

DRAFT AIA® Document B133™ – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

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

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

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

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

The Construction Manager (if known):
(Name, legal status, address, and other information)

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.

This document is intended to be used in conjunction with AIA Documents A201-2017™, General Conditions of the Contract for Construction; A133-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™-2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 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.)

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 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.)

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 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.)

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

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

.1 Design phase milestone dates, if any:

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

.2 Construction commencement date:

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

.3 Substantial Completion date or dates:

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

.4 Other milestone dates:

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.) [\(IF THIS IS WITH CMAR, THE FIRST OPTION SHOULD BE SELECTED\)](#)

[] AIA Document A133–2019, [modified](#) Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[] AIA Document A134–2019, [modified](#) Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

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

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 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.)

« [As set forth in Attachment A – Request for Proposal \(RFP\)](#) »

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 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.)

« »

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

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

« »

.2 Land Surveyor:

« »« »
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.3 Geotechnical Engineer:

« »« »
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.4 ~~[Intentionally Deleted] Civil Engineer:~~

« »« »
« »
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« »

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

« »

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:
(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:

« [As set forth in Attachment B – Architect’s Design Proposal](#) »« »
« »
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« »

.2 Mechanical Engineer:

« [As set forth in Attachment B – Architect’s Design Proposal](#) »« »
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.3 Electrical Engineer:

« [As set forth in Attachment B – Architect’s Design Proposal](#) »« »
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.4 Civil Engineer:

« [As set forth in Attachment B – Architect’s Design Proposal](#) »« »
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§ 1.1.12.2 Consultants retained under Supplemental Services:

« [As set forth in Attachment B – Architect’s Design Proposal](#) »

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

« »

§ 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; and schedule for the Architect’s services, ~~and the Architect’s compensation~~. To the extent that the material change results solely from an error by Owner in preparing all or a portion of the Initial Information, the Owner shall consider adjustments to 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; provided, however, that in such circumstances the Owner may, in its sole discretion, cancel all or a portion of the Project, without costs, in order to meet its budget.

§ 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 (1) AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or (2) another format as proposed in Attachment B – Architect’s Design Proposal and agreed by the parties, 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 (1) AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or (2) another format as proposed in Attachment B – Architect’s Design Proposal and agreed by the parties, and the requisite (1) AIA Document G202™–2013, Project Building Information Modeling Protocol Form or (2) another format as proposed in Attachment B – Architect’s Design Proposal and agreed by the parties, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect 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 Time is of the essence for all of Architect's services. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and in such manner so that no aspect of the most current Project Schedule approved by Owner is delayed, unless delay is caused by circumstances beyond the Architect's control.

§ 2.3 The Architect shall provide its services in conjunction with the Owner and the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Such representative must be approved by Owner and shall not be changed without Owner's consent.

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

§ 2.6 **Insurance.** 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.

§ 2.6.1 Intentionally Deleted ~~Comprehensive General and Automotive Liability. At all times during the term of this Agreement, The Architect shall procure and maintain commercial general liability insurance including auto liability insurance covering itself and its employees and agents providing services pursuant to the Agreement on an occurrence basis in the minimum amounts of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate of all claims. Commercial General Liability with policy limits of not less than « » (\$ « ») for each occurrence and « » (\$ « ») in the aggregate for bodily injury and property damage.~~

§ 2.6.2 Intentionally Deleted ~~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.~~

§ 2.6.3 Intentionally Deleted ~~The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. 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 2.6.1 and 2.6.2, 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.~~

§ 2.6.4 Intentionally Deleted ~~Workers' Compensation as required by the State of « Wisconsin » at statutory limits.~~

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

§ 2.6.6 Intentionally Deleted ~~Professional Liability. The Architect also maintain professional liability insurance coverage on a claim basis for its employees and agents providing services hereunder with minimum limits of One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) annual aggregate, 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.~~

§ 2.6.7 Insurance & Proof of Financial Responsibility for Claims. Purchase and maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims of tort as respect damage to persons or property and third parties in such coverage and amounts as required and approved by the County Risk Manager. Furnish acceptable proof of such coverage to the County Risk Manager prior to services commenced under this Agreement.

§ 2.6.8 Provide evidence of the following coverage and minimum amounts.

<u>Type of Coverage</u>	<u>Minimum Limits</u>
<u>Wisconsin Workers Compensation</u>	<u>Statutory (Waiver if Subrogation for Worker Comp by Endorsement)</u>
<u>Employers Liability & Disease USL&H and All States Endorsement</u>	<u>\$100,000/\$500,000/\$100,000</u>
<u>General Liability</u>	<u>\$5,000,000 Per Occurrence (name the Owner as additional insured in the general liability policy by endorsement)</u>
<u>Bodily Injury & Property Damage to include personal injury, fire, legal, products and complete operations Contractual Liability and X, C & U</u>	<u>\$5,000,000 Aggregate</u>
<u>Architects & Engineers Professional Liability & Errors & Omissions (Refer to section 2.6.12 for additional conditions)</u>	<u>\$2,000,000 Per Occurrence</u>
<u>Environmental Impairment Insurance</u>	<u>\$1,000,000 Aggregate Minimum (Unless not required)</u>
<u>Automobile Liability</u>	<u>(Name the Owner as an Additional Insured in the automobile policy by endorsement)</u>
<u>Bodily Injury & Property Damage All Autos</u>	<u>\$1,000,000 Per Accident</u>

Note: Architect's performing work on the secured air side at General Milwaukee Mitchell International Airport and Timmerman Field airport shall maintain at least \$5,000,000 Auto & Commercial General Liability Limits. This can be satisfied through a combination of Auto and Umbrella, and General Liability and Umbrella Limits.

§ 2.6.9 Except for Environmental Impairment Insurance, Professional Liability (Errors and Omissions), Workers Compensation and Employers Liability, name Owner as an additional insured in the general liability and automobile policy as their interests may appear as respects services provided in this Agreement. A Waiver of Subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. Afford Owner Thirty (30) day written notice of cancellation or non-renewal.

