:

December 31, 2019

§ 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 in accord with Articles 4 and 11.

1. § 1.4 The Architect acknowledges that, once construction commences, as set forth in §1.2.1 above, time is of the essence for completion of the construction. The construction must be completed within twenty-four (24) months after commencement of construction, as required by section 288.11631(3)(d)(3), Florida Statutes. This twenty-four (24) month time-period may not be exceeded under any circumstances. The Architect acknowledges that, should the construction not be completed within 24 months from project commencement, the County will suffer extensive damages, including but not limited to, loss of



certification under section 288.11631, F.S. and loss of Florida Department of Economic Opportunity ("DEO") grant funding. The Architect shall insert a provision in accordance with this Section in all subcontracts for services in connection with or related to this Agreement.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement (and in accordance with the Architect's proposal attached as Exhibit A – Initial Information). Services not set specifically set forth in this Agreement or Exhibit A are Additional Services.

2.1.1 To the extent the Architect has provided any of the professional services described herein prior to the date first stated above, they shall be deemed to have been provided in this Agreement.

§ 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 on a project of the same or similar scale and complexity as the subject Project. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and ensure its subconsultants perform their services in accordance with the professional standard of care governing their trade.

2.2.1 The Architect shall, at no additional cost, modify any drawings and specifications which are deemed by the authority having jurisdiction, not to be in conformance with Applicable Laws, provided that the Applicable Codes, laws or regulations have not been changed within the time frame of the project 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 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. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost: (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 Commercial General Liability  
with Products / Completed Operations Liability coverage

\$1,000,000 each occurrence, \$2,000,000 general aggregate.  
Shall not include any ISO Exclusion CG 2294 or Exclusion 2295, or any other exclusion for liability  
resulting from operations performed by subconsultants

.2 Automobile Liability

\$1,000,000 combined single limit per accident for bodily injury and property damage for all owned,  
leased and non-owned vehicles.

.3 Workers' Compensation

\$1,000,000 per incident.

.4 Professional Liability

\$5,000,000 per claim, \$5,000,000 aggregate.

5. General Liability Umbrella

\$5,000,000 for Commercial General Liability products and Completed Operations and Automobile Liability

6. St. Lucie County shall be named as Additional Insured on all liability policies, except for Professional Liability. The County shall also be named as an Additional Insured on all such liability policies pertaining to all Subconsultants retained by Architect.

Owner may request a copy of all insurance certificates required hereunder, which Architect shall provide within seven (7) days.

§ 2.6 The Architect shall comply with all applicable provisions of the Spring Training Agreement between DEO and the County (the "Grant Agreement"). County and Architect also agree that all acts to be performed by them in connection with the Grant Agreement shall be performed in strict conformity with all applicable local, State and Federal laws and regulations. The Architect shall insert a provision in accordance with this Article in all agreements, assignments, leases, contracts, and subcontracts in connection with or related to this Agreement that are either amended or executed after the effective date of the Grant Agreement.

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

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

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

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

§ 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 also be in reasonable alignment with the preliminary design milestone dates set forth below:

Completion of Schematic Design Phase Services: 08/01/2017  
Completion of Design Development Phase Services: 11/01/2017  
Completion of Construction Documents Phase Services: 03/01/2018

The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

The Architect acknowledges that the Owner will suffer extensive damages if the Architect's services hereunder are not performed pursuant to the schedule. Accordingly, time is of the essence for the performance of this Agreement.

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

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

§ 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.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and the 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 above information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and 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 as identified within the Architect's proposal. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

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

§ 3.2.6 The Architect shall review and provide commentary on the Owner's estimate of the Cost of the Work.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's review and approval. The Schematic Design documents shall also be submitted to the St. Lucie County Board of County Commissioners who shall have twenty (20) days from delivery thereof, to review, approve or disapprove, if applicable as set forth in the Facilities Use Agreement.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's review and approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's review and 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, electrical and plumbing systems, and such other elements as may be deemed appropriate by the Architect. The Design Development Documents shall also include outline specifications or narratives that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 . The Architect shall review and comment on the Owner's updated estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any required adjustments to the estimate of the Cost of the Work, and request the Owner's review and approval. The Design Development documents shall also be submitted to the St. Lucie Board of County Commissioners, who shall have twenty (20) days from delivery thereof to review, approve or disapprove if applicable, as set forth in the Facilities Use Agreement.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall provide input to the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms developed by the Construction Manager; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall review and comment on the Owner's updated estimate of the Cost of the Work.

