

Request for Qualifications

for Design Professional Services

Owner **The Board of Education of the Newark City School District**
621 Mount Vernon Road
Newark, OH 43055

Project **PK & Digital Academy Building Project**
1440 Granville Road
Newark, OH 43055

Response Deadline **August 3, 2021, at 3:00 PM** local time

The Owner seeks Statements of Qualifications from design professionals to provide design and construction administration services for the above-referenced Project.

Project Description

The Project is anticipated to include the renovation of a building recently acquired by the District to house the District's preschool program, NCS Digital Academy, and the District's information technology department.

The Owner's initial total budget for the Project (including all acquisition, construction, and other soft costs) is **\$6.5 million**. The selected Design Professional will assist the Owner in refining the project budget. The Owner reserves the right to increase or decrease the project budget in its sole discretion.

The Owner anticipates that the Design Professional will assist with planning and developing the program for the Project and participate in or lead meetings with the Owner's Board and staff and to the extent feasible, incorporate their input into the conceptual plans and design for the Project. The Owner also anticipates that the Design Professional will assist with scheduling, evaluate potential operating costs, review reports related to and advise on site testing and development, in addition to performing design and contract administration duties. The Design Professional's scope will include design and construction administration services.

All or part of the project will be funded with federal grant funding; accordingly, the project is subject to the requirements of the Davis-Bacon Act.

Submission Instructions

Design firms interested in providing these services are invited to submit a Statement of Qualifications containing the information requested herein for consideration. Submit the Statement of Qualifications in either hard copy or electronic copy. Hard copies must be submitted to the Owner's address identified above. Electronic copies must be submitted in PDF format, via email to: **Julio Valladares, Treasurer/CFO, at jvalladares@newarkcityschools.org**. A copy of the Statement of Qualification must be received by the Owner no later than the Response Deadline identified above. Submission received after this deadline may be considered solely in the Owner's discretion.

Direct any questions concerning the services requested for the Project to **Julio Valladares, Treasurer/CFO, at jvalladares@newarkcityschools.org**.

Qualifications received will be retained in the file maintained by the Owner for design professional qualifications, unless the firm specifically requests not to be included in this file; each firm is responsible to provide annual updates to the qualifications to remain current. This file may be used for future design needs when design fees are estimated to be less than \$50,000.

Design Professional's Qualifications

Include the following in the qualifications submittal:

1. **Firm's History** – Information about the firm's history (number of years in business, etc.).
2. **Education & Technical Training/Experience** – Identify your firm's assigned team for the Project. Provide the education, technical training, and experience of the principal in charge of the Project and the Project Manager, as well as any other individuals assigned to the Project, and proposed consultants, if any. Detail the assigned team's experience in providing substantially similar services (i.e., design services for similar facilities, additions to existing buildings, and specifically for any experience with the construction manager at risk delivery model) and describe the team's experience working together on similar projects. Describe:
 - a. Experience, planned approach, and specific expertise in assisting with Project planning, Project site assessment/testing, and schedule development. Include the team's experience leading and participating in meetings with the Owner to develop the program for the Project;
 - b. Approach to incorporating practical, tested, energy efficiency and sustainability features into similar projects that will enhance the design, be easy/economic to maintain and contribute to energy conservation and savings for the long-term maintenance and operations of systems for the Project;
 - c. Experience, approach, and specific expertise in planning for the use of space, technology, and systems that support Owner's functions;
 - d. Experience with obtaining all applicable permits and governmental approvals, from the Authorities Having Jurisdiction, including but not limited to obtaining approval of building plans from the Authorities Having Jurisdiction, obtaining building, electrical, plumbing, and HVAC permits, as applicable; and
 - e. Experience and approach to obtaining all applicable permits and governmental approvals, from the Authorities Having Jurisdiction, including but not limited to obtaining approval of building plans from the Authorities Having Jurisdiction, obtaining building, electrical, plumbing, and HVAC permits, as applicable.
3. **Workload** – Describe the current workload and availability of the firm and personnel assigned to the Project team, the available equipment and facilities, and the team's ability to perform the required professional design services competently and expeditiously (i.e., are resources currently available or committed to other projects).

4. **Proposed Schedule and Coordination of Design & Construction – Include:**
 - a. Proposed design phase milestones for completion of the Architect’s services including completion dates or durations in calendar days for programming, schematic design, design development and construction documents, as well as an anticipated timeline for the construction and close-out phases of the Project. Provide a detailed narrative demonstrating the firm’s ability to manage the Project schedule.
 - b. Describe the steps the firm will take to coordinate design and construction work on the Project with the Owner and Construction Manager at Risk with respect to scheduling the Project, maintaining the construction schedule, and close-out of each stage of the Project.
5. **Past Performance based on References –** Past performance as reflected in evaluations of previous and current clients for which the firm has provided or is providing similar services; please include a list of at least five (5) relevant projects involving similar services performed by the firm during the past five years. Include the following information for each project:
 - a. Project owner, name of project and location;
 - b. Brief description of the project, including size of project (e.g., square footage and number of stories) and project delivery model (e.g., general contractor, construction manager at risk, design-build, etc.);
 - c. The initial scheduled completion date and the actual date services were completed or the current anticipated completion date;
 - d. Construction budget, change order amounts, and actual construction cost;
 - e. Your firm’s assigned team members for the project;
 - f. Other relevant information about the project and the firm's services; and
 - g. Reference contact person and phone number.
6. **Past Performance with Owner –** Describe the firm's past experience with the Owner, if any.
7. **Proximity to the Site –** The firm’s location and proximity to the site for purposes of site visits and attending meetings with the Owner.
8. **Project Estimates and Budget –** The firm's procedures for:
 - a. Project budget development, including but not limited to, procedures for initial budget development with the Owner and the process for reviewing and evaluating the budget in coordination with the Construction Manager at Risk’s cost estimates with the CMR and Owner at various stages of the design process; and