§ 2.6.10 Place insurance specified above with at least an "A" rated carrier per Best's Rating Guide approved to do business in the State of Wisconsin. Submit deviations or waiver of required coverage or minimums in writing to Owner for approval as a condition of this Agreement. Waivers may be granted when surplus lines and specialty carriers are used.

§ 2.6.11 The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the Owner.

§ 2.6.12 Professional Liability – Additional Provisions

§ 2.6.12.1 Provide additional information on professional liability coverage as respects policy type, i.e., errors and omissions for consultants, architects, and/or engineers, etc.; applicable retention levels; coverage form, i.e. claims-made, occurrence; discovery clause conditions; and effective, retroactive, and expiration dates, to Owner as requested to obtain approval of coverage as respects this section.

§ 2.6.12.2 Be responsible for the accuracy of the services performed under this Agreement and promptly make necessary revisions or corrections to services resulting from negligent acts, errors or omissions without additional compensation.

[§ 2.6.12.3 Give immediate attention to these revisions or corrections to prevent or minimize delay to Project schedule.](#)

[§ 2.6.12.4 Be responsible to the Owner for losses or costs to repair or remedy as a result of Architect's negligent acts, errors or omissions.](#)

[§ 2.6.12.5 It is understood and agreed that coverage which applies to services inherent in this Agreement will be extended for two \(2\) years after completion of work contemplated in this Project if coverage is written on a claims-made basis.](#)

[§ 2.6.12.6 Deviations and waivers may be requested in writing based on market conditions to Owner. Approval shall be given in writing of any acceptable deviation or waiver to the Architect prior to the Architect effecting any change in conditions as contained in this section. Waivers shall not be unduly withheld nor denied without consultation with the Architect.](#)

[§ 2.6.12.7 Obtain information on the professional liability coverage of subconsultants and/or subcontractors in the same form as specified above for review by Owner.](#)

§ 2.6.7 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.

§ 2.6.8 The Architect shall provide certificates of insurance [and endorsements for review](#) to the Owner [for each successive period of coverage for the duration of this Agreement](#) that evidence compliance with the requirements in this Section 2.6. [The Architect's required certification of insurance and endorsements is included as Attachment C.](#)

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, [as well as any other Basic Services as set forth in Attachment A – Request for Proposal \(RFP\) and Attachment B – Architect's Design Proposal.](#) [The Architect's Basic Services shall also include assisting the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction or plan approval over the Project. If required by Owner, the Architect shall pay local and State Examination fees and be reimbursed at cost.](#) Services not set forth in this Article 3 are Supplemental or Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, 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, the Construction Manager, and the Owner's consultants [unless Architect knew or reasonably should have known that any of such services or information was inaccurate or incomplete.](#) [The Architect has responsibility for verifying overall dimensions of areas pertaining to the Project in existing drawings provided by Owner.](#) The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, ~~for the Construction Manager's review and~~ for the Owner's approval, a schedule for the performance of the Architect's services [that shall be consistent with the Project schedule as set forth in Attachment A – Request for Proposal \(RFP\) and Attachment B – Architect's Design Proposal,](#) ~~attached hereto as «Exhibit B»,~~ and that shall be adjusted through a Change in Services, if necessary, as the Project proceeds. ~~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 Construction Manager's review,~~ for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as

the Project proceeds until the commencement of construction. The Architect acknowledges that unless Architect objects, in writing, to the Project Schedule of Owner, it shall be deemed that the Architect considers the time limits established by the Project Schedule are reasonable and that the time limits set forth in the Project Schedule shall not, except for reasonable cause, be exceeded by the Architect unless approved through a Change in Service. When Project requirements have been sufficiently identified, the Architect shall periodically update and expand upon the Project Schedule and shall further identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

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

§ 3.1.5 ~~[Intentionally Deleted]The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.~~

§ 3.1.6 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. In accordance with the professional standard of care, the Architect will design the Work, and all Instruments of Service prepared by Architect under this Agreement, shall comply with any and all applicable federal, state, and local codes, laws, ordinances, regulations, rules, and statutes.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. Architect shall notify Owner of all documents known to Architect that need to be filed to obtain such approval. Architect shall be present at approval hearings as necessary, and Architect shall prepare any and all architectural and engineering documents in connection therewith.

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

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, but not less than each of the design phases, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager. The Architect, Construction Manager and Owner shall cooperate to manage not just the Cost of the Work, but also the Total Project Cost to at or below the Total Project Budget.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

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

§ 3.3.2 The Architect shall evaluate the Owner's program, and schedule requirements. Unless Architect states otherwise in writing, it will be presumed the Architect acknowledges that Owner's requirements are reasonable and achievable. The Architect shall continue to provide evaluations of the Owner's program, schedule, budget for the Cost of the Work,

Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain requirements of the Project, and shall continue to provide evaluations of the Owner's site for the Project based on: (a) the information provided by the Owner of site conditions; (b) the information prepared by the Architect; and (c) the Owner's program, schedule, and budget for the Cost of Work. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project. The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.2.1 Basis of Design (BOD):

The Architect shall meet with and interview the appropriate Owner's personnel to gather and coordinate information used to form the Basis of Design document. The document will include criteria for the types of spaces anticipated by the building program information. These interviews and meetings will inform the refinement of program, goals and objectives, vision and image, and design criteria for the facility.

The Architect will develop and investigate design constraints established by codes and standards that are in effect at the project providing an evaluation of the effects on the project's development. Site constraints will be documented by the Owner or it's consultants or contractors concerning utility corridors, easements, views, and connector criterion.

The Architect and consultants will develop sets of criteria for each type of space with regard to environmental requirements. Systems selection options and criteria will be developed for analysis.

The Architect will develop diagrammatic studies, sketches, and narrative descriptions of space relationships and requirements including suggested module sizes and arrangements.

Describe the internal functions of each space, the personnel and material flow patterns, the general space allocations, the analysis of operating functions, the adjacency requirements, any special equipment or facilities to serve the needs of the space.