§ 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 review and approval. The Construction Documents shall also be submitted to the St. Lucie County Commissioners who shall have twenty (20) days from delivery thereof to review, approve or disapprove if applicable, as set forth in the Facilities Use Agreement.

#### § 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) reviewing and commenting on 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 in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders if requested by Owner or Owner's representative.
- .2 assist in distributing the Bidding Documents to prospective bidders.
- .3 attend pre-bid conference for prospective bidders and
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.
- .5

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

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

§ 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, if requested by Owner or Owner's representative.
- .2 Participate in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, if requested by Owner or Owner's representative.

§ 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 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

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

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

§ 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 and terminates on the date the Architect issues the final Certificate for Payment. However, the Architect shall be entitled to an Additional Services in accordance with Article 4 if Contract Administration Services extend beyond December 31, 2019.

#### § 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 4.3.3, 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. The Architect shall report to the Owner, (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work. This authority of the Architect to reject portions of the Work shall not create a duty to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.



§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. 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 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 disputes between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

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

### § 3.6.4 SUBMITTALS

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

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be

entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, 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 Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 CHANGES IN THE WORK

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

3.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may accept a minor change in the Work or make a recommendation to the Owner.

3.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall review the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

### § 3.6.6 PROJECT COMPLETION

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

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

§ 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, 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: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2)

affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

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

3.6.6.6 If an action or duty is not specified in Article 3 or 4, it is specifically excluded from the scope of the Architect's responsibilities.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 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.

(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.)

<u>Additional Services</u>	<u>Responsibility (Architect, Owner or Not Provided)</u>	<u>Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)</u>
<u>§ 4.1.1 Programming (B202™–2009)</u>	<u>Not Provided</u>	
<u>§ 4.1.2 Multiple preliminary designs</u>	<u>Not Provided</u>	
<u>§ 4.1.3 Measured drawings</u>	<u>Not Provided</u>	
<u>§ 4.1.4 Existing facilities surveys</u>	<u>Additional Services</u>	
<u>§ 4.1.5 Site Evaluation and Planning (B203™–2007)</u>	<u>Base Scope</u>	
<u>§ 4.1.6 Building Information Modeling (E202™–2008)</u>	<u>Not Provided</u>	
<u>§ 4.1.7 Civil engineering</u>	<u>Base Scope</u>	
<u>§ 4.1.8 Landscape design</u>	<u>Base Scope</u>	
<u>§ 4.1.9 Architectural Interior Design (B252™–2007)</u>	<u>Base Scope</u>	
<u>§ 4.1.10 Value Analysis (B204™–2007)</u>	<u>Not Provided</u>	
<u>§ 4.1.11 Detailed cost estimating</u>	<u>Not Provided</u>	
<u>§ 4.1.12 On-site Project Representation (B207™–2008)</u>	<u>Additional Services</u>	<u>B-101</u>
<u>§ 4.1.13 Conformed construction documents</u>	<u>Additional Services</u>	
<u>§ 4.1.14 As-Designed Record drawings</u>	<u>Additional Services</u>	
<u>§ 4.1.15 As-Constructed Record drawings</u>	<u>Additional Services</u>	
<u>§ 4.1.16 Post occupancy evaluation</u>	<u>Not Provided</u>	
<u>§ 4.1.17 Facility Support Services (B210™–2007)</u>	<u>Not Provided</u>	
<u>§ 4.1.18 Tenant-related services</u>	<u>Not Provided</u>	
<u>§ 4.1.19 Coordination of Owner's consultants</u>	<u>Not Provided</u>	
<u>§ 4.1.20 Telecommunications/data design</u>	<u>Base Scope</u>	
<u>§ 4.1.21 Security Evaluation and Planning (B206™–2007)</u>	<u>Not Provided</u>	
<u>§ 4.1.22 Commissioning (B211™–2007)</u>	<u>Not Provided</u>	
<u>§ 4.1.23 Extensive environmentally responsible design</u>	<u>Not Provided</u>	
<u>§ 4.1.24 LEED® Certification (B214™–2012)</u>	<u>Additional Services</u>	
<u>§ 4.1.25 Fast-track design services</u>	<u>Base Scope</u>	
<u>§ 4.1.26 Historic Preservation (B205™–2007)</u>	<u>Not Provided</u>	
<u>§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)</u>	<u>See Exhibit "A"</u>	
<u>§ 4.1.28 Signage and wayfinding design</u>	<u>Base Scope</u>	