- b. The firm's experience over the past five years with preparing or evaluating project estimates and construction costs, monitoring project costs, and completing a project within the initial budget with emphasis on any experience with construction manager at risk projects.
9. **Unique Qualities and/or Expertise of the Assigned Team** - Identify the unique competence, qualities, and/or expertise that set the firm's assigned team apart from other firms and teams as it relates to the required services for the Project. List a maximum of four specific and unique qualities that set your team apart from others in relation to this Project.
10. **Professional Liability Insurance Coverage & Claims History** - Include:
- a. The coverage amounts and types of insurance coverage, particularly the firm's commercial general liability and professional liability limits;
 - b. Specific information about any claims asserted against the firm or its professional liability carrier within the last five years, including the resolution of the claim(s);
 - c. Any statistics kept internally on change order history, project completion, and budget considerations, recognizing that each change order is unique as to its causes. The Owner is interested in information that will show consideration of budget requirements; and
 - d. Specific information about any claims asserted by the firm within the last five (5) years, including the resolution of the claim(s).
11. **Construction Phase Services** - The firm's practices with respect to site visits and oversight of the Project. What amount of time is spent on average on site during construction? What is the background of the individuals who would be visiting the Project during construction? What documentation of such site visits is prepared and maintained?
12. **Proposed Modification to Agreement Terms** - The Architect Agreement, which is a modified AIA Document B133-2014 Agreement Between Owner and Architect, Construction Manager as Constructor Edition, is attached hereto as Exhibit A (the "Architect Agreement"). If your firm would like to propose any deviation from the terms of the Architect Agreement, you must identify those terms and submit your proposed modified language in detail in your SOQ in a section clearly titled "Proposed Modification to Agreement Terms". Failure to do so shall be deemed to be a waiver of the right to negotiate the terms. Modifications may be accepted in the Owner's sole discretion and may be taken in to account by Owner when ranking the most-qualified firms.

Site Visits

Respondents may visit the site, after submitting a written request that is approved in advance. Such written request must be made by email to **Julio Valladares, Treasurer/CFO, at jvalladares@newarkcityschools.org**. Visits will only be allowed from the general public's perspective. The Owner reserves the right to have a representative present.

Evaluation and Selection

Firms submitting SOQs for the available contract will be evaluated and ranked in order of their qualifications, subject to the Owner's absolute right to stop the process and refrain from entering into any contract. The individual project teams from select firms may be asked to meet with Owner representatives to present the firm's qualifications and proposed approach for the Project before final ranking and selection is made. The individual team members that will be involved with the Project must attend such meeting.

Upon selection of the firm determined to be most qualified to provide the requested services for the Project, the Owner reserves the right to negotiate the price for services to be provided, with such firm. If the Owner and the selected firm agree to a price and scope of services, the form of agreement between the Owner and the selected firm will be the attached Architect Agreement with modifications proposed in accordance with this RFQ, if accepted by the Owner in its sole discretion. Any modifications to the attached Architect Agreement will be in the Owner's sole discretion, and the Owner at its option may accept or reject the proposed modifications.

Attachments

Exhibit A Form of Agreement

Exhibit A
Form of Agreement

DRAFT AIA® Document B133™ – 2019

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

THIS DOCUMENT HAS BEEN MODIFIED FROM ITS ORIGINAL FORM

AGREEMENT made as of the day of «execution by the Owner»
(In words, indicate day, month and year.)

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

Board of Education of the Newark City School District
621 Mount Vernon Road
Newark, OH 43055

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

The Architect was selected by the Owner following the qualification-based selection process required by Ohio Revised Code Sections 153.65, et seq. to provide professional design services to the Owner. The Owner reserves the right to add additional scope and services that are in accordance with the Request for Qualifications ("RFQ"), as further improvements are identified and funds are available.

The Architect may also be referred to as the "Design Professional" in the Contract Documents.

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

PK & Digital Academy Building Project
1440 Granville Road
Newark, OH 43055

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

To be determined by Owner.

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.)

The Owner's initial program for the Project is set forth in the Request for Qualifications issued by the Owner. Additional details relating to the Owner's program for the Project may be set forth below:

The Project is anticipated to include the renovation of a building recently acquired by the District to house the District's preschool program, NCS Digital Academy, and the District's information technology department.

§ 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 the Request for Qualifications issued by the Owner and to be further developed in collaboration with the Architect and the Construction Manager, in the Owner's sole discretion

§ 1.1.3 The Owner's budget for the Project:

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

The Owner's current total budget for the Project including the sum of the Cost of the Work as defined in Article 6 (including cost of construction, site improvements, construction manager fees, and appropriate contingencies) plus design fees, excluding legal and real estate acquisition fees is \$4.3 million.

Throughout the term of this Agreement, the Architect will perform its services based upon the Owner's then current budget.

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

- .1 Design phase milestone dates are as follows:

| «Task | Completed by Architect by |
|-------|---------------------------|
| | ,20 |
| | ,20 |
| | ,20 |

As part of its Basic Services, the Architect will assist with schedule development for the Project, as requested by the Owner. The Design milestone and completion dates stated herein shall only be changed by written, signed agreement between the Owner and Architect.

- .2 Anticipated Construction commencement date:

- .3 Anticipated Substantial Completion date or dates:

- .4 Other milestone dates:

« »

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:

(Indicate agreement type.)

AIA Document 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, as modified by the Owner.

AIA Document 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.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages or phased construction are set forth below:

(List number and type of bid/procurement packages.)

Architect acknowledges that it is anticipated that there will be multiple separate bid packages to be determined with the Construction Manager and bid out by the Construction Manager in order to accommodate the Owner's schedule for completion, and has taken this into account in its proposal. The Architect will assist the Owner with the bidding process by attending the pre-bid conference scheduled and conducted by the CMR and in providing clarifications and interpretations of the Bidding Documents for the CMR to issue to prospective subcontractor bidders for the Work. Fast-tracking or early bid packages for the Work may be approved in writing by the Owner.

§ 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.)

Where possible, the Architect shall provide the Owner with various design and material options and advise on the added or reduced costs and savings for operation costs and over the life of the Project.

§ 1.1.7.1 [Not Used.]

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

(List name, address, e-mail, and other information.)

Julio Valladares, Treasurer/CFO
740-740-7010
jvalladares@newarkcityschools.org

§ 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.)

None.

§ 1.1.10 The Owner shall retain the following consultants and contractors, with assistance from the Architect as requested by the Owner:

(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.)

