

DRAFT AIA® Document B103™ – 2017

Standard Form of Agreement Between Owner and Architect for a Complex Project

AGREEMENT made as of the day of in the year 2024
(In words, indicate day, month and year.)

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

Skagit County, a Municipal Corporation
1800 Continental Place
Mount Vernon, WA 98273

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

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

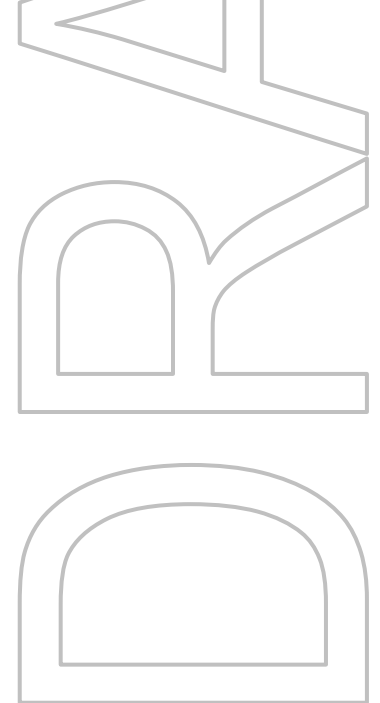
Skagit County

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The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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



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TABLE OF ARTICLES

| | |
|----|--------------------------------------|
| 1 | INITIAL INFORMATION |
| 2 | ARCHITECT'S RESPONSIBILITIES |
| 3 | SCOPE OF ARCHITECT'S BASIC SERVICES |
| 4 | SUPPLEMENTAL AND 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 |

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

The basis of design will be the program as created by Architect and as approved in writing by Owner.

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§ 1.1.2 The Project's physical characteristics:

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

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§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Project budget is \$

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

.1 Design phase milestone dates, if any:

Permit documents no later than <date>.
Bidding documents no later than <date>.

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.2 Construction commencement date:

A date set forth in the notice to proceed issued by the Owner, currently anticipated to be no later than <date>.

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.3 Substantial Completion date or dates:

Currently anticipated that Substantial Completion shall be no later than <date>.

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.4 Other milestone dates:

NA

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§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Competitive bid through the public procurement process with alternatives.

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§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

The Architect will provide a single bid package to include all drawings and specifications.

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

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

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

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

Skagit County Facilities Management
1800 Continental Place
Mount Vernon, WA 98273

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

.1 Cost Consultant:

NA
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.2 Scheduling Consultant:

NA
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.3 Geotechnical Engineer:

NA
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.4 Civil Engineer:

NA
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.5 Other, if any:

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

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

(List name, address, and other contact information.)

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§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

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.2 Mechanical/Electrical/Plumbing/Fire Engineer:

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.3 Civil ~~Electrical~~ Engineer:

.4 Cost Consultant

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§ 1.1.12.2 Consultants retained under Supplemental Services:

.1 Landscape Design

.2 Lighting Design

.3 Tel/Data/Security

.4 ADA Consultant

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

Notice to Proceed. Architect shall commence the Scope of Services upon receipt of a written Notice to Proceed by Owner. To the extent that the Scope of Services includes different phases of work, a Notice to Proceed must be issued by Owner for each phase of work prior to Architect commencing its services. Architect shall diligently and continuously perform the Scope of Services in an efficient manner and at a rate so as not to cause delay in the progress of the work of Contractor, Owner or other consultants.

Site Inspection. By executing this Agreement, Architect represents that it has investigated the nature, locality and site of the Scope of Services and has visited the Project, familiarizing itself with the local conditions and difficulties under which the Scope of Services is to be performed. Architect acknowledges that it enters into this Agreement on the basis of its own investigation and not in reliance upon any opinions or representations of Owner, or any of its respective officers, agents or employees.