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

§ 4.3 Additional Services may be added or 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 in writing and with reasonable promptness to explain the facts and circumstances giving rise to the need. After such notice, the Architect shall proceed to provide, and be compensated for the following services unless instructed by the Owner in writing not to provide such services :

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 deleted
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 deleted
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;  
or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 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 Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Disputes as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 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.

§ 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 Three (3 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Thirty-six (36) visits to the site by the Architect over the duration of the Project during construction
- .3 Four (4) visits for the purpose of evaluating 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 Two (2) visits for the purpose of evaluating any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed by December 31, 2019 through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 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 in addition to Commercial General Liability, Automotive, and Worker Compensation Insurance. The Owner, County and Architect shall be named as additional insureds on all insurance policies other than Professional Liability policies. Copies of insurance certificates shall be made available upon request.



§ 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 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall communicate with the Architect's Consultants through the Architect. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 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 Architect and Owner shall mutually agree on the General Conditions of the Contract for Construction as they pertain to the Architect's duties and responsibilities under this Agreement. The Architect shall also review the General Conditions of the Contract for Construction and advise the Owner of any suggested revisions required for the benefit of the Project prior to execution.

§ 5.11.1 The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction. The Architect shall promptly identify to the Owner in writing any services required of the Architect under the proposed Contract for Construction that the Architect asserts are not included in compensation and shall provide a proposal for pricing of such services. If the Owner disputes the Architect's assertion at any time, whether before executing the Contract for Construction or after the affected services have been rendered, such dispute shall be resolved in accordance with Article 8. The Owner shall provide the Architect with an executed copy of the Contract for Construction and the Architect shall provide all services required of it thereunder.

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

#### ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, review of and comment on the preliminary estimate of the Cost of the Work and updated reviews of and comments on the estimates of the Cost of the Work prepared by the Owner's consultant, Construction Manager, Owner's Representative, 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 review of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Owner's consultant, Construction Manager, Owner's Representative shall 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 estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

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

§ 6.5 If at any time the 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, 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. The Architect shall be compensated for such revisions if cost fluctuations are caused by market conditions outside the Architect's control, unless it is determined that the Construction Documents do not conform to the scope and program as established at the conclusion of the Design Development Phase.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner agree 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 solely 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 have a separate written agreement establishing the specific conditions governing the format and use of such electronic Instrument of Service. A copy of such agreement is attached to this agreement as Exhibit A.

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

§ 7.3 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. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify, defend, 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.

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law. 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 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, and only to the extent of insurance proceeds actually received. The Owner or the Architect, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. The Owner agrees to obtain the necessary property insurance as set forth in the General Conditions.

§ 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, except to the limits of available insurance coverage required by the Agreement, such claims being reserved by the parties.

§ 8.1.4 To the fullest extent permitted by law the Architect shall indemnify and hold harmless the Owner and St. Lucie County from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property or non-performance of the Work, but only to the extent any of the foregoing was caused by the negligent acts or omissions by of the Architect, or the Architect's agents, employees, partners, contractors, or subcontractors. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Article 8.1.3. Architect's indemnification obligations hereunder shall survive completion of the Work or any earlier termination of the Contract made in accordance with Article 9.