The Owner anticipates that it will engage a Construction Manager at Risk who will provide Preconstruction and Construction Services as well as hold the contracts for construction of the Project. The Construction Manager's Preconstruction Services are anticipated to include, but not be limited to: development and monitoring of the Project Schedule; development and monitoring the budget for the Cost of the Work; review of the Project design for constructability; obtaining bids or negotiated proposals for all work including the reproduction and distribution of bidding and Construction Documents; and preparing all subcontracts for construction. The Construction Manager's Construction Services are anticipated to include, but not be limited to: construction of the Project; administration of the construction process; review of subcontractors' cost proposals for changes in the Work; assembly of required contractors' submittals and review of same for conformance with the contract requirements; assembly of contractors' Applications for Payment; and Project closeout. The Architect and the Architect's consultants shall cooperate and coordinate delivery of their services with the Construction Manager as part of their Basic Services.

.2 Land Surveyor:

To be provided by Architect

.3 Geotechnical Engineer:

To be provided by Architect

.4 Civil Engineer:

To be provided by Architect

.5 Other consultants and contractors:

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













None.

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

(List name, address, e-mail, and other contact information.)

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 (and its subparagraphs) 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:

- .2 Plumbing/Mechanical Engineer:

- .3 Electrical/Technology Engineer:

- .4 Civil Engineer:

- .5 Landscape Architect:

- .6 Design Architect:

- .7 Cost Estimating/Scheduling Consultant:

- .8 Land Surveyor:

- .9 Geotechnical Engineer:

- .10 Lighting Design:

- .11 A/V Acoustics Design:

- .12 FFE:




§ 1.1.12.2 Consultants retained under Additional Services:

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

- .1 If Architect must retain additional consultants, such consultants are subject to the Owner's approval. Architect shall not contract with a proposed consultant with whom the Owner has made a reasonable and timely objection. If the Owner has a reasonable objection to a consultant proposed by the Architect, the Architect shall propose another consultant with whom the Owner has no reasonable objection at no additional cost to the Owner. The Architect shall not change a consultant previously selected and approved by the Owner, if the Owner makes a reasonable objection to the substitution.
- .2 The Owner reserves the right to review and approve staff proposed by the Architect to be assigned to the Project and any staff changes in key project roles, including those identified in the Architect's submitted Statement of Qualifications. The Architect will inform the Owner of any proposed staff assignments and changes in staffing before the change is implemented and obtain approval from the Owner, which will not be unreasonably withheld. The Architect shall not replace any of the representatives listed herein without the consent of the Owner while such representative is employed by the Architect, except with another representative who is satisfactory to the Owner. If the Architect proposes to change the representative, the Architect shall submit to the Owner a written request for the change, including the justification for the change and the name and qualifications for the proposed replacement. The Architect shall provide promptly any related additional information the Owner requests.
- .3 The Architect's agreements with its consultants and subcontractors must be consistent with the Architect's contractual obligations to Owner, include a provision incorporating the terms of this Agreement by reference, incorporate relevant portions of the Architect's scope of services for the Project, and name the Owner as a third-party beneficiary.
- .4 The Architect shall obtain, and unless otherwise approved in advance in writing by the Owner, shall require its consultants or subcontractors to maintain insurance coverage and workers compensation coverage in at least the same limits and specifications as the requirements set forth for Architect in Section 2.6, and to provide the Owner with an insurance certificate if so requested.
- .5 The Architect will respond to inquiries from the Owner or the Owner's representative within three (3) business days from the receipt of the inquiry. Each response will address the questions raised in the inquiry and, if requested, will be in writing; provided, however, that if three (3) business days is not an adequate period of time under the circumstances to prepare the response, the period for the response will be extended to give the Architect a reasonable amount of time to respond. If a decision or approval is required by the Owner under this Agreement, the Owner will have at least three (3) business days written notice in advance that its decision or approval is required and will be furnished with sufficient information from which a decision or approval can be made, provided, however that if the 3-day period is not sufficient under the circumstances, the period for the response will be extended to give the Owner a reasonable period of time to respond.

§ 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 may agree to appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation pursuant to a written, signed agreement between the Owner and Architect. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information that may be agreed-upon.

§ 1.3 The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 [Not Used.]

§ 1.4 During the design services, the Architect shall keep Owner apprised of any deviation from Owner's preliminary design documents or design criteria and respond timely to the Owner's comments regarding any such deviation.

§ 1.5 In the event of any inconsistency, the provisions of this Agreement shall control over any proposal, purchase order or separate terms and conditions. In the event of inconsistencies within or between parts of the Contract Documents or

between the Contract Documents and applicable standards, codes and ordinances, the greater or more stringent obligation shall apply to the Architect's services. Terms used in this Agreement have the same meaning as defined herein or in the definitions of the modified AIA Document A201-2017, General Conditions of the Contract for Construction, as modified by the Owner.

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. The Architect shall comply with the Owner's rules, regulations, and policies. The Architect will provide professional services necessary for the design and documentation of the Project. The Architect agrees that the Basic Services compensation, as stated in Article 11, represents adequate and sufficient consideration for its provision of professional services, identified as Basic Services in this Agreement (including those of its consulting structural, mechanical, fire protection, plumbing, and electrical engineers and all other consultants under the Architect's responsibility) necessary to design the Project and prepare the documents that are necessary to fully indicate the requirements for construction, whether or not those services are individually expressed in this Agreement, the only exceptions to this being (1) the costs of those services that are provided by third parties and are expressly designated herein as being the "Owner's responsibility" or are "Owner-provided" and (2) the cost of those engineering or consulting services that become necessary as a result of a change in Project scope affecting the Architect and that are the subject of a written agreement between the Owner and the Architect, subject to the terms of this Agreement.

§ 2.2 Architect's Standard of Care. The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects licensed to practice in the State of Ohio experienced in the design of school facilities and practicing in the same or similar locality under the same or similar circumstances (the "Standard of Care"). The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect's failure to comply with the Standard of Care shall be a material breach of the Agreement.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. Except with respect to the Architect's obligations for construction administration and observation of the Construction Manager's Work, 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 shall be subject to the approval of the Owner.

§ 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. All policies shall be written by insurers acceptable to the additional insureds that have an A.M. Best's Rating of A-, VII or higher and are authorized to conduct business in the State of Ohio.