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§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation through mutually acceptable negotiations. The Architect shall notify the Owner of any errors, inconsistencies or omissions discovered by the Architect in information provided by the Owner or the Architect. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect ~~and the Architect's consultants~~ shall provide the professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 **Standard of Care.** The Architect ~~and Architect's consultants will~~ shall perform ~~the Scope of Services~~ its services ~~consistent with the degree of care and skill exercised by qualified consulting and professional firms performing similar services~~ skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. Architect will correct or revise, at its own cost and expense, any deficiency in its services. Architect represents that all persons who will be performing the Scope of Services possess the requisite skill, training and experience and hold all required licenses and permits to render the Scope of Services contemplated by this Agreement. Regardless of where the Scope of Services is to be performed, and consistent with the Standard of Care, Architect, its affiliates, and representatives will at all times comply with any and all applicable federal, state, and local government laws, ordinances, statutes, standards, codes, rules, regulations, and guidelines. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Architect shall perform all of its services and design the Project in accordance with sound architectural and engineering practices and standards and in compliance with all applicable laws.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project who will maintain continuous involvement throughout the duration of the project. The representative shall be generally available to the Owner between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday and during such other hours that construction may be occurring at the Project site.

§ 2.3.1 **Personnel.** All personnel employed by Architect for purposes of completing the Scope of Services shall be satisfactory to Owner, and key personnel shall not be changed by Architect except with the written consent of Owner, which will not be unreasonably withheld.

§ 2.4 Except with the Owner's written 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. While Architect may provide similar services for other projects, Architect shall not reproduce this building or any other unique design element derived from this Scope of Services for any other project.

§ 2.5 ~~The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~

Insurance. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. In addition to any other insurance which Architect may choose to carry, Architect, will maintain in effect during the term of this Agreement and, will retain prior to the commencement of the Scope of Services, the following minimum insurance coverages ("Architect's Insurance") with insurers licensed to do business or through surplus lines brokers authorized in each state where the Project is performed and with a rating of at least A IX by A.M. Best Company:

- (a) Commercial General Liability Insurance including, without limitation, coverage for bodily injury, including death; contractual liability; independent consultants and/or contractors; personal injury including coverage for suits brought by employees of Architect; broad form property damage; and where the contract is for a design-build project, coverage for completed operations for a period equivalent to the applicable statutes of repose and limitations, written on an ISO occurrence form in the following minimum amounts:

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| <u>General Aggregate</u> | <u>\$1,000,000</u> |
| <u>Products-Comp/Op Aggregate</u> | <u>\$1,000,000</u> |
| <u>Personal and Advertising Injury</u> | <u>\$1,000,000</u> |
| <u>Each Occurrence</u> | <u>\$1,000,000</u> |

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| <u>Fire Damage (any one fire)</u> | <u>\$ 50,000</u> |
| <u>Medical Expense (any one person)</u> | <u>\$ 15,000</u> |

(b) Comprehensive Automobile Liability insurance covering all owned, non-owned and hired vehicles and including bodily injury (including death and personal injury) and property damage in the minimum amount of \$1,000,000 combined single limit of liability each accident.

(c) Workers' compensation insurance as required by the laws of the State in which the Scope of Services is performed, and Employer Liability insurance in the minimum amounts set forth below:

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|--------------------------------|--------------------|
| <u>Each Accident</u> | <u>\$1,000,000</u> |
| <u>Disease – Policy Limit</u> | <u>\$1,000,000</u> |
| <u>Disease – Each Employee</u> | <u>\$1,000,000</u> |

(d) Professional Liability (Errors and Omissions) insurance in the minimum amount of \$1,000,000 each claim and \$1,000,000 in the annual aggregate with respect to claims allegedly arising out of negligent acts, errors or omissions of Architect, its subconsultants, subcontractors, suppliers and any other parties for whom Architect may be liable, including without limitation, coverage for bodily injury, personal injury or property damage. The retroactive date of such coverage will be prior to the date of this Agreement and the start of the Scope of Services and the policy will be maintained during the performance of the Scope of Services and for three (3) years after substantial completion Substantial Completion of the Project. If Owner chooses to acquire a project specific policy of professional liability insurance, then Owner and Architect must agree on the scope and limits of coverage, parties covered, deductible required and length of the policy period after substantial completion Substantial Completion of the services.