### **§ 8.2 MEDIATION**

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to other legal recourse. 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 other legal recourse.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation to be administered by a mutually agreeable private party i. 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.

§ 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.

§ 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.)

]

] Litigation in a court of competent jurisdiction in the County where the Project is located

] Other (Specify)

#### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments due to the Architect in accordance with the terms of the Agreement, and if such failure continues after thirty (30) days written notice to the Owner of such failure providing a detailed explanation of why such failure constitutes a violation of 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 for such failure by the Owner to make payments, the Architect shall give seven days' written notice to the Owner, and opportunity to cure within that period, before suspending services. In the event of a suspension of services, the Owner agrees that the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services provided such suspension is not due to Architect's failure to perform. Before resuming services, the Architect shall be paid all reasonable 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, for more than 30 days without fault of the Architect, 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. The Architect's compensation for expenses associated with any suspension and resumption of the Architects' services shall be calculated as shown on Exhibit "B" to this Agreement. The Architect shall be entitled to receive reasonable expenses associated with the suspension notwithstanding the Owner's decision to abandon the Project or otherwise terminate this Agreement.

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7. Under no circumstances shall Architect or any Subconsultants be entitled to any compensation, fees or profits on any services not performed as of the date of termination.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include reasonable expenses directly attributable to termination for which the Architect is not otherwise compensated.

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

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Florida.

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

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

It shall be recognized in the assignment agreement that all due and unpaid professional service fees and reimbursable expenses incurred by the Architect prior to the date of such assignment shall be an obligation to the Owner.

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect except that St. Lucie County is an intended third-party beneficiary of this Agreement.

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

§ 10.7 Subject to Owner's written consent, 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.

#### 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.)*

Owner shall pay Architect a Fee equal to \$4,275,000 to directly perform, and/or subcontract with others to perform, the Basic Services. This Fee includes a cap of \$500,000 for subconsultant compensation.

The Architect is also entitled to reimbursement by the Owner for reasonable, out-of-pocket expenditures made by the Architect and the Architect's employees and subconsultants in the interest and for the direct benefit of the Project, Reimbursable Expenses related to the performance of Basic Services, which shall not exceed \$250,000 without the Owner's prior written consent.



§ 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.)

On a time and materials basis per the attached hourly rate schedule (Exhibit B) unless negotiated as a fixed lump sum fee.

§ 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.)

On a time and materials basis per the attached hourly rate schedule (Exhibit B).

§ 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 \_\_\_\_\_ ( \_\_\_\_\_ ), or as otherwise stated below:

§ 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:

<u>Schematic Design Phase</u>	<u>85,500</u>	<u>percent (</u>	<u>2</u>	<u>%)</u>
<u>Design Development Phase</u>	<u>1,068,750</u>	<u>percent (</u>	<u>25</u>	<u>%)</u>
<u>Construction Documents Phase</u>	<u>2,030,750</u>	<u>percent (</u>	<u>48</u>	<u>%)</u>
<u>Bidding or Negotiation Phase</u>	<u>60,000</u>	<u>percent (</u>	<u>1</u>	<u>%)</u>
<u>Construction Phase</u>	<u>855,000</u>	<u>percent (</u>	<u>20</u>	<u>%)</u>
<u>Punchlist/Close-out</u>	<u>175,000</u>		<u>4</u>	
<u>Total Basic Compensation</u>	<u>one hundred</u>	<u>percent (</u>	<u>100</u>	<u>%)</u>

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§ 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.)

Refer to Exhibit B

<u>Employee or Category</u>	<u>Rate</u>
-----------------------------	-------------

...

**§ 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;

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

§ 11.8.2 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:

15% of the Construction Document Phase fee.

#### § 11.10 PAYMENTS TO THE ARCHITECT

##### § 11.10.1

§ 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 sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)

\_\_\_\_\_ statutory rate

§ 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.