§ 2.6.1 Commercial General Liability with policy limits of not less than (\$ «2 Million») for each occurrence and (\$ «4 Million») in the aggregate for bodily injury and property damage. A per project aggregate endorsement shall be included in the General Liability and shall provide that the general aggregate limit applies separately to the Project. This endorsement shall be Insurance Services Office, Inc. (ISO) endorsement CG 25 03, or equivalent.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$ 1 Million) per claim and (\$ «2 Million») in the aggregate 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 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.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits as required by State law.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits as set forth below:

| Project Budget Defined in 1.1.3 | Professional Liability Policy Limits Not Less Than | |
|---|--|--------------|
| | Per Claim | In Aggregate |
| \$0-\$5 Million | \$1 Million | \$2 Million |
| Greater than \$5 Million - \$10 Million | \$2 Million | \$2 Million |
| Greater than \$10 Million - \$50 Million | \$2 Million | \$4 Million |
| Greater than \$50 Million - \$100 Million | \$5 Million | \$10 Million |
| Greater than \$100 Million | \$10 Million | \$10 Million |

§ 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 to the Owner that evidence compliance with the requirements in this Section 2.6, upon execution of the Agreement. The certificates will show the Owner as an additional insured on all insurance policies except Professional Liability. The Architect shall deliver to Owner, upon request, copies of the actual insurance policies. Architect is required to notify Owner of any adverse material change in, or cancellation of, the policy or policies evidenced, via certified mail to Owner, and that 5 days after the renewal date, the Architect shall furnish Owner, with updated or replacement certificates of insurance that clearly evidence continuation of all coverages in the same manner, limits and protection, as required.

§ 2.6.10 If professional liability and/or commercial general liability coverage is claims-made coverage, coverage must be maintained in effect for ten (10) years after Final Completion of Work.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3, as set forth in the Owner's Request for Qualifications which is incorporated herein by reference to the extent not inconsistent with this Agreement, and as set forth in the Architect's Proposal attached hereto as **Exhibit A** to the extent not inconsistent with this Agreement, and include usual and customary civil, structural, mechanical, plumbing, electrical, and other engineering and consulting services necessary to design the Project. The Architect's design for the Project will comply with the Owner's planned objectives and program for the Project and the Owner's budget for the Project. Services not set forth in this Article 3 or elsewhere in this Agreement are Additional Services. Because the Project delivery method is anticipated to be construction manager at risk, in coordination with the Owner, Owner's legal counsel, and the CMR, the Architect will assist in the preparation of subcontractor bid packages, consider requests for substitutions if permitted, and prepare addenda identifying approved substitutions, as part of its Basic Services. The Owner may provide services from its consultants and suppliers for the Project. The Architect shall assist the Owner in the procurement of consultants and suppliers, as requested by Owner, and provide all required information and coordination of its services with the Owner and any of Owner's consultants and suppliers as part of its Basic Services. Services not set forth in this Agreement as Basic Services are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall be responsible for memorializing all Project meetings during the design phases of the Project.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. If Owner performs work on the Project with separate consultants, equipment

suppliers, or other vendors, Architect shall cooperate with and coordinate its design and activities with those of such separate consultants, equipment suppliers, or other vendors so that the Project can be completed in an orderly and coordinated manner without disruption. As applicable, the Architect shall review the reports and shop drawings from Owner's consultants, equipment suppliers, or other vendors and coordinate its design accordingly. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. However, the Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, delay, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager (when selected by Owner) a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule shall include design phase milestone dates, anticipated dates when cost estimates or design reviews may occur, 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 cause, be exceeded by the Architect. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 Throughout the Project, 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. The Architect will work with the Construction Manager to develop the construction schedule for the Project; the Construction Manager is responsible for preparing the final construction schedule, subject to approval by the Owner.

§ 3.1.4.1 Once the Owner and Architect agree to the time limits established by the Project schedule, the Architect shall not exceed them, except for reasonable cause or as agreed pursuant to Section 1.1.4.1 of this Agreement.

- .1 If at any time the Architect believes the time for the completion of any component of the Project or any milestone will be exceeded by any party under contract with the Owner in connection with the Project, the Architect will notify the Owner promptly in writing of the situation and work with the Owner and Construction Manager to develop alternatives for maintaining the schedule for the applicable component of the Project.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made without the Architect's approval. The Architect shall timely notify the Owner and Construction Manager of any objections it has to such substitution, in writing.

§ 3.1.6 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall advise the Owner, in writing, of the results of these contacts and any impacts on Project requirements.

§ 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.

§ 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 cost estimates/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.

§ 3.1.9 In providing services under this Agreement, the Architect shall, in accordance with the Standard of Care, comply with all applicable federal, state, and local laws, regulations, and orders in effect at the time of submission of the Contract Documents to the governing building authority. The Architect shall respond in the design of the Project to

requirements imposed by governmental authorities having jurisdiction over the project. The Plans and Specifications and the improvements, if built in accordance with them, shall conform to all currently applicable statutes, regulations, ordinances, and orders, except to the extent that the Architect has advised the Owner in writing that there is an ambiguity or an interpretation by a code official contrary to that by the Architect or that a variance shall be necessary. The Architect shall not be responsible for compliance of any contractor with currently applicable statutes, regulations, ordinances, and orders but shall report any known deviation therefrom to Owner in writing.

§ 3.1.10 The American with Disabilities Act (ADA) provides that designs of new facilities must meet the requirements of the ADA. The Owner has contracted with the Architect in reliance upon the Architect's skill and judgment in addressing the ADA requirements of the Project. The Architect will comply with the applicable ADA requirements as they apply to the Project.

§ 3.1.11 The Architect warrants and represents that it presently has, and will at all times during the term of this Agreement maintain: (i) all skills, experience, knowledge, staffing and resources necessary to perform the services set forth herein, and (ii) all required licenses, accreditations, certifications and registrations necessary to perform the services set forth herein.

§ 3.1.12 To the extent needed to provide its Basic Services and to the extent existing conditions are reasonably visible and accessible, the Architect shall investigate existing conditions or facilities.

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

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, 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 cost estimate(s) (also referred to as a Control Estimate), as appropriate. As requested by the Owner, the Architect shall assist the Owner in reviewing the Construction Manager's GMP Proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies created by the Construction Manager; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager in writing.

§ 3.2.2 Upon authorization by the Owner, subject to Sections 6.5, 6.6, and 6.7, 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 Cost Estimate.

§ 3.3 Schematic Design Phase Services

For Schematic Design Phase Services, references to the Construction Manager apply only to the extent a Construction Manager has been selected.

§ 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 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. The Architect will advise the Owner of design alternatives, which could result in savings to the Owner, including savings in the construction cost and the cost of operating the Project when completed.

§ 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 feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 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. The Architect shall coordinate and conduct Schematic Design meetings with the Construction Manager and Owner.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services not included as Basic Services, as an Additional Service, subject to Owner's prior written authorization in accordance with this Agreement.