Architect's Insurance may carry a commercially reasonable deductible, but may not have a deductible or self-insured retention exceeding (i) \$25,000 for the insurance coverages in Section 2.5(a) and (ii) \$100,000 for the insurance coverages in Section 2.5(e). Architect will pay all deductibles and self-insured retentions under Architect's Insurance. The amount of any self-insured retention or deductible shall be clearly identified on the certificate(s) of insurance.

Architect's Insurance will be primary to, and non-contributing with, any insurance maintained by Owner or any additional insured required to be named under this Agreement. The primary wording shall be included in the additional insured endorsement(s). The policies shall indicate that, as respects Owner or any additional insured, a severability of interests shall exist for all coverages provided therein. The insurance specified shall contain or recognize a waiver of subrogation against Owner and any additional insureds either by endorsement or on a blanket basis. Architect's Insurance may not be cancelled or allowed to expire without thirty (30) days' prior written notice, ten (10) days for cancellation due to non-payment of premium, to Owner; provided, however, Architect will itself, or will instruct its broker or carrier to, notify Owner of any nonrenewal or material modifications to the policy thirty (30) days before such nonrenewal or material modification becomes effective. Owner and its respective assignees, affiliates, members, partners, shareholders, directors, officers, and employees will be named as additional insureds on the insurance coverages described in subsections 2.5(a) through (c) above with respect to all matters arising out of this Agreement and all liability arising out of Architect's work under this Agreement (including product/completed operations). After signing this Agreement and prior to executing the contract, Architect will deliver to Owner a certificate or certificates of insurance evidencing Architect's Insurance is in effect and copies of all additional insured endorsements. All such certificates of insurance shall be presented in accordance with the requirements of the Compliance Service Provider, as defined below. Architect will renew or update such certificates promptly following each renewal and upon any modifications to Architect's Insurance relating to the requirements of this Agreement and otherwise upon Owner's reasonable request.

Architect specifically agrees to incorporate the provisions of this Section into all contracts with any consultants, subconsultants, subcontractors or suppliers that Architect retains in performance of the Scope of Services and to require the same minimum insurance requirements of such subconsultants, subcontractors or suppliers. In the event any of Architect's consultants, subconsultants, subcontractors or suppliers do not have the insurance in the amount and types required under this Agreement, Architect shall notify Owner of such prior to retaining or using such subconsultant, subcontractor, or supplier. In such event, Architect shall provide Owner with the available insurance

for Owner's review. Owner has the right to deny use of any consultant, subcontractor or supplier that does not have insurance in the amounts or types deemed acceptable to the Owner in its sole and absolute discretion. Any subconsultants, subcontractors or suppliers who do not meet the insurance requirements of Section 2.5 must be previously approved in writing by Owner's Risk Manager.

Should Architect or any of its consultants, subconsultants, subcontractors or suppliers fail to maintain the coverages required or otherwise fail to comply with the obligations set forth in this Agreement, Owner shall be entitled to withhold payments for the Scope of Services until Architect and its subconsultants, subcontractors and suppliers have satisfied their obligations hereunder. Failure of Architect to fulfill its obligations under this Section shall constitute a material breach of this Agreement.

Architect will not be permitted to commence the Scope of Services or receive payment therefore without the required insurance on file with Owner.

§ 2.5.1 Commercial General Liability with policy limits of not less than « » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate for bodily injury and property damage.

The Architect shall provide to the Owner certificates of insurance with signed Agreement to the Owner that evidence compliance with the requirements in this Section. The certificates must name the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies: **Skagit County, its elected officials, officers and employees are named as additional insured.**

~~§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than « » (\$ « ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 2.5.4 Workers' Compensation at statutory limits.~~

~~§ 2.5.5 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.~~

~~§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.~~

~~§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

~~§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.~~

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the Architect's services, 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, and shall not be responsible for, the accuracy, completeness, and timeliness 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. The Owner shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Architect and the Architect's consultants.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the ~~Owner's~~Owner and the Scheduling Consultant's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the 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 ~~and Scheduling Consultant~~, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. Time is of the essence in this Agreement. Architect agrees to punctually and diligently perform all parties of its services at the time scheduled by Owner, which shall be subject to change by Owner as deemed necessary or convenient to the overall progress of the Project. Architect will confer with Owner so that its work shall be coordinated in sequence to achieve the greatest efficiency and benefit for the Owner. Should the Architect fail to timely and completely perform its services causing the progress or completion of the Project to be delayed arising from the negligence of the Architect, the Architect shall compensate and indemnify and defend the Owner for all costs, expenses, liabilities or damages which may occur as a result of such negligence.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the ~~Owner~~Scheduling Consultant and participate in developing and revising the Project schedule as it relates to the Architect's services.