The final BOD will document the criteria agreed to by the Owner and the design team providing document for validating construction cost and documenting direction for moving forward into Design Development.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the Owner's anticipated Sustainable Objectives per Article 1.1.7. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

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

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

§ 3.3.5.1 The Architect shall consider environmentally responsible 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.~~

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

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager Architect shall not proceed to the Design Development Document Phase until Owner has approved, in writing, the¹⁰

Schematic Design Documents or has otherwise provided Architect with written instructions to proceed with the Design Development Document Phase. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Owner and Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, 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.

~~§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.~~

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents or a written notice to proceed, and ~~on~~ subject to the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Owner and the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents establishing the scope, relationships, forms, size, and appearance of the Project by means of ~~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, such other elements as may be appropriate. ~~other appropriate elements.~~ Equipment and IT equipment specifications will be provided to Architect by Owner (or Owner's IT consultant). Architect will provide appropriate space planning and services to accommodate such specifications in the Design Development Documents 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. In order to maintain the Project schedule, Architect shall deliver Design Development Documents in multiple phase packages as directed and required by Owner.

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

§ 3.4.3 Upon receipt of the Owner's and Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. Architect shall not proceed to the Construction Document Phase until the Owner has approved, in writing, the Design Development Documents.

§ 3.4.4 The Architect's Specifications within the Project Manual shall include:

- (a) Technical content;
- (b) Section format; and

§ 3.4.5 In order to obtain the level of quality desired for the Project, or in some cases to obtain specific attributes desired for the Project, certain material or product specifications from only one manufacturer may be approved. However, other manufacturers may be given the opportunity, during the bidding period, to submit information to prove that they meet or exceed the particular requirements, but until satisfactory proof is presented, they will not be approved to bid on the Project.

§ 3.4.6 In order to provide Owner with the benefits associated with competitive bidding, and so as to not have to charge the Owner for the Architect's or the Architect's consultants' fees for performing the engineering design on particular product or system multiple times, certain specifications require that a specific manufacturer or supplier perform certain portions of the engineering design for their product or system and that they have an engineer licensed in the state of Wisconsin where the Project is to be constructed, seal and sign such engineering design.

§ 3.5 Construction Documents Phase Services

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

§ 3.5.2 In accordance with the professional standard of care the Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.~~The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.~~

§ 3.5.3 No later than ~~During~~ the development of the Construction Documents, but earlier as needed to meet the Project schedule, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms. The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of Anticipated impacts that such method may have on the Owner's program, financial, and time requirements, and the scope of the Project.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and the Construction Manager to review the Construction Documents, pursuant to the Master Project Schedule.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate or GMP 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.

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

§ 3.6.1.2 ~~Subject to Section 4.2, t~~The Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Owner approves the final Certificate for payment, after recommendation of certification issued by the Architect, which approval shall not be unreasonably withheld.~~the Architect issues the final Certificate for Payment.~~

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement, unless otherwise modified by written amendment. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work. Architect and Architect's sub consultants are to complete site-specific Owner safety training, if any, prior to commencing work on the Project.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, (a) to become generally familiar with the progress and quality of the portion of the Work completed; (b) to observe Work and to endeavor to guard the Owner against defects and deficiencies in the Work; (c) when applicable, to determine whether or not to issue a Certificate for payment; and (d); ~~and~~ to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, and from the most recent construction schedule, and (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. Site observations shall be per Section 4.2.3 until the Project reaches Substantial Completion. "Observations" as used herein shall consist of observing the Work and informing the Owner if Architect becomes aware that Work does not conform to the Contract Documents. Architect shall also attend Project job site meetings as required and shall otherwise be available to answer questions of Construction Manager (or the applicable Subcontractor). In addition, Architect, or its applicable Consultant, shall be present on-site as necessary to review or monitor any critical Work item. All on-site observation of the Work shall be in compliance with Wis. Stats. Chapter 443.

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

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager; however, Architect's decision shall not be binding on Owner or Contractor unless agreed to by such party. Absent such agreement, the Architect's decisions shall be deemed to be recommendations. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. ~~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 ~~[Intentionally Deleted] Unless the Owner and Construction Manager 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 Construction Manager as provided in the Contract Documents.~~

§ 3.6.3 Certificates for Payment to Construction Manager

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

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect or Owner 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 Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval ~~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 as to cause no delay in the Work or in activities of the Owner, Construction Manager, or other contractors, while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, ~~the~~ Architect shall review and approve, or ~~reject or~~ take other appropriate action (e.g., require revisions and resubmissions) upon ~~the~~ Construction Manager's submittals such as Shop Drawings, Product Data and Samples, for the purpose of verifying that they comply with the requirements of but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions unless otherwise specifically stated by the Architect, 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. Architects' approval of submittal items in no way relieves the Construction Manager (or its subcontractors) of their respective responsibilities for review and due diligence of the submittal items for purposes of incorporation into the work performed by Construction Manager (and subcontractors). Architect shall notify Owner in writing if Architect observes any such portions of the work being constructed without Architect having approved submittals for same.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review ~~and take appropriate action on~~ Shop Drawings and other submittals related to the Work designed or certified by the ~~Construction Manager's design professional retained by the Construction Manager that, 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 be entitled to rely upon, ~~and shall not be responsible for,~~ the adequacy ~~and~~ accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, unless Architect knew or reasonably should have known that any of such services, certifications, or approvals was inadequate, inaccurate, or incomplete. All submissions for design products not currently in use by Owner must be reviewed and approved by Owner prior to submission.

§ 3.6.4.4 ~~Subject to the provisions of 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 as to cause no delay in Work or in the activities of the Owner, Construction Manager, or other contractors. 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 Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may ~~order authorize~~ minor changes in the Work if approved by the Owner in writing that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. ~~Subject to Section 4.2, the~~ Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce, and distribute Drawings and Specifications to describe Work to be added, deleted, or modified.

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

§ 3.6.5.3 The Architect shall review properly prepared, timely requests by the Owner or Construction Manager for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different for the requirements of the Contract Documents and has no effect on Contract Time or Contract Sum, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a change of the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization and based upon consultation with the Construction Manager and Owner, the Architect shall assist with preparing an estimate of the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval the Architect shall incorporate those estimated into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Construction Manager.