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

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager, including copies of any applicable design narrative and/or project manual. The Architect shall meet with the Construction Manager and Owner to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Owner's comments and Construction Manager's review comments and Cost Estimate, if any, at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.5 and 6.6, 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, if any, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

For Design Development Phase Services, references to the Construction Manager apply only to the extent a Construction Manager has been selected.

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, 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 Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The Architect shall coordinate and conduct Design Development meetings with the Construction Manager and 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, including copies of any applicable narrative and/or project manual, as requested by the Owner. The Architect shall meet with the Construction Manager and Owner to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Owner's comments and Construction Manager's information and Cost Estimate at the conclusion of the Design Development Phase, the Architect shall take action if required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

For Construction Documents Phase Services, references to the Construction Manager apply only to the extent a Construction Manager has been selected.

§ 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 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 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents. The Architect will assist the Owner in connection with filing documents required for approval by governmental authorities having jurisdiction over the Project.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist and coordinate with the Owner, Owner's legal counsel, and Construction Manager in the development and preparation of a project manual that includes the Contract Documents.

§ 3.5.4 **Construction Documents for GMP Proposal.** Prior to the conclusion of the Construction Documents Phase, at the time specified in the agreement between the Owner and Construction Manager, the Architect shall submit the Construction Documents, including copies of any Design Intent Statement, other narrative, or project manual, to the Owner and the Construction Manager for the Construction Manager's use in preparing its GMP Proposal. In the event that Construction Documents are not 100% complete at the time the CMR prepares its Guaranteed Maximum Price Proposal, the Architect shall prepare a Design Intent Statement upon which the Construction Manager's Guaranteed Maximum Price Proposal may be based. The Design Intent Statement shall include the Architect's detailed listing of any incomplete design elements and the Architect's statement of intended scope with respect to such incomplete elements. The Architect shall meet with the Construction Manager and Owner to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's estimate(s) and upon receipt of a GMP Proposal during and at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.5 and 6.6, and request the Owner's approval of the Construction Documents.

§ 3.5.6 In addition to other terms to be included in the Contract Documents on behalf of the Owner, to the extent that the following items are within the scope of the Project, the Architect will (a) include in the Contract Documents test requirements for the following building systems: air conditioning system (which will be conducted during the summer months), heating system (which shall be conducted during the winter months), electrical system, plumbing system, fire protection system, communications system, security systems and other such systems as are reasonably requested by the Owner; (b) provide that the respective contractors participate in such series of systems tests; and (c) provide that such tests will be conducted during the first eleven (11) months following the date the Owner receives the occupancy permit and Substantial Completion. It is intended that the testing shall be a comprehensive series of operation tests designed to determine whether the systems, including hardware and software, are fully operational in accordance with the requirements of the Contract 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 by the Owner. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal 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 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. 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.

§ 3.6.1.4 Coordination of Responsibilities Regarding Underground Utility Facilities. The Architect, on behalf of and in the name of the Owner, will assist the Owner to give the notices required to be given by the Owner under Section 153.64(B), Revised Code. The Architect will include in the Drawings and Specifications the identity and location of existing underground utility facilities located in the construction area of the Project as provided by the Owner of the utility facility.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect shall memorialize its site visits in a written report to the Owner. The Owner may specify the format of the Architect's written reports. Nothing in this section will relieve the Architect of its duty to use reasonable care to endeavor to protect the Owner from defective and non-conforming Work in accordance with its Standard of Care.

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

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect will keep a record of all such interpretations that includes information such as the date of each request for interpretation, the person making the request, the date of the Architect's response, and a summary of the response. The Architect will keep all correspondence and documentation related to such requests organized in a systematic manner and will make such documentation available to the Owner upon the Owner's request.

§ 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 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, as modified by the Owner, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.2.6 The Architect shall give prompt written notice to the Owner if the Architect becomes aware of any fault, defect, error, omission, or inconsistency in the Project or in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect shall assist the Owner with the evaluation of Construction Manager's requests for use of contingency funds. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, 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. The Architect will not certify any payment application to the extent the Construction Manager has not submitted appropriate waivers of claim, waivers of lien, or other documents required by the Contract Documents, except as provided herein.

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

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

§ 3.6.3.4 Consistent with its Standard of Care, the Architect will advise the Owner and the Owner's representative in writing, which writing may consist of notations in the job progress meetings, at the time of the delivery of each certification for payment of any known defects or problems with respect to the Work, which can be reasonably observed in the course of the Architect's observations, given the stage of completion of the Work. The Architect will not certify any payment application to the extent the Construction Manager has not submitted any waivers of claim under the Ohio Mechanic's Lien laws or other documents required by the Contract Documents for labor and/or materials listed on the attachment to the Contractor's previous applications for Payment or other documents required by the Contract Documents. Notwithstanding the foregoing, the Architect will have discretion to adjust the amount certified when missing documentation is deemed by the Architect, in consultation with the Owner's representative, to be relatively inconsequential or beyond the control of the Construction Manager such that holding all payment for those items would be detrimental to the Project or unfair to the Construction Manager.

§ 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 while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect shall provide reasonable assistance to clarify certain dimensions if those indicated in the Contract Documents conflict with existing field conditions or because the dimensions in the Contract Documents contain erroneous, inconsistent, or incomplete information. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the

Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 3.6.4.4 Subject to 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 **3 business days** unless otherwise agreed upon by the Owner, in writing. 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 minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. However, the Architect will notify the Owner and Construction Manager in writing, of such minor changes. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work, including but not limited to, RFIs, Bulletins, Change Orders, Construction Change Directives, submittals, and Architect's Supplemental Instructions and upon completion, represent all changes in the Record Documents. The Architect will maintain a record of all change orders for the Project that shows the status of each change order, identifies known issues that could potentially be the basis for a change order, and includes the name of the contractor, the subject of the change order, the dates of approval, the estimated cost of the change order (if not approved), the number of days additional time requested by the contractor for the Work, and the number of days approved by the Architect and Owner to accomplish the Work. The Architect will furnish an updated copy of the change order record to the Owner upon request.