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

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

§ 3.1.7 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. Architect shall organize a pre-design meeting with the local jurisdiction to understand unique local requirements. Architect shall schedule and attend all appropriate pre-submittal meetings with the local jurisdiction and assist the Owner in connection with the Owner's responsibility for filing required documents. All services performed by the Architect shall comply with applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and orders effective at the time of building permit submittal.

§ 3.1.8 In the course of performing its services under this Agreement, Architect may have access to confidential and/or proprietary information of Owner, its agent or members. The Architect shall treat the Owner's proprietary and confidential information with the same degree of care with which it treats its own confidential information. The Architect shall provide Owner prompt written notice should Architect become aware of any fault or defect in the Project, including any error, omissions, or inconsistencies in the Architect's Instruments of Service of the performance of the Project construction work. Architect shall exercise its Standard of Care to ensure that the Project as constructed is free from defective materials and is constructed in accordance with sound engineering and construction standards in a workmanlike manner and consistent with prevailing interpretations and enforcement of all applicable laws. The Architect shall provide Owner prompt written notice should Architect become aware of any fault of defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service or the performance of the Project construction work.

§ 3.1.9 Architect, in performing its planning and design services hereunder, shall plan and design the Project in conformity with the expressed needs of the Owner. Subject to the Standard of Care, Architect shall perform all its Services hereunder so that the Project may be constructed within the Owner's cost and time constraints.

§ 3.1.10 The Architect shall contemporaneously provide the Owner with copies of all written communications between the Architect and any contractor concerning any matter relating to the cost, sequence, scope, or requirements of the Project.

§ 3.1.11 Throughout all phases of Architect's services, Architect shall participate personally in Project meetings with all Project participants as necessary to carry out its Services. Such meetings may occur every two weeks, weekly, or at such other times as determined by the Owner.

§ 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, grant agreements furnished by the Owner upon written request, codes, and regulations applicable to the Architect's services.

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

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

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

§ 3.2.5 Based on the Owner's written approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's written 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 representations. 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 sustainable 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 more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 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 the Schematic Design Documents to the Owner, ~~and the Cost Consultant~~. The Architect shall meet with the ~~Owner-Cost Consultant~~ to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the ~~Cost Consultant's~~ estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's written 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 other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner, ~~and the Cost Consultant~~. The Architect shall meet with the Owner~~Cost Consultant~~ to review the Design Development Documents.

§ 3.3.3 ~~Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, t~~The Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.4 Construction Documents Phase Services

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

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

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

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner, ~~and the Cost Consultant~~. The Architect shall meet with the Owner~~Cost Consultant~~ to review the Construction Documents.

§ 3.4.5 Upon receipt of the Cost Consultant's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.5 Procurement 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 facilitating the distribution of Bidding Documents to prospective bidders, (by use of Builders Exchange of Washington or otherwise agreed with Owner);
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

§ 3.5.3 Negotiated Proposals

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

§ ~~3.5.2.4~~ The Architect shall assist the Owner in obtaining Competitive Bids~~proposals~~ by:

- .1 facilitating the distribution of Bidding~~Proposal~~ Documents ~~for distribution to prospective bidders (by use of Builders Exchange contractors and requesting their return upon completion of Washington or as otherwise agreed with Owner); and the negotiation process;~~
- .2 organizing and participating in a pre-bid conference for selection interviews with prospective bidders; ~~contractors;~~
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 organizing and conducting the opening of the bids~~participating in negotiations with prospective contractors~~, and subsequently documenting and distributing the bidding~~preparing a summary report of the negotiation~~ results, as directed by the Owner.