§ 3.6.5.5 The Architect shall review and advise Owner as to the appropriateness of cost of work of any Field Change as set forth in the General Conditions.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall support the Owner in the following activities:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion and provide Owner with WI Commercial Bldg. Code, Form SBDB-9720;
- .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 Construction Manager, including completion of Attachment L – Consultant Agreement Closeout Checklist; 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.

§ 3.6.6.2 The Architect's inspections Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

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

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

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

§ 3.6.7 OTHER BASIC SERVICES

§ 3.6.7.1 Architect shall, if requested by Owner, prepare documents for alternate, separate, or sequential bids and provide services in connection with bidding, negotiation, and construction prior to the completion of the Construction Documents Phase. Architect shall prepare as necessary addenda required to amend or clarify bidding documents.

§ 3.6.7.2 Architect shall evaluate substitutions proposed by Owner or Construction Manager and make subsequent revisions to Instruments of Service resulting therefrom.

§ 3.6.7.3 Architect shall assist with the investigation, solicit, and prepare applications for outside grants that may be available in connection with energy and/or renewable resource related to grants.

§ 3.6.7.4 If applicable, Architect shall investigate the existing building to verify that the building is suitable for the proposed renovation. This investigation will include verifying that the existing documentation provided by the Owner accurately reflects the physical space. If the documentation provided by the Owner is not accurate, the architect needs to advise the Owner. This investigation is exclusive of any disruptive investigation and the testing or mitigating any hazardous materials.

§ 3.6.7.5 The Architect shall evaluate the Construction Manager's proposals and supporting data related to Change Orders and Construction Change Directives and shall prepare or revise the Instruments of Service in connection with any Change Order or Construction Change Directive.

§ 3.6.7.6 The Architect shall prepare and deliver to the Owner, as a condition of receiving final payment, a set of reproducible as-constructed record drawings showing changes to the Work made during the construction based on marked-up prints, drawings and other data furnished by the Construction Manager to the Architect. All record documents shall conform to the requirement of **Attachment I – Record Documents**.

§ 3.6.7.7 Architect shall participate in warranty walk-throughs at the Project Site with the Owner and Construction Manager eleven (11) months after Substantial Completion of each phase of the Work to identify warranty work and any other items which must be corrected to conform with the requirements of the Contract Documents.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	If applicable, as set forth in Attachments A and B
§ 4.1.1.2 Programming	If applicable, as set forth in Attachments A and B
§ 4.1.1.3 Multiple Preliminary Designs	If applicable, as set forth in Attachments A and B
§ 4.1.1.4 Measured drawings	If applicable, as set forth in Attachments A and B
§ 4.1.1.5 Existing facilities surveys	If applicable, as set forth in Attachments A and B
§ 4.1.1.6 Site evaluation and planning	If applicable, as set forth in Attachments A and B
§ 4.1.1.7 Building Information Model management responsibilities	If applicable, as set forth in Attachments A and B
§ 4.1.1.8 Development of Building Information Models for post construction use	If applicable, as set forth in Attachments A and B
§ 4.1.1.9 Civil engineering	If applicable, as set forth in Attachments A and B
§ 4.1.1.10 Landscape design	If applicable, as set forth in Attachments A and B
§ 4.1.1.11 Architectural interior design	If applicable, as set forth in Attachments A and B
§ 4.1.1.12 Value analysis	If applicable, as set forth in Attachments A and B
§ 4.1.1.13 Cost estimating	If applicable, as set forth in Attachments A and B
§ 4.1.1.14 On-site project representation	If applicable, as set forth in Attachments A and B
§ 4.1.1.15 Conformed documents for construction	If applicable, as set forth in Attachments A and B
§ 4.1.1.16 As-designed record drawings	If applicable, as set forth in Attachments A and B
§ 4.1.1.17 As-constructed record drawings	If applicable, as set forth in Attachments A and B
§ 4.1.1.18 Post-occupancy evaluation	If applicable, as set forth in Attachments A and B
§ 4.1.1.19 Facility support services	If applicable, as set forth in Attachments A and B
§ 4.1.1.20 Tenant-related services	If applicable, as set forth in Attachments A and B
§ 4.1.1.21 Architect's coordination of the Owner's consultants	If applicable, as set forth in Attachments A and B
§ 4.1.1.22 Telecommunications/data design	If applicable, as set forth in Attachments A and B
§ 4.1.1.23 Security evaluation and planning	If applicable, as set forth in Attachments A and B
§ 4.1.1.24 Commissioning	If applicable, as set forth in Attachments A and B
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	If applicable, as set forth in Attachments A and B
§ 4.1.1.26 Historic preservation	If applicable, as set forth in Attachments A and B
§ 4.1.1.27 Furniture, furnishings, and equipment design	If applicable, as set forth in Attachments A and B
§ 4.1.1.28 Other services provided by specialty Consultants	If applicable, as set forth in Attachments A and B
§ 4.1.1.29 Other Supplemental Services	If applicable, as set forth in Attachments A and B

§ 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.)

« [Provides as necessary as set forth in Attachment A – Request for Proposal \(RFP\) and Attachment B – Architect's Design Proposal. For any RFPs requiring Programming or Master Planning services Architect shall perform the services as described below.](#)

[Programming and/or Master Plan Phase](#)

[From Interviews, research, and study of the Owner needs, the Architect shall prepare a program and an estimate of probable construction costs for the project. Architect shall take action as required under Section 6.4, and request the Owner's approval of the Programming and/or Master Plan Documents. If revisions to the Programming and/or Master Plan Phase Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Programming and/or Master Planning Phase, the Architect shall incorporate the required revisions in the Schematic Development Phase. Architect shall, during the programming phase, notify Owner of all tests,](#)

investigations, inspections, analysis, studies, or reports known to Architect that should be undertaken in connection with the development of the design and construction documents.