§ 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 from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied. The Architect will maintain a record of all change orders for the Project that shows the status of each change order, identifies potential change orders and includes the subject of the change order, the dates of approval, the estimated cost of the change order (if not approved), the number of days additional time requested by the Construction Manager for the Work and the number of days approved by the Architect and Owner to accomplish the Work. The Architect will furnish an updated copy of the change order record to the Owner upon request.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Construction Manager, if any, the Architect, shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services modification to the Architect's services. With the Owner's approval, the Architect shall incorporate those estimates into

a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Construction Manager.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; 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.

To the extent the Construction Manager has not completed its Work or there are defects or non-conforming Work following the date for Substantial Completion, the Architect in its role as design professional will work with the Owner to pursue the Construction Manager to complete its Work and correct any defective or non-conforming Work; however, the Architect is not a guarantor that the Construction Manager will complete its Work. The Architect will receive and review for compliance with the Contract Documents written guarantees and related documents required by the Contract Documents to be assembled by the Construction Manager and will issue when so warranted a Final Certificate of Payment.

§ 3.6.6.2 The 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 of the Work 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 1 month 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. The Architect shall document deficiencies and notify the Construction Manager in writing with a copy to Owner, that corrective work is required, prior to the 1 year anniversary of Substantial Completion unless agreed upon otherwise.

§ 3.6.6.6 **Record Drawings.** Before final payment is due the Architect and as part of its Basic Services, the Architect will prepare a set of Record Drawings for the Project, based upon the marked drawings received from the Construction Manager and including any annotations from the Architect to reflect changes to the Project issued through responses to RFIs or Change Orders. The Record Drawings, to the best of the Architect's knowledge based upon the record drawings delivered to the Architect by the Construction Manager and the Architect's knowledge of change orders and observations during the progress of the Project, will document the construction of the Project and contain such annotations by the Architect as may be necessary for someone unfamiliar with the Project to understand the changes made to the original plans. As part of the payment approval process for the Construction Manager during the course of the Project, the Architect will implement a system that requires the Construction Manager to update the working sets of drawings to reflect Work in progress. Because the Record Drawings are based on unverified information provided by other parties, which will be assumed reliable, the Architect cannot and does not warrant their accuracy. The Record Drawings will be provided in an electronic format that is acceptable to the Owner.

ARTICLE 4 OTHER BASIC SERVICES

§ 4.1 Basic Services

§ 4.1.1 The following are Basic Services, except where indicated below:

| Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|--|--|
| § 4.1.1.1 Assistance with Selection of Construction Manager | Architect Included as a Basic Service |
| § 4.1.1.2 Programming | Architect, subject to Owner's discretion; Included as a Basic Service |
| § 4.1.1.3 Multiple Preliminary Designs | Architect Included as a Basic Service |
| § 4.1.1.4 Measured drawings | Architect Included as a Basic Service |
| § 4.1.1.5 Existing facilities surveys | Architect Included as a Basic Service |
| § 4.1.1.6 Site evaluation and planning | Architect Included as a Basic Service |
| § 4.1.1.7 Building Information Model management responsibilities | Architect Included as a Basic Service |
| § 4.1.1.8 Development of Building Information Models for post construction use | Architect Included as a Basic Service |
| § 4.1.1.9 Civil engineering | Architect Included as a Basic Service |
| § 4.1.1.10 Landscape design | Architect Included as a Basic Service |
| § 4.1.1.11 Architectural interior design | Architect Included as a Basic Service. See Section 4.1.2.1.3 below |
| § 4.1.1.12 Value analysis | Architect, as needed with the Owner's designated representative and CMR |
| § 4.1.1.13 Cost estimating | Architect/Owner/ CMR |
| § 4.1.1.14 On-site project representation | Architect Included as a Basic Service |
| § 4.1.1.15 Conformed documents for construction | Architect Included as a Basic Service. See Section 4.1.2.1.1 below. |
| § 4.1.1.16 As-designed record drawings | Architect Included as a Basic Service. |
| § 4.1.1.17 As-constructed record drawings | Architect To be provided to the Owner per Section 3.6.6.6 and 4.1.2.1.2 |
| § 4.1.1.18 Post-occupancy evaluation (11 month walkthrough) | Architect Included as a Basic Service per paragraph 3.6.6.5 |
| § 4.1.1.19 Facility support services | Not Provided |
| § 4.1.1.20 Tenant-related services | Not Provided |
| § 4.1.1.21 Architect's coordination of the Owner's consultants | Architect The Architect shall provide all required information and coordination of its services with all of Owner's consultants and suppliers as part of its Basic Services |
| § 4.1.1.22 Telecommunications/data design | Architect Included as a Basic Service |
| § 4.1.1.23 Security evaluation and planning | Architect Included as a Basic Service; no separate agreement will be used |
| § 4.1.1.24 Commissioning | Not Provided |

| Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|---|---|
| § 4.1.1.25 Sustainable Project Services pursuant to Section 1.1.7 | Architect Included as a Basic Service |
| § 4.1.1.26 Historic preservation | Architect Included as a Basic Service as required by Authorities Having Jurisdiction; no separate agreement will be used |
| § 4.1.1.27 Furniture, furnishings, and equipment design | Architect Included as a Basic Service; no separate agreement will be used. See Section 4.1.2.1.4 below |
| § 4.1.1.28 Participating in community and Owner staff, meetings for input in planning the conceptual program/design for the Project | Architect Included as a Basic Service |

§ 4.1.2 Description of Basic Services

§ 4.1.2.1 Insert a description of any Basic Service designated in Section 4.1.1 if further description is needed (none if none are listed).

(Describe in detail the Architect's Basic 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 Basic Services.)

§ 4.1.2.1.1 After the last Bid Package has been released, the Architect shall assemble a complete, single set of Construction Documents which shall incorporate the drawings, specifications and Addenda for all of the various Bid Packages issued during the Bidding or Negotiation Phase. All documents shall be made current as of the date of issuance of the Conformance Set. An electronic copy of the Conformance Set shall be provided to the Owner and Construction Manager for distribution. The Architect shall provide any hard copies requested by the Owner in the size and quantity requested.

§ 4.1.2.1.2 The Architect shall compile and deliver to the Owner Record Documents which reflect the marked-up drawings and other data furnished to the Architect by the Construction Manager. The Documents shall be in the form of a set of prints and electronic CAD and pdf files on a USB flash drive. All RFI's and documented changes in Work will be represented on the Record Documents when appropriate.

§ 4.1.2.1.3 In consultation with the Owner, the Architect will develop interior design solutions for all spaces to be constructed, including selection of all interior finishes, materials, and colors of fixed components such as general casework, which are part of the specifications for the Project.