#### ARTICLE 12 PUBLIC RECORDS & SPECIAL TERMS AND CONDITIONS

§ 12.1 When the Architect receives any request to inspect or copy any records that relate to this Agreement, it shall promptly provide the County with a copy of the request. The County will respond to each such request on behalf of itself and the Architect and the Architect agrees to fully cooperate with the County with regard to all records requests and comply with all decisions made by the County regarding the production/disclosure. The Architect shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services being performed by the Architect.
2. Provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, as

- amended, or as otherwise provided by law.
3. Except as authorized by law, ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed for the duration of the Agreement, as well as following completion or termination of the Agreement if the Architect does not transfer the records to the County.
  4. Meet all requirements for retaining public records and upon completion or termination of the Agreement, transfer, at no cost, to the County all public records in possession of the Architect or keep and maintain the public records required by the County and the law to perform the services being performed by the Architect. If the Architect transfers all public records to the County upon completion or termination of the Agreement, the Architect shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. If the Architect keeps and maintains public records upon completion or termination of the Agreement, the Architect shall meet all applicable requirements for retaining public records.
  5. Failure to grant such public access or otherwise comply with the County's request for records may be grounds for immediate termination of this Agreement.
  6. Failure to provide the public records to the County within a reasonable time may also subject the Architect to penalties under section 119.10, Florida Statutes.
  7. The Architect shall include provisions in accordance with this Section, chapter 119, F.S., and all applicable Florida public records law, including the forgoing paragraph, in 14-point font, in all agreements, assignments, leases, contracts, and subcontracts executed or amended after the effective date of the Grant Agreement for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement.

**IF THE ARCHITECT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO THE ARCHITECT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (772) 462-1441,**

**bellamys@stlucieco.org COUNTY ATTORNEY'S OFFICE, 2300 VIRGINIA AVENUE, PORT PIERCE, FL 34982.**

**§ 12.2 Architect understands and acknowledges that the Project is a significant public-private infrastructure project where principals of cooperation, accountability, transparency and fairness are paramount. Architect will provide its services with these principles in force. Architect will specifically involve the County's Program Manager, in all project development interaction, including but not limited to design review meetings with SFS or contractor, site inspections and any stakeholder meeting held during design and construction.**

**§ 12.3 County shall have the right to review, verify, and audit if necessary, all requests for disbursements of any 2017 Improvements Budget Funds, including invoices from the Architect and Contractor. SFS shall reasonably ensure that all requests for disbursement are sufficiently documented and accompanied by supporting invoices and time records, and in the case of Architect and Contractor, that they (i) maintain an "open book" project accounting practice, (ii) make all files and accounting records available for review and auditing upon reasonable request, and (iii) allow for back charging for any erroneous billing.**

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

**Additions and Deletions Report for AIA Document B101™ – 2007 (formerly B151™ – 1997).** Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 09:44:31 on 08/18/2017 under Order No.6850554115\_1 which expires on 01/01/2018, and is not for resale.  
**User Notes:** 20160441

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.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 A - Initial Information

Exhibit B - Hourly Rate Schedule

Exhibit C - Agreement for Delivery of Documents in Electronic Form

Exhibit D - St. Lucie County Sports Complex, Amended and Restated Facilities Use Agreement