Elements of the program shall include a full description of each of the following:

- .1 Exterior and interior functional areas and spaces of the Project, with technical and equipment requirements on each;
- .2 Comparisons between existing and proposed facilities and systems;
- .3 Diagrams to describe proposed circulation and relationships between functional areas and departments;
- .4 Descriptions of provisions for future changes and growth;
- .5 Narrative of the rationale for proposed program and prioritized options to maintain Project budget.

Upon completion of the Programming Phase documents, the Architect shall submit three (3) copies of drafts of same for review.

After review, the Architect shall incorporate necessary corrections and additions into the final report and submit three (3) copies to Owner for approval.

»

§ 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.)

« If applicable, as set forth in Attachment A – Request for Proposal (RFP) »

§ 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 E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, 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. Except for services required due to (a) any negligent error or omission of the Architect or Architect's consultants; (b) any breach of this Agreement by the Architect; or (c) uncertainties or errors in the Contract Documents, ~~the fault of the Architect.~~ Any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, and provided such additional services are not the result of a) any negligent error or omission of the Architect or Architect's consultants; (b) any breach of this Agreement by the Architect; or (c) uncertainties or errors in the Contract Documents, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, 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 bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 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;
- .5 Services necessitated by decisions of the Owner or Construction Manager 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;

- .6 Preparing digital models or other design documentation for transmission to the Owner’s consultants and contractors, or to other Owner- authorized recipients unless required in Attachment A – Request for Proposal;
- .7 Preparation of design and documentation for significant alternate bid or proposal requests proposed by the Owner or Construction Manager;
- ~~.8 Preparation for, and attendance at, a public presentation, meeting or hearing; [Intentionally Deleted]~~
- .98 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .409 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .4410 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 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 Construction Manager’s submittal out of sequence from the submittal schedule approved by the Architect;~~
- ~~.2 Responding to the Construction Manager’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Construction Manager prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager’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 Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.~~

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

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

§ 4.2.4 Except for services required under Section 3.6.6.5 and 3.6.7.7 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

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

§ 4.2.6 Notwithstanding anything to the contrary in this Agreement, Owner shall have no obligation to pay Architect for any Additional Services unless, prior to performing same, (a) Architect notifies Owner in writing of the services it intends to perform, the reasons therefor and the cost of such services, and (b) Owner agrees in writing to such services and the cost therefor. If Architect fails to comply with the foregoing procedure, such services shall be deemed to be Basic Services under this Agreement. In addition, Owner shall have no obligation to pay Architect for any Additional Services if such services result from the errors, omissions or negligence of Architect or the failure of Architect to perform in accordance with the terms of this Agreement. Architect acknowledges that Basic Services shall include all of Architect’s services performed in connection with the Project prior to the date hereof and that none of such services shall be considered Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 5.3 The Owner shall establish and may periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. ~~The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion.~~ If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. ~~The Owner and the Architect, in consultation with the Construction Manager, 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 Construction Manager 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 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. Architect and Construction Manager shall inform Owner of the time periods required for Owner's approval of submittals. Such time periods must be reasonable and in no event less than ten five (105) business days from Owner's receipts of the submittal unless a shorter period of time is expressly agreed to by Owner.

§ 5.5 If requested by the Architect in writing, ~~T~~he Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Architect shall request any required surveys from the Owner with enough advanced notice to allow the Owner to procure and furnish such information and not impact the Project schedule for the Architect's Work.

§ 5.6 If requested by the Architect in writing, ~~T~~he 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. The Architect shall request any required geotechnical services from the Owner with enough advanced notice to allow the Owner to procure and furnish such information and not impact the Project schedule for the Architect's Work.

§ 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 E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition or similar format, 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~~

~~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 Except as otherwise provided in this Agreement, the 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 Except as otherwise provided in this Agreement, the 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. This term shall not create a duty on part of the Owner to provide such services for the benefit of any other Project team member.

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

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

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

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

§ 5.16 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.

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work 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 compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. The Architect, Construction Manager and Owner shall cooperate to manage not just the Cost of the Work, but also the Total Project Cost to at or below the Total Project Budget.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and ~~may~~ 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 The Owner ~~shall require~~ and the Construction Manager ~~to shall~~ 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 Owner and Construction Manager 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 inaccuracies or incompleteness ~~the Construction Manager's inaccuracies or incompleteness in preparing cost estimates provided to Architect, or due to~~

~~market conditions the Architect could not reasonably anticipate.~~ The Architect may review the Construction Manager'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.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Owner and the Construction Manager, 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. Such recommendations shall not be an Additional Service.

§ 6.5 If the Construction Manager's 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 and Construction Manager, 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 as a Basic Service 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 the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate 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 ~~[Intentionally Deleted] The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.~~

§ 7.2 ~~[Intentionally Deleted] 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 ~~[Intentionally Deleted] The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums 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 Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~

§ 7.3.1 ~~[Intentionally Deleted] 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 expenses~~

of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

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

§ 7.6 Upon completion of the Project or upon termination of this Agreement, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Architect has collected or prepared in carrying out this Agreement shall be provided to and become the exclusive property of the Owner. Therefore, any reports, information and data, given to or prepared or assembled by Architect under this Agreement shall not be made available to any individual or organization by Architect without the prior written approval of the Owner (see Attachment I – Record Documents). No reports or documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Architect.

§ 7.7 Architect further understands that oral and written communications with Owner regarding Architect's services under this Agreement are confidential. No aspect of Architect's services may be discussed with any individual or organization other than Owner, unless Architect receives prior written authorization from Owner for such discussion.