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

§ 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™-2017 (as modified); General Conditions of the Contract for Construction. ~~If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~

§ 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. In the case of negligence on the part of both the Contractor and the Architect, the Architect shall be responsible for its proportional share of negligence.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment and all punch list items are complete.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, 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 promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 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 recommend to the Owner ~~require~~ inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and advise the Owner regarding ~~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 so as not to unreasonably delay the progress of the construction work.

§ 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 the Contractor. ~~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 [Reserved] ~~Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor 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, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The Architect's certification for payment shall also constitute a representation to the Owner that the Architect had made site visits to review the quality and progress of the Work. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and 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 promptly review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's 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 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 and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall report in writing be entitled to Owner any known rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or discovered inaccuracies or incompleteness with contracted provided by such design services. professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the 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 order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. If requested by the Owner and Subject to Section 4.2, 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 current and accurate records relative to changes in the Work which shall be provided to Owner upon request.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents and that all punch list items are complete.

§ 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 Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 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, visit the site, conduct a meeting with the Owner to review the facility operations and performance and to make appropriate recommendations to the Owner, including but not limited to issues related to warranties.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. Architect shall obtain prior written approval from Owner to perform any services not specifically stated in Exhibit "A" and below, and, in the event that Architect performs such services without the prior written approval of Owner, Architect shall waive any claims for additional compensation or time related thereto. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

| Supplemental Services | Responsibility (Architect, Owner, or not provided) |
|--|---|
| § 4.1.1.1 Programming | <u>Architect</u> |
| § 4.1.1.2 Multiple preliminary designs | <u>Not provided</u> |
| § 4.1.1.3 Measured drawings | <u>Not provided</u> |
| § 4.1.1.4 Existing facilities surveys | <u>Owner</u> |
| § 4.1.1.5 Site evaluation and planning | <u>Not provided</u> |
| § 4.1.1.6 Building Information Model management responsibilities | <u>Not provided</u> |
| § 4.1.1.7 Development of Building Information Models for post construction use | <u>Not provided</u> |
| § 4.1.1.8 Civil engineering | <u>Not provided</u> |
| § 4.1.1.9 Landscape design | <u>Not provided</u> |
| § 4.1.1.10 Architectural interior design | <u>Architect</u> |
| § 4.1.1.11 Value analysis | <u>Not provided</u> |
| § 4.1.1.12 Cost estimating | <u>Architect</u> |
| § 4.1.1.13 On-site project representation | <u>Not provided</u> |
| § 4.1.1.14 Conformed documents for construction | <u>Architect</u> |

| Supplemental Services | Responsibility (Architect, Owner, or not provided) |
|---|---|
| § 4.1.1.15 As-designed record drawings | <u>Architect</u> |
| § 4.1.1.16 As-constructed record drawings | <u>Architect</u> |
| § 4.1.1.17 Post-occupancy evaluation | <u>Not provided</u> |
| § 4.1.1.18 Facility support services | <u>Owner</u> |
| § 4.1.1.19 Tenant-related services | <u>Owner</u> |
| § 4.1.1.20 Architect's coordination of the Owner's consultants | <u>Architect</u> |
| § 4.1.1.21 Telecommunications/data design | <u>Not provided</u> |
| § 4.1.1.22 Security evaluation and planning | <u>Architect</u> |
| § 4.1.1.23 Commissioning | <u>Not provided</u> |
| § 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3 | <u>Not provided</u> |
| § 4.1.1.25 Historic preservation | <u>Not provided</u> |
| § 4.1.1.26 Furniture, furnishings, and equipment design | <u>Architect</u> |
| § 4.1.1.27 Other services provided by specialty Consultants | <u>Not provided</u> |
| § 4.1.1.28 Other Supplemental Services | <u>Not provided</u> |
| | |

§ 4.1.2 Description of Supplemental Services

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

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

See attached proposal.

↔

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

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

NA.

↔

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

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement.