Exhibit E - Schedule

**ARTICLE 14 AUDIT**

1. §14.1 The County shall have audit rights pursuant to Attachment A, Audit Requirements, as applicable.
2. The Architect shall retain and maintain all records so as to sufficiently and properly reflect all expenditures of funds distributed under this Agreement, in accordance with generally accepted accounting procedures and practices. Records shall include, but are not limited to, independent auditor working papers, notes, books, vouchers, bills, invoices, requests for payment, receipts, and other supporting, source documentation, including electronic storage media. Such records shall be subject at all times to inspection, review, and audit by, as well as transfer to, representatives of the County, DEO, the Chief Financial Officer of the State of Florida, the Auditor General of the State of Florida, the Florida Office of Program Policy Analysis and Government Accountability, or representatives of the Federal government and their duly authorized representatives upon request.
3. The Architect agrees to comply with all applicable audit requirements of section 215.97, F.S., and those found in Attachment A, Audit Requirements; and, if an audit is required, the Architect shall disclose all related transactions to the County.
4. The Architect shall maintain and retain all records, financial records, supporting documents, statistical records, and any other documents, including electronic storage media, pertinent to this Agreement, as well as all financial records related to funds paid by the County to any parties for work on the matters that are the subject of this Agreement, in accordance with the record retention requirements of Part V of Attachment A, Audit Requirements. The Architect shall cooperate with DEO to facilitate the duplication and transfer of such records or documents upon request of DEO.
5. If applicable, the County or the Architect shall submit a written independent audit report to DEO specifically covering the period of Agreement expenditures pursuant to sections 215.97 and 11.45, F.S., and other relevant laws.
6. The Architect must provide copies of any audit referencing this Agreement, the audit transmittal letter, and any response to such audit to the County within 15 calendar days of receipt by the Architect.
7. The Architect will comply with section 20.055(5), F.S., including, but not limited to, the duty of the Architect, to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, F.S. The Architect agrees to reimburse the County for the reasonable costs of investigation incurred by the County, the Inspector General or other authorized State official for investigations of the County's beneficiary, contractors' or subcontractors' compliance with the terms of this Agreement or Grant Agreement which results in a finding of noncompliance, fraud, illegality, or financial misuse, in connection with this Agreement by the Architect, its beneficiary, contractor(s), or subcontractor(s). Such reasonable costs shall include, but shall not be limited to: attorney's fees, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.
8. The Architect shall include the audit and record keeping requirements aforementioned in this Article and in Attachment A, Audit Requirements, in all contracts, subcontracts, leases, assignments, and agreements executed for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement that are either amended or executed after the effective date of the Grant Agreement.

1. ARTICLE 15 CONFIDENTIAL INFORMATION

2. § 15.1 The provisions of chapter 119, F.S., and other applicable Florida and federal laws govern the

- disclosure of any confidential information received by the County and the Architect.
3. If the Architect or its affiliates, or the Architect's agents, employees, partners, contractors, or subcontractors submit records to the County or to DEO that the Architect or its affiliates, or the Architect's contractors or subcontractors, deems legally confidential and/or exempt from public disclosure, as trade secrets, proprietary confidential business information, or for any other valid legal exemption under applicable Florida or Federal law, such records must be properly identified as such prior to submission to the County or DEO. Failure to identify the legal basis for and the specific content of each claim of exemption and/or confidentiality from the requirements of chapter 119, F.S. or other law, prior to submittal of the record to the County or DEO, may serve as a waiver of a claim of exemption and/or confidentiality of that record.
  4. The Architect shall ensure that public records in the custody and/or control of the Architect, its affiliates, or the Architect's agents, employees, partners, contractors or subcontractors that are confidential are not disclosed except as authorized by law.
  5. The Architect shall not disclose to third parties any confidential information obtained by the Architect or its affiliates, or the Architect's agents, employees, officers, contractors or subcontractors in furtherance of this Agreement.
  6. The Architect shall notify the County verbally within 24 hours, and in writing within 72 hours of any improper disclosure or unauthorized use of confidential information related to this Agreement by the Architect, its employees, agents, or representatives which is not in compliance with the terms of this Agreement or Federal or State law or if any information related to this Agreement is subpoenaed.
  7. The Architect shall make a report to the County not more than five (5) calendar days after the Architect learns of such an improper disclosure or unauthorized use of confidential information. The Architect's report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the confidential information disclosed or used, who made the disclosure of or used the information, what the Architect has done or shall do to mitigate any deleterious effect of the improper disclosure or unauthorized use, and what corrective action the Architect has taken or shall take to prevent future similar unauthorized use or improper disclosure. The Architect shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by the County or the DEO. The Architect shall take all steps the County or the DEO deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of confidential information shared or exchanged by the County, the Architect, and their affiliates in connection with this Agreement.
  8. The Architect shall include the foregoing provisions of this Article and in accordance with chapter 119, F.S. and all applicable Florida public records law, in all agreements, assignments, leases, contracts, and subcontracts executed or amended after the effective date of the Grant Agreement for the expenditure of funds from, related to, in connection with, or in furtherance of this Agreement.
  9. To the extent allowable by law, the Architect shall be fully liable for the actions of its agents, employees, partners, contractors, and subcontractors and shall fully indemnify, defend, and hold harmless the County and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to public record requests or public record law violation(s), alleged to be caused in whole or in part by the Architect, its agents, employees, partners, contractors, or subcontractors, provided, however, that the Architect does not indemnify for that portion of any costs or damages proximately caused by the negligent act or omission of the County, State or DEO. The County, in its sole discretion, has the right, but the not obligation, to enforce this indemnification provision.
  10. ARTICLE 16 GRANT REQUIRED PROVISIONS
  11. §16.1 DISCRIMINATORY VENDOR: The Architect acknowledges the provisions of section 287.134, F.S. The Architect shall disclose to the County if any of its affiliates, as defined by section 287.134(1)(a.), F.S. appears on the discriminatory vendor list. The Architect shall ensure provisions in accordance with section 287.143, F.S., are present in all agreements, assignments, leases, contracts, and subcontracts in furtherance of or related to this Agreement.
  12. § 16.2 NON-DISCRIMINATION: The Architect shall not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, race, sex, creed, color, handicap, national origin, or marital status. The Architect shall insert a provision in accordance with this Article in all subcontracts for services in relation to this Agreement.
  13. § 16.3 HARASSMENT-FREE WORKPLACE: The Architect shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The Architect shall insert a provision in accordance with this Article in all subcontracts for services in relation to this