§ 4.1.2.1.4 Architect will provide services for furniture and equipment design, which may be purchased by the Owner. As part of its Basic Services, Architect will include the layout for furniture and equipment items to be purchased on the drawings and will include power and data for all furniture, fixtures, and equipment on the drawings for each component of the Project. Architect will coordinate with staff to design infrastructure for audio-visual and computer equipment. The Architect will review and inventory existing furnishings and equipment, design and specify new furnishings and fixtures to be selected, and provide oversight for installation and inspection of existing furnishings and fixtures during the Construction Administration Phase.

§ 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.)

N/A

§ 4.1.3 [Not Used.]

§ 4.2 Architect's Additional Services

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

Architect's schedule. However, nothing in this Agreement shall relieve the Architect of its professional duties related to this Project. If the Architect fails to timely provide notice under this Section 4.2 and its subsections, the Architect shall be deemed to have waived the right for compensation for performing the Additional Services.

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

- .1 Subject to the limitations of Section 6.5 and 6.6, services necessitated by a material change in the Initial Information, previous instructions given by the Owner, approvals given by the Owner, or a material change in the Project including but not limited to size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6 which materially impact Architect's performance and services;
- .2 Making revisions in Drawings, Specifications, or other documents after execution of the GMP Amendment and 100% completion of the Construction Documents, subject to Section 6.7;
- .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 which materially impact Architect's performance and services;
- .6 [Not Used.]
- .7 [Not Used.]
- .8 [Not Used.]
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause, other than when caused by the act or omission of the Architect or a party for which it is responsible, during construction;
- .11 Assistance to the Initial Decision Maker, if other than the Architect; or
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method.
- .13 [Not Used.]
- .14 [Not Used.]
- .15 [Not Used.]

§ 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 the Owner subsequently determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 [Not Used.]
- .2 Responding to the Construction Manager's extensive 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 (the Architect shall identify to Owner and Construction Manager the location of the information in the foregoing documentation);
- .3 [Not Used.]
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker, unless any Claim is alleged to be a result of the Architect's errors or omissions; or
- .5 Evaluating extensive substitutions proposed by the Owner or Construction Manager and making subsequent material revisions to Instruments of Service resulting therefrom.

Should the Architect believe that the proposed Additional Services are essential for the performance of its professional responsibilities, the Architect shall clearly notify the Owner of that fact in writing, stating the objective basis for that belief. If the Owner determines that the proposed Additional Services (which the Architect has suggested are essential)

are included in the Architect's Basic Services, the Architect shall perform them, submitting written notice to the Owner before performing those services, stating that the Architect disputes the Owner's determination that those services are Basic Services and that the Architect does not waive its right to seek compensation for those services by performing them.

§ 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 «Two » (« 2 ») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Visits to the site by the Architect over the duration of the Project during construction, as often as is appropriate for the Work that is under way, but not less than one (1) time every week
- .3 «Two » (« 2 ») 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 «One » (« 1 ») inspections for any portion of the Work to determine final completion

§ 4.2.4 [Not Used.]

§ 4.2.5 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, if the services covered by this Agreement have not been completed within « twelve » (« 12 ») months after the Date of Substantial Completion of the Project that is included in the CMR's GMP Amendment (subject to change as agreed-upon by the Owner in writing), through no fault of the Architect, the Architect may request additional compensation for the actual cost of performance to the extent the Architect demonstrates that such costs exceed the costs the Architect would have incurred in the absence of the delay.

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 anticipates that it will retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5. The Construction Manager shall be responsible for creating the overall Project schedule. The Owner shall coordinate with the Construction Manager to adjust the Project schedule, if necessary in the Owner's sole discretion, as the Project proceeds.

§ 5.3 The Owner shall establish and may periodically update the Owner's budget for the Project in its sole discretion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect.

§ 5.3.1 [Not Used.]

§ 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.

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

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

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

§ 5.8 [Not Used.]

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

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

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

§ 5.12 The Owner shall provide prompt written notice to the Architect 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. Notwithstanding the foregoing, the parties understand that the Owner has no duty to search for the same, and further agree that Owner is not a professional skilled in finding such faults or defects

§ 5.13 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.

§ 5.14 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, upon request by the Architect.

§ 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 reasonable access to the Work wherever it is in preparation or progress, unless there is a risk of delay to the Project or safety of individuals.

§ 5.16 [Not Used.]

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 all of the Construction Manager's construction phase compensation, contingency, general conditions costs, but exclude the Construction Manager's preconstruction fees and costs. 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 other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project per Sections 5.3 and 6.5. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect will review these detailed cost estimates for the Work prepared by the Construction Manager and will provide written comments on the cost estimates or acceptance of the cost estimates. The Architect shall report to the Owner, in writing, any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's detailed cost estimates, the Architect shall work cooperatively with the Construction Manager to conform the cost estimates to one another.

§ 6.3.2 If the Owner engages a Cost Consultant and a discrepancy exists between the Construction Manager's estimate and the Cost Consultant's estimate, the Architect shall assist the Cost Consultant and Construction Manager as necessary to conform the estimates to one another.

§ 6.4 [Not Used.]

§ 6.5 If at any time prior to the Owner's acceptance of the Guaranteed Maximum Price Proposal, the Construction Manager's estimate of the Cost of the Work (as defined in Section 6.1 herein) at the various stages of design exceeds the Owner's budget for the Cost of the Work (as defined in Section 6.1 herein), the Owner may hold a review and value analysis meeting with Construction Manager and Architect to determine options to address the potential impact on the Guaranteed Maximum Price if any, and/or shall, in its sole discretion:

- .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 Sections 6.5.1, 6.5.3, or 6.5.4, the Architect, without additional compensation, shall incorporate the required modifications in the Schematic Design Documents, Design Development Documents, and/or Construction Documents, as applicable, as necessary to comply with the Owner's revised budget for the Cost of the Work, Project program, scope or other adjustments by Owner..

§ 6.7 After execution of the Guaranteed Maximum Price Amendment by Owner, and completion of 100% Construction Documents by the Architect, the Architect shall, after prior written authorization from Owner as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, that exceed the Owner's budget for the Cost of the Work by more than 5% cumulatively, 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, or are a result of the Architect's error or omission.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications. As payments are made by the Owner and accepted by the Architect, the Owner is hereby deemed the owner of the Architect's and the Architect's consultants' 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 Owner.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner full ownership of the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain the necessary rights from the Architect's consultants consistent with this Agreement and the Owner's ownership of the Instruments of Service. The rights granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service for use in performing services or construction for the Project for the Owner. These full ownership rights shall survive any termination of this Agreement.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses or rights 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 The provisions of this Article 7 shall survive the termination of this Agreement.