§ 7.8 If Architect's services are terminated prior to completion of the Project, Owner will indemnify and hold Architect and Architect's subconsultants harmless for costs or claims for damages arising out of use the of incomplete documents, interpretation, revision, alteration, or omission to the documents which are not made by Architect or subconsultants. Should Owner reuse documents, created by Architect, the seals and certifications of Architect and subconsultants shall be invalid, shall not be used and shall be deleted and Owner will indemnify and hold Architect and Architect's subconsultants harmless for cost or claims for damages arising out of the reuse of the documents.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 To the extent damages are ~~recovered underecovered 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 Construction Manager, 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, defend 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 [Intentionally Deleted] The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.~~

§ 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of 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)

« Litigation or Arbitration as determined by Owner, acting in its sole and absolute discretion, after the dispute arises -> »

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

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 [Intentionally Deleted] Consolidation or Joinder

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

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

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

~~§ 8.4 [Intentionally Deleted] The provisions of this Article 8 shall survive the termination of this Agreement.~~

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 9.6 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 [Intentionally Deleted] 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 [Intentionally Deleted] 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, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least ~~14~~7 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~~7 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 with prior written authorization of Owner. 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 or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, ~~or~~ (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information or (4) as may be required under Wisconsin’s Public Records Law, Wis. Stat. § 19.21 et seq., as determined by Owner in accordance therewith, as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

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

§ 10.8.2 Architect and Owner understand that Owner is bound by the Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21 et seq. Architect hereby agrees that it shall be obligated to assist Owner in retaining and timely producing records that are subject to Public Records Law upon any statutory request having been made. Except as otherwise authorized by Owner in writing, records that are subject to Public Records Law shall be maintained for a period of three years after expiration of this Agreement. In the event that Owner receives a request to disclose any Architect information defined as “Confidential Information” or labeled as such by Architect, Owner will promptly provide Architect notice of the public records request to enable Architect to resist any required disclosure and/or to obtain suitable protection regarding such required disclosure by Owner. In the event the designation of “Confidential Information” of such Architect information is challenged by the requestor and Architect resists disclosure by Owner, Architect hereby agrees to provide legal counsel or other necessary assistance to Owner to defend the designation of confidentiality and agrees to indemnify and hold Owner harmless for any costs or damages arising out of Owner’s agreement to withhold such Architect information from disclosure.

§ 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 Counterparts, Facsimile or Electronic Signature. This Agreement may be signed in one or more counterparts including via facsimile or email, or by electronic signature in accordance with applicable law, all of which shall be considered one and the same agreement, binding on all parties hereto, notwithstanding that both parties are not signatories to the same counterpart. A signed facsimile or photocopy of this Agreement shall be binding on the parties to this Agreement.

§ 10.11 Equal Employment Opportunity. In accordance with Section 56.17 of the Milwaukee County Code of General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, Architect certifies as to the following:

§ 10.11.1 Non-Discrimination

- .1 The Architect shall not discriminate against an employee or applicant for employment because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, or disability, marital status, family status, lawful source of income or status as a victim of domestic abuse, sexual assault or stalking, which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- .2 The Architect shall post in conspicuous places, available to employees, notices to be provided by the County, setting forth provisions of non-discrimination clause.
- .3 A violation of this Section ~~10.11~~ shall be sufficient cause for Owner to terminate this Agreement without liability for uncompleted portion or for materials or services purchased or paid for by Architect for use in completing this Agreement.

§ 10.11.2 Affirmative Action Program

- .1 Architect shall strive to implement principles of equal employment opportunity through an effective affirmative action program, which shall have as its objective to increase the use of women, minority,

and persons with disabilities and other protected groups, at all levels of employment in all divisions of Architect's work force, where these groups may have been previously under-used and under-represented.

- .2 In the event of dispute of compliance with these requirements, Architect shall be responsible for showing that the requirements have been met.

§ 10.11.3 Affirmative Action Plan

- .1 Architect shall certify that if it has fifty (50) or more employees, a written affirmative action plan has been filed or will be developed and submitted (within 120 days of contract award) for each establishment. File current Affirmative Action plans, if required, with one of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Department of Audit, 633 W. Wisconsin Avenue, 9th Floor, Milwaukee, Wisconsin 53203. If a current plan has been filed, indicate where filed « » and the year covered « ».
- .2 The Architect shall require lower-tier subcontractors who have fifty (50) or more employees to establish similar written affirmative action plans.

§ 10.11.4 Non-Segregated Facilities. Architect shall certify that it does not and will not maintain or provide segregated facilities for employees at its establishments, and that employees are not permitted to perform their services at a location under its control where segregated facilities are maintained.

§ 10.11.5 Consultant. Architect shall certify that certifications regarding non-discrimination, affirmative action program, and non-segregated facilities have been obtained from proposed consultants that are directly related to contracts with the Owner, if any, prior to the award of contracts, and that such certification will be retained.

§ 10.11.6 Reporting Requirement. Where applicable, Architect shall certify compliance with reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60 (Equal Opportunity Employment).

§ 10.11.7 Employees. Architect shall certify that « » employees are in the Standard Metropolitan Statistical Area (Counties of Milwaukee, Waukesha, Ozaukee, and Washington, Wisconsin) and that it has « »-employees in total.

§ 10.11.8 Compliance. Architect shall certify that it is not currently in receipt of outstanding letters of deficiencies, show cause, probable cause, or other notification of non-compliance with EEO regulations.

§ 10.12 Consultant Services. Should Architect find it necessary or advisable to employ consultants for performing services under this Agreement, the following shall apply:

§ 10.12.1 Architect shall:

- .1 Be responsible for services performed by any consultants under this Agreement.
- .2 Be compensated for the cost of any consultants as provided under Payments (consultant compensation is included in the overall basic compensation total).

§ 10.12.2 Consultants employed shall be engaged in conformance with the following:

- .1 Obtain Owner's written approval for the hiring of each proposed consultant to be used in performance of the contractual obligations under this Agreement. ~~Owner Milwaukee County's Project Manager~~ will indicate such approval and/or rejection on **Attachment J – Subconsultant Listing**.
- .2 Within five (5) days of the above approval, consultant shall execute **Attachment K – Subconsultant Compliance Certification**, binding consultant to the terms and conditions of this Agreement including the Audit and Inspection of Records requirements.
- .3 Owner will not approve as a consultant a person connected with a firm manufacturing, selling, or installing material or equipment that is or may be included in Project.
- .4 Approved consultants shall also complete **Attachment E – Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule** for potential additional services to be requested at a later date.