Agreement.

- 14. § 16.4 PUBLIC ENTITY CRIMES: The Architect affirms that it is aware of the provisions of section 287.133, F.S., and that at no time has the Architect or its affiliates, as defined by section 287.133(1)(a), F.S., been convicted of a Public Entity Crime. The Architect agrees that it shall not violate such law. The Architect shall insert a provision in accordance with this Article and the applicable Florida Statutes in all agreements, assignments, leases, contracts, and subcontracts in connection with or related to this Agreement.
- 15. § 16.5 LOBBYING: Pursuant to sections 11.062 and 216.347, F.S., the Architect shall not use any funds received under this Agreement for lobbying the Legislature, the judicial branch, or any state agency.
- 16. The Architect will keep the County and DEO apprised of any requests for testimony or its participation in any Congressional, legislative and other State or Federal hearings, or agency, committee, or task force meetings or the like, related to this Agreement.
- 17. The Architect shall insert a provision in accordance with this Article, in all agreements, assignments, leases, contracts, or subcontracts related to this Agreement or for which funds distributed pursuant to this Agreement are to be expended.
- 18. § 16.6 INFORMATION RELEASE AND ADVERTISING: The County and DEO do not endorse any commodity, service, project, or entity. Subject to chapters 119 and 286, F.S., the Architect shall not publicly disclose or disseminate any information concerning this Agreement without prior written approval from DEO, including, but not limited to mentioning this Agreement in a press release or other promotional material, identifying DEO or the State as a reference, or otherwise linking the Architect and either a description of the Agreement or the name of DEO or the State in any material published, either in print or electronically, to any entity that is not a Party to this Agreement, except potential or actual authorized contractors, subcontractors, distributors, dealers, resellers, or service representatives.
- 19. § 16.7 CONFLICT OF INTEREST: This Agreement and the use of funds distributed pursuant to this Agreement are subject to chapter 112, F.S. The Architect shall disclose the name of any officer, director, employee, or other agent of the Architect who is also an employee of the County or the State. The Architect shall disclose to the County the name of any Architect employee or agent who owns, directly or indirectly, more than 5 percent of the total assets or capital stock of the Architect and any business entity or its affiliates receiving funds from this Agreement. The Architect shall insert a provision in accordance with this Article and the applicable Florida Statutes in all agreements, assignments, leases, contracts, and subcontracts in connection with or related to this Agreement.
- 20. 16.8 INDEPENDENT CONTRACTOR: The Architect agrees to take such action as may be necessary to ensure that each contractor will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, or partner of the County or the State of Florida.