Notwithstanding any other language in this Agreement, the Architect shall not be entitled to any compensation or additional time for any Additional Services unless Architect has first submitted a proposal therefor, which includes a description of the scope and need for the Additional Services and not-to-exceed estimated maximum cost for such Additional Services, and any requested adjustment in the Architect's schedule, and the owner has approved in writing. Additional Services shall be provided if authorized in writing by the Owner, and shall be paid for by the Owner as provided in this Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule provided that the Architect strictly complied with Article 4.1.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing and with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's 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 size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .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 entities providing bids or 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.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner in writing and with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved 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; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 Multiple ~~()~~ reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor. () hours for Design;
- .2 RFI Reviews by Architect and design consultants, () hours;
- .3 One (1) pre-construction meeting each for architectural and structural engineering;
- .4 <Number> () visits to the site by the Architect during construction;
- .5 <Number> () site visits during construction for structural engineering;

- ~~.6~~ ~~<Number> (1.3)~~ ~~«»(«»)~~ 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;
- ~~.7~~ ~~One (1) inspection~~ ~~4 «»(«»)~~ inspections for any portion of the Work to determine final completion;
- ~~.8~~ One (1) final construction review site visit/punchlist each for mechanical and electrical and design consultants; and,
- ~~.9~~ Miscellaneous field consultations by Architect, () hours.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within ~~twenty-four (24)~~ ~~«»(«»)~~ months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 [Reserved]

§ 5.3 [Reserved]

~~§ 5.3.1 [Reserved]~~ ~~§ 5.2 The Owner shall furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.~~

~~§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.~~

~~§ 5.3.1 The Owner acknowledges that accelerated, phased or fast track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.~~

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall endeavor to 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.

§ 5.5 The Owner shall furnish copies of previously conducted surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to

existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

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

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

§ 5.10 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.

§ 5.11 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.

§ 5.12 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.

§ 5.13 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 ~~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.

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

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

ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 ~~[Reserved] The Owner shall require the Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Cost Consultant's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Cost Consultant's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.~~

§ 6.4 If, prior to the conclusion of the Design Development Phase, the ~~Cost Consultant's~~ estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, ~~in consultation with the Cost Consultant,~~ 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.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. ~~The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.~~

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

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. Architect acknowledges that instruments of service and other records related to this Project are subject to Public Disclosure pursuant to state law and as such may be disclosable to the public unless exempt.

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

§ 7.3 The Architect grants to the Owner ~~an irrevocable~~ nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and

separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.14, the license granted in this Section 7.3 shall terminate. If the Owner terminates this Agreement for any reason, the irrevocable license shall not terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.54.

§ 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 notifying the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 [Reserved]

§ 8.1.3 Indemnity. To the fullest extent permitted by law, Architect shall indemnify and hold the Owner and the Owner's members, affiliates, lenders, partners, shareholders, directors, officers and employees (the "Indemnitees") against all damages, liabilities, losses and expenses, including court costs, expert fees, attorneys' fees and other costs of defense, arising out of Architect's performance of the Scope of Services, but (a) only to the extent caused by the negligence or willful misconduct of Architect, its officers, employees, agents, subcontractors or any person or organization for whom Architect is legally liable, regardless of whether or not such claim, damage, liability, loss or expense is caused in part by an Indemnitee and (b) in the event of concurrent negligence involving the Owner, its employees, consultants or contractors, such indemnification obligation is valid and enforceable only to the extent of the negligence of the Architect, its officers, employees, agents, subcontractors, consultants, or any persons or organization for whom the Architect is legally liable. Architect specifically and expressly waives any immunity that it may be granted under the applicable workers' compensation statute; provided, however, that Architect's waiver of immunity shall extend only to claims against Architect by Owner, and does not include, or extend to, any claims by Architect's employees directly against Architect. By their signatures to this Agreement, Architect and Owner certify that this Section was mutually negotiated and agreed upon. This duty to defend and indemnify shall survive termination or expiration of this Agreement.

§ 8.1.4 Time is of the essence of each party's performance of its obligations under this Agreement. In the event Architect fails to timely complete the Scope of Services or Owner reasonably believes Architect cannot complete the Scope of Services in accordance with the Project Schedule, Owner shall have the right to order Architect to work overtime as required to complete the Scope of Services in accordance with the Project Schedule with no increase in the Consulting Fee. Architect's failure to adequately or timely staff the Scope of Services shall not constitute a basis for extra payment for any overtime. ~~§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the~~

other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

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

§ 8.1.5 Costs of Enforcement. If any action or proceeding (including without limitation, arbitration, mediation, court actions and appellate proceedings, at law or in equity) is brought to enforce any of the provisions of this Agreement, the substantially prevailing party in such action or proceeding shall be entitled to recover all of the substantially prevailing party's costs and expenses, including reasonable attorneys' fees and consultant costs, incurred in connection with the action or proceeding.