§ 10.12.3 Unless otherwise approved by Owner, Architect shall not employ consultants within the Architect's specialties, i.e. architectural design for architects, electrical for electrical engineers, HVAC for HVAC engineers, etc.

§ 10.12.4 Fees for consultants shall be compensated by Owner as billed to Architect (there shall be no mark up for costs/fees billed by consultants).

§ 10.13 Compliance with Governmental Requirements. Evidence satisfactory compliance for Unemployment Compensation and Social Security Reporting as required by federal and state laws.

§ 10.14 Rights of access and audit. The Architect, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Architect, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Architect. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Architect, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances.

§ 10.15 Independent Contractor. Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between Owner or its successors or assigns and Architect or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Architect is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

§ 10.16 Prohibited Practices

- .1 Architect during the period of this Agreement shall not hire, retain or utilize for compensation any member, officer, or employee of Milwaukee County or any person who, to the knowledge of Architect, has a conflict of interest with Milwaukee County.
- .2 Architect hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

§ 10.173 The Owner shall agree that the Architect will not provide environmental reports or evaluations of existing conditions at the existing building with regards to hazardous materials and other environmental conditions that may or may not be prevalent at the existing building site including but not limited to the presence of asbestos, mold, hazardous waste or any and all other materials or conditions that may pose threat or danger to the owner and or his contractor, subcontractor employees and customers, residents, tenants, lender, or other.

§ 10.184 It is intended by the parties to this Agreement that the services provided in connection with the Project shall not subject the individual employees, officers, directors, owners, consultants to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner and Architect agrees that, any claim, demand or suit shall be directed and or asserted only against the company and not against any of the company's individual employees, officers, directors, owners, and consultants.

§ 10.196 Notice. All notices or other communications required or permitted to be given or made hereunder to either party shall be deemed to be so given or made when in writing via email, with a delivery confirmation, ~~or~~ delivered in person (with evidence of receipt) such as overnight courier services or sent by United States Registered or Certified Mail, Postage prepaid, or by Federal Express or other service providing proof of delivery, directed to the parties at the following addresses or to such other addresses as they may from time to time designate in writing:

If to the Owner:

<< >>
<< >>
<< >>

And

If to Architect:

<< >>
<< >>
<< >>

Any change to the notice address listed above must be given to the other party in the same manner as described in this section. The date of notice shall be the date of delivery if the notice is personally delivered, the date of mailing if the notice is sent by United States certified mail or the date of transmission if the notice is sent by email. Each party agrees to maintain evidence of the respective notice method utilized.

§ 10.2015 Medicare Access to Books and Records. In the event, and only in the event, that Section 952 of P.L. 96-499 (42 U.S.C. Section 1395x(v)(1)) is applicable to this Agreement, the Architect agrees as follows: (a) until the expiration of four (4) years after the furnishing of such services pursuant to this Agreement, the Architect shall make available, upon written request of the Secretary of the U.S. Department of Health and Human Services or upon request of the Comptroller General of the United States, or any of his/her duly authorized representatives, this Agreement, and books, documents and records of the Architect that are necessary to certify the nature of the duties of this Agreement; and (b) if Architect performs its services hereunder through a subcontract with a related organization, with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, then any such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request of the Secretary of the U.S. Department of Health and Human Services or upon request of the Comptroller General of the United States, or any of its duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of the cost of services provided pursuant to such subcontract.

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)~~

«>>

.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)

« ~~The Basic Service Compensation Total including reimbursables expenses for the project for the Architect including all subconsultants shall be the "Not-To-Exceed" sum as indicated below on the basis of hourly rates set forth in section 11.7~~ »

~~(Insert amount)~~

«>>

§ 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.)

« ~~To be billed with Basic Services in section 11.1~~ »

§ 11.3 For approved 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.)

« Hourly, Not-to-Exceed rates as set forth in Attachment E - Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule as updated from time to time by the Architect and approved by the Owner

Additional Services Rate Itemization

The form on which the Additional Services Rate Itemization is reported and approved is included as Attachment E (by Architect and subconsultants).

On Attachment E list staff by name, including clerical staff, who will be assigned to the Project.

“Overhead Rate” (Overhead Factor less profit) contained within the Overhead Factor submitted by Architect and each subconsultant shall be Federal Acquisition Regulation (“FAR”) (48 CFR 1-31) audit certified. Provide a copy of the most recent auditor’s report for each rate.

If Architect or subconsultant does not possess a FAR audit certified rate then each shall submit as Attachment E-2 their proposed rate, for the fiscal year, with identification of the accounting method used and certification that the proposed rate contains only those indirect costs proper and appropriate for the type of professional services sought by this Agreement. It is understood and agreed that no direct charge will be made for labor or expenses included in the Overhead Factor.

“Overhead Factor” and the “Principal’s Flat Rate” shall include but are not limited to reimbursement of the following:

«»

<u>Social Security</u>	<u>General Office Expenses</u>
<u>Vacation, Holiday & Sick Pay</u>	<u>Dues & Subscriptions</u>
<u>Pension & Personal Insurance Plans</u>	<u>Profit</u>
<u>Local Telephone & Fax Service</u>	<u>Registration Fees</u>
<u>Insurance</u>	<u>Legal & Accounting Expenses</u>
<u>Postage & Shipping (see “C-2”)</u>	<u>Auto Expenses, Parking</u>
<u>Taxes</u>	<u>Travel Costs to locations within a 100 mile radius of Milwaukee</u>
<u>Office & Drafting Supplies</u>	<u>Meals</u>
<u>Repairs & Maintenance</u>	<u>Use of CAD Equipment & Systems (including drawing plots)</u>
<u>Selling Expense</u>	<u>Miscellaneous Overhead</u>
<u>General Advertising</u>	<u>Office Utilities</u>

For personnel changes during the term of this Agreement submit a new Attachment E-1 within sixty (60) days of adding or deleting staff used or permanent classification changes. In case of added personnel or classification changes, the new “Direct Salary Rate/Hour” will not increase more than 10 percent (10%) above the rate previously listed for the specific classification being replaced.