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

OWNER

STERLING FACILITY SERVICES, INC.

(Signature)

(Printed name and title)

ARCHITECT

EWING COLE, INC.

(Signature)

(Printed name and title)

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§ 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.)

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

~~.1— Commencement of construction date:~~

~~.2— Substantial Completion date:~~

~~§ 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.~~

## ARTICLE 2 — ARCHITECT'S RESPONSIBILITIES

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

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

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

~~§ 2.4 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. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:  
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)~~

~~.1— General Liability~~

~~.2— Automobile Liability~~

~~.3— Workers' Compensation~~

~~.4— Professional Liability~~

## ARTICLE 3 — SCOPE OF ARCHITECT'S BASIC SERVICES

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

~~§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.~~

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

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

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

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

§ 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.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

§ 3.2.3 The 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. The Owner may obtain other environmentally responsible design services under Article 4.

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

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

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

### ~~§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES~~

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

~~§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.~~

~~§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.~~

### ~~§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES~~

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

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

~~§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.~~

~~§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.~~

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

### ~~§ 3.5 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 in bidding the Project by~~

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

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

## ~~§ 3.5.3 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 CONSTRUCTION PHASE SERVICES~~

### ~~§ 3.6.1 GENERAL~~

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

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

~~§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.~~

### ~~§ 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 4.3.3, 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, and (2) defects and deficiencies observed in the Work.

~~§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.~~

~~§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. 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 with the intent expressed in the Contract Documents.~~

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

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

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

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

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

### ~~§ 3.6.4 SUBMITTALS~~

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

~~§ 3.6.4.2 In accordance with the Architect approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept~~

expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 3.6.4.4 Subject to the provisions of Section 4.3, 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 Contractor in accordance with the requirements of the Contract Documents.

#### § 3.6.5 CHANGES IN THE WORK

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

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

#### § 3.6.6 PROJECT COMPLETION

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

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

§ 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, 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: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

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

**ARTICLE 4 — ADDITIONAL SERVICES**

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

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

§ 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, in depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;  
or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 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 Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 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.

§ 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.~~

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

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

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

~~§ 5.3 The Owner 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 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.~~



~~§ 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, including the General Conditions of the Contract for Construction.~~

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

#### **ARTICLE 6 — COST OF THE WORK**

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

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

~~§ 6.3 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 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.~~

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

~~§ 6.5 If at any time the 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.~~

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

§ 7.3 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.

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

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

## ARTICLE 8 — CLAIMS AND DISPUTES

### § 8.1 GENERAL

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

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

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

## § 8.2 MEDIATION

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

§ 8.2.2 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.

§ 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.

§ 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)

## § 8.3 ARBITRATION

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

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

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

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

#### ~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

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

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

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

#### ~~ARTICLE 9 — TERMINATION OR SUSPENSION~~

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

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

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

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

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

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

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

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

#### ~~ARTICLE 10 — MISCELLANEOUS PROVISIONS~~

~~§ 10.1 This Agreement shall be governed by the law of the 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.~~

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

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

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

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

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

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

§ 10.8 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.

## 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.)*

§ 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.)*

§ 11.4 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:



§ 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:

Schematic Design Phase	percent — (	)
Design Development Phase	percent — (	)
Construction Documents Phase	percent — (	)
Bidding or Negotiation Phase	percent — (	)
Construction Phase	percent — (	)
<hr/>		
Total Basic Compensation	one hundred percent — (	100 %)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the 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.)*

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

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

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

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

~~§ 11.10 PAYMENTS TO THE ARCHITECT~~

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

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

~~—%~~

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

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

~~ARTICLE 12 SPECIAL TERMS AND CONDITIONS~~

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

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

- ~~.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.)~~

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

~~OWNER~~

~~ARCHITECT~~

~~(Signature)~~

~~(Signature)~~

~~(Printed name and title)~~

~~(Printed name and title)~~

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Robert Alfert, Jr., hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:44:31 on 08/18/2017 under Order No. 6850554115\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*