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

§ 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.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)



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

§ 8.3 Arbitration **[Reserved]**

~~§ 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. 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 **[Reserved]**

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination (unless a good faith dispute exists between Owner and Architect) 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 ten (10) business~~seven~~ days' written notice to the Owner to cure before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules may~~shall~~ be equitably adjusted.

§ 9.2 If the Owner suspends the Project through no fault of 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 may 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 [Reserved]

~~§ 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 or for cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 [Reserved]

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

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

~~.1 — Termination Fee:~~



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



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

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.3.1 [Reserved]

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. ~~Neither the Owner nor t~~The Architect shall not assign this Agreement without the

written consent of the ~~Owner other, except that~~ the Owner ~~shall have the sole right to may~~ assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

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

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

§ 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. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 ~~If~~ The Architect ~~shall keep all or Owner receives~~ information ~~received from the Owner concerning specifically designated as "confidential" or "business proprietary,"~~ the Project which is not already in the public domain or which the Architect is required by law to disclose receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement. Architect agrees that any items produced by Architect and its Consultants, including Architect's Instruments of Service, are public records and will be produced upon Owner request at no charge to Owner. Architect agrees that Owner has the right to disclosure any records pursuant to a public records request, subpoena, or court order, unless Owner received a court order blocking production of such records. Architect and its consultants shall keep all records related to the Project and Work for a period of ten years from project completion.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

§ 10.10 Architect shall not permit to be created or to remain undischarged any lien, encumbrance or charge upon Owner's property to the extent the Architect has been paid for its services in accordance with the Contract. If any lien on account of an alleged debt of Architect or any notice of lien by a party engaged by Architect to work on the premises shall be filed against the property related to services for which Architect has been paid, Architect shall promptly cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If the Architect fails to promptly cause such lien to be discharged, then, in addition to any

other right or remedy. Owner may discharge the same whether by any means or to pay the amount of the judgment in favor of the lien or with interest, costs and allowances. Any amount so paid by Owner and all costs and expenses incurred by Owner in connection therewith, together with interest thereon from the respective dates of Owner's making of the payment or incurring of the costs and expense, shall be paid by Architect to Owner on demand.

§ 10.11 The Owner may audit the Architect's and any subconsultant's project and cost records for the Project at any time.

§ 10.12 The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Architect.

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)

<Amount> Dollars (\$) for contracted scope of work included in lump sum amounts, plus <amount> Dollars (\$) for reimbursables and contingency, resulting in a total compensation amount not to exceed Dollars (\$).
« »

- .2 Percentage Basis
(Insert percentage value)

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

- .3 Other
(Describe the method of compensation)

Lump sum for project phases as identified in the proposal. Eligible reimbursable expenses may be billed per the proposal and not to exceed <amount> Dollars (\$).
« »

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« »

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

A contingency amount up to <amount> Dollars (\$) is included for any owner-approved additional services as time and expense fees specified in this agreement.
« »

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

Contingency time and expense fees not to exceed <amount> Dollars (\$) for Additional Services included in the proposal.

↔

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

| | | | | |
|------------------------------|-------------|-----------|-----|----|
| Schematic Design Phase | « » | percent (| « » | %) |
| Design Development Phase | « » | percent (| « » | %) |
| Construction Documents Phase | « » | percent (| « » | %) |
| Procurement Phase | « » | percent (| « » | %) |
| Construction Phase | « » | percent (| « » | %) |
| Total Basic Compensation | one hundred | percent (| 100 | %) |

Note: Above summary does not include Reimbursables or Contingency amounts.

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

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

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

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

Hourly billing rates in included in Architect's attached proposal.