»

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus « zero » percent (« 0 » %), or as follows:
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

« ->

§ 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:

Program and Master Plan/Schematic Design Phase « Ten » percent (« 10 » %)

<u>Schematic Design Phase</u>	« Fifteen »	percent (« 15 »	%)
Design Development Phase	« Fifteen »	percent (« 15 »	%)
Construction Documents Phase	« Thirty-Eight »	percent (« 38 »	%)
Procurement Construction Phase	« Four »	percent (« 4 »	%)
<u>Construction Phase</u>	« Eighteen »	percent (« 18 »	%)
Total Basic Compensation	one hundred	percent (100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, 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 in Attachment E – Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule as updated from time to time by the Architect and approved by the Owner 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.)

«—»

<u>Employee or Category</u>	<u>Rate (\$0.00)</u>

§ 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 set forth in Attachment F – Guidelines for Reimbursable Expenses and shall not exceed the amount established in Attachment B - Architect’s Design Proposal, as follows:

- ~~.1 — Transportation and authorized out of town travel and subsistence;~~
- ~~.2 — Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- ~~.3 — Permitting and other fees required by authorities having jurisdiction over the Project;~~
- ~~.4 — Printing, reproductions, plots, and standard form documents;~~
- ~~.5 — Postage, handling, and delivery;~~
- ~~.6 — Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.7 — Renderings, physical models, mock ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~
- ~~.8 — 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;~~
- ~~.9 — All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 — Site office expenses;~~
- ~~.11 — Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and~~
- ~~.12 — Other similar Project related expenditures.~~

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus « zero » percent (« 0 » %) of the expenses incurred as set forth Attachment F – Guidelines for Reimbursable Expenses.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 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 2.6, and for which the Owner shall reimburse the Architect.)

« [As set forth in Attachment F – Guidelines for Reimbursable Expenses](#) »

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

~~§ 11.10.1.2 [Intentionally Deleted] 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 [as set forth in Attachment G – Required Invoice Format](#). Payments are due and payable upon presentation of the Architect's invoice which shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to the Agreement along with or any other supporting documentation requested by Owner. Except for documentation specifically required by [Attachment G – Required Invoice Format](#), all other supporting documentation shall not be submitted but shall be clearly identified and readily accessible as specified herein under section 10.14 Amounts unpaid « ~~thirtysixty~~ » (« ~~3060~~ ») days after the invoice is received by the Owner with the required supporting documentation 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.)

« Payment due and unpaid under Contract Documents shall bear interest at rate specified in Wisconsin Statutes 71.82 (1) (a) compounded monthly. »

« ~~0~~ » % « ~~annually~~ »

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

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be provided as set forth in -Attachment G – Required Invoice Format available to the Owner at mutually convenient times.

§ 11.10.2.4 Owner will make payments to Architect within thirty (30) days of invoice approval on the basis of monthly billings prepared by the Architect and approved by the Owner. Payments will be made on the basis of ninety five percent (95%) of the approved statement. No retainage, however, shall be withheld for reimbursable expenses.

§ 11.10.2.5 Adherence with prompt payment requirements is monitored through information entered into the Diversity Management and Compliance System, utilizing B2GNow software. Architect is required to report payments received from the Owner and amounts paid to sub-consultants. Sub-consultants will receive an automated email requesting them to confirm the amounts and whether the terms of the prompt payment policy were complied with. There is no cost to the Architect or any sub-consultant, the only requirement is to become a registered user and complete the one hour webinar training. The Owner will enter the Architect's contract, and the Architect will enter all sub-consultants, including both TBE/DBE and non-TBE/DBE firms.

§ 11.10.3 Final Payment

§ 11.10.3.1 Final Payment shall be made after the following have been accomplished:

- .1 Owner is in receipt of Architect’s signed Certification of Substantial Completion (A.I.A. Document G704) in conformance with Contract Documents (for each contract).
- .2 Owner is in receipt of “Record Documents”.
- .3 Owner is in receipt of Architects’ invoice labeled “Final Billing”.
- .4 Owner has determined that Architect has performed the obligations under this Agreement as evidenced by completion of **Attachment L – Consultant Agreement Closeout Checklist**.

§ 11.10.3.2 Final payment shall be the release of the five percent (5%) retainage, held by Owner from partial payments for performance under this Agreement.

§ 11.10.3.3 Architect is required to conform to all TBE/DBE Requirements set forth in Attachment D. Upon notification from Owner to the Architect that the obligations under this Agreement have been completed, the Architect shall within thirty (30) calendar days submit for payment a final invoice for any remaining unpaid charges. Should the Architect fail to respond within the thirty (30) days, the Owner will assume no additional charges have been incurred. Owner will transmit to Architect notice of termination of this Agreement with a check for any remaining retainage.

§ 11.10.4 Architect shall submit to Owner a partial waiver of lien (covering all services through the date of payment) from Architect and all of its consultants as a condition to receiving each progress payment and a final waiver of lien from Architect and all of its consultants as a condition to receiving final payment.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

« »

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:
(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 E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

« »

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

« »

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

[« Attachment A – Request for Proposal \(RFP\) »](#)
[« Attachment B – Architect’s Design Proposal »](#)
[« Attachment C – Certificate of Insurance and Endorsements »](#)
[« Attachment D – Targeted Business Enterprise \(TBE\) Requirements »](#)

[« Attachment E – Manpower, Direct Salary Rate and Overhead & Profit Factor Schedule »](#)
[« Attachment F – Guideline for Reimbursable Expenses »](#)
[« Attachment G – Required Invoice Format »](#)
[« Attachment H – NOT USED »](#)
[« Attachment I – Record Documents »](#)
[« Attachment J – Subconsultant Listing »](#)
[« Attachment K – Subconsultant Compliance Certification »](#)
[« Attachment L – ~~Consultant~~ Architect Agreement Closeout Checklist »](#)
[« Attachment M – Modified AIA A201 - 2017 »](#)
[« Attachment N – Modified AIA A133 - 2019 »](#)

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

OWNER *(Signature)*

« »« »

(Printed name and title)

ARCHITECT *(Signature)*

« »« »

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