↔

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence not to exceed federal per diem limits;
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- ~~.3~~ Permitting and other fees required by authorities having jurisdiction over the Project will be paid by Owner;
- .34 Printing, reproductions, plots, and standard form documents;
- .45 Postage, handling, and delivery;
- .56 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner in writing;

- ~~.67~~ Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- ~~.78~~ If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- ~~.89~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.9~~ ~~If required by Owner, .40~~ Site office expenses;
- ~~.1044~~ Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- ~~.1142~~ Other similar Project-related expenditures with the Owner's prior written approval.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~fifteen~~ percent (~~15~~%) of the expenses incurred. Architect shall provide copies of receipts and back-up information fully supporting each invoice.

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

«»

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

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

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~forty five (45)~~upon presentation of the Architect's invoice. Amounts unpaid «»«» days after the invoice date including any requested supporting documentation by the Owner 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.)

The Owner will not pay interest on late payments.

«»%«»

§ 11.10.2.2 The Owner ~~may~~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.

§ 11.10.2.3 Detailed Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be provided to the Owner available to the Owner with each monthly billing invoice~~at mutually convenient times.~~

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§ 12.2 The Owner shall have the right to require removal from the Project of any member of the Architect's team to whom it has a reasonable objection.

§ 12.3 All written notices required to be given shall be given or served by: a) depositing the same in the United States mail, addressed to the party to be notified, postage paid; b) by delivering the same in person; or c) by e-mail addressed and delivered to recipient with a received return receipt. Notices to be given hereunder shall be given to the parties at the following addresses:

| | |
|-------------------------|--|
| <u>If to the Owner:</u> | <u>Ken Hansen</u> <u>Skagit County Facilities Management</u> <u>1800 Continental Place</u> <u>Mount Vernon, WA 98273</u> <u>khansen@co.skagit.wa.us</u> <u>(360) 416-1179</u> |
| <u>with a copy to:</u> | <u>Melinda Miller</u> <u>Skagit County, a Municipal Corporation</u> <u>1800 Continental Place</u> <u>Mount Vernon, WA 98273</u> <u>melindam@co.skagit.wa.us</u> <u>(360) 416-1619</u> |

If to the Architect:

§ 12.4 Independent Contractor Status. Architect is an independent contractor, and Owner its discretion will not exercise any control or direction over the means and manner of performance of the Project by Architect. This Agreement does not create, between Owner and Architect, the relationship of partners, joint venturers, employer and employee, or agent and principal. Architect has the status of employer as defined by the applicable industrial insurance, workers' compensation and unemployment compensation acts, the Social Security Act, and other similar acts of the Federal, State and Local Government. Architect will withhold from its payroll the applicable Social Security taxes, workers' compensation, unemployment compensation contributions and withholding taxes and pay the same, and Owner shall in no way be liable as an employer to or on account of any of the employees of Architect. Before final payment is made upon this Agreement, Architect shall furnish satisfactory evidence to Owner that Architect has conformed to said laws, rules and regulations. Architect hereby agrees to defend, indemnify and hold Owner harmless from any and all liability under such laws, rules and regulations arising from the Scope of Services performed under this Agreement carry a suitable contingency during the Construction period.

§ 12.5 The Architect will exercise due care and diligence in carrying out the services described above. Architect's design will incorporate disability requirements from applicable building codes and the ADA Standards for Accessible Design or the current standards in effect at the execution of this Agreement.

§ 12.6 Severability. The provisions of this Agreement will be deemed severable, and the invalidity or unenforceability of any provision will not affect the validity and enforceability of the other provisions hereof. If any provision of this Agreement is deemed unenforceable for any reason whatsoever, such provision will be appropriately limited and given effect to the extent that it may be enforceable.

§ 12.7 Amendments; No Waiver. This Agreement may not be modified or amended in any manner by terms and conditions set forth in Exhibit "A". This Agreement may only be amended, changed or modified by a written amendment executed by Owner and Architect and expressly labeled as an amendment to this Agreement. No waiver of any provision of this Agreement will be valid unless in writing signed by the party charged.

« »

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B103™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)

« »

- .3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

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

« »

[~~XX~~« »] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A: Contractor Proposal dated <date>

« »

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

« »

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

OWNER (Signature)

« »« » See signature sheet

(Printed name and title)

ARCHITECT (Signature)

« »« »

(Printed name, title, and license number, if required)