§ 7.5 The Owner authorizes the Architect to furnish contractors and subcontractors, directly engaged in the Project, portions of the Construction Documents in digital data format for their convenience and use solely for their construction of the Project. The Architect cannot warrant the compatibility of digital data files with the hardware or software utilized by the contractors and subcontractors. The Architect does not warrant the accuracy of changes made by contractors and subcontractors to the digital files provided by the Architect.

§ 7.6 Upon completion of the services, the Architect shall furnish to the Owner digital data files of the latest Construction Documents prepared by the Architect. The Architect shall correct any errors or discrepancies found in the digital data files and reported within 60 days of their receipt by the Owner.

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. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered and paid 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 the modified AIA Document A201-2017, (as prepared for the Project) General Conditions of the Contract for Construction, if applicable. 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 **Indemnification** Notwithstanding any other provision in this Agreement to the contrary, the Architect shall indemnify and hold harmless the Owner for all damages, losses, attorney fees or claims which the Owner sustains arising out of or related to any negligent act (including the negligent breach of this Agreement), error, omission or failure to exercise reasonable care skill or diligence on the part of the Architect, its employees, its agents, its consultants, or any party for which the Architect is responsible respecting the performance of any Work or Service in connection with the Project.

§ 8.1.4 The Architect waives consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement may be subject to mediation if agreed upon in writing by both parties. 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.

§ 8.2.1.1 Unless otherwise agreed in writing, the Owner shall maintain the Owner's rights to the Architect's Instruments of Service and the Architect shall continue to provide services and shall maintain progress during any mediation, arbitration or litigation proceedings, and the Owner shall continue to make payments to the Architect in accordance with this Agreement, however the Owner shall be under no obligation to make payments on or against any

claim or amounts in dispute during the pendency of any mediation, arbitration or litigation proceeding to resolve those claims or amount in dispute.

§ 8.2.2 If the Owner and Architect endeavor to resolve claims, disputes and other matters in question between them by mediation, the parties shall mutually agree to a mediator, and the mediation shall be administered by a mediator that is mutually agreeable to the parties; however if the parties are unable to agree upon a forum or mediator, the parties will use the American Arbitration Association's Construction Industry Mediation rules in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement. 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. The parties agree that a request for mediation will not be submitted to the American Arbitration Association until the parties are unable to agree on a different forum for mediation of the claim, dispute, or other matter in question between them.

§ 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, pursuant to Section 10.1

Other: (Specify)

« »

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

§ 8.3 [Not Used.]

§ 8.3.1 [Not Used.]

§ 8.3.1.1 [Not Used.]

§ 8.3.2 [Not Used.]

§ 8.3.3 [Not Used.]

§ 8.3.4 [Not Used.]

§ 8.3.4.1 [Not Used.]

§ 8.3.4.2 [Not Used.]

§ 8.3.4.3 [Not Used.]

§ 8.4 [Not Used.]

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 twenty-one 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, and the period of suspension is more than 120 days, 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 120 cumulative days for reasons other than the fault of the Architect and within the control of the Owner, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services actually performed prior to termination per paragraph 11.6, together with Reimbursable Expenses then due. .

§ 9.7 [Not Used.]

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in Common Pleas Court in the county in which the Project is located, and each party hereby expressly consents to the jurisdiction of such court. The parties expressly waive the right to remove any litigation arising out of this Agreement to federal court.

§ 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, as modified by the Owner. 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.

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect. The Architect shall identify Owner as an express third party beneficiary in each agreement with Architect's consultants and subcontractors and shall incorporate by reference all of Architect's duties and obligations with respect to Owner in such agreements such that each consultant and subcontractor

shall owe to Architect all obligations that Architect owes to Owner, as adjusted for the particular services provided to 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, unless the toxic materials or substances were brought to the Project by the Architect pursuant to the terms of the Contract Documents. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project Site, the Architect shall immediately report that presence to the Owner in writing.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Architect will not publish other information regarding the Project without the Owner's prior written consent and the Owner agrees not to unreasonably withhold such consent. The Architect agrees to keep confidential and not to disclose to any third party (without the advance written consent of the Owner) any confidential, proprietary or privileged information or documentation of the Owner. 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 to the extent permitted by law 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, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) to the extent required by law. If Architect wishes to protect such information from a public records request, Architect shall be responsible for initiating or pursuing any legal remedy at its own expense and shall indemnify Owner against any damages Owner may incur related to or arising out of such public records request. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 [Not Used.]

§ 10.9 **Partial Invalidity.** If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

§ 10.9 **Betterment.** If a required item or component of the Project is omitted from the Architect's Construction Documents, the Architect shall not be responsible for paying the cost required to construct such item or component to the extent that such costs would have been incurred had Architect included such item or component in the Architect's original Construction Documents (i.e., betterment), but Architect shall be responsible for paying any additional costs arising from the omission.

§ 10.10 The services provided under this Agreement include those commenced and previously authorized by the Owner within the scope of this Project. Fees paid prior to the execution of the Agreement shall be credited against the fees set forth in this Agreement

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)

« The Architect's compensation for its Basic Services actually performed shall be \$ _____, plus Reimbursable Expenses as defined in paragraph 11.8, not to exceed \$ _____ . »

.2 [Not Used.]

.3 [Not Used.]

§ 11.2 [Not Used.]

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

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

«No Additional Services shall be performed without a prior written, signed agreement between the Owner and Architect. The Architect shall be compensated for Additional Services on the basis of hourly billing rates set forth in Exhibit B, unless a lump sum amount is mutually agreed upon between the Owner and Architect. »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants, 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 The Architect shall invoice the Owner monthly in proportion to services performed in each phase of services. When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

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

§ 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 or the Cost of the Work in the executed Guaranteed Maximum Price Amendment, as applicable. 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 of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services have been actually completed on those portions in accordance with the schedule set forth in Section 11.5 based on (1) the Cost of the Work in the Owner-accepted Guaranteed Maximum Price Amendment, or (2) if the Guaranteed Maximum Price proposal has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project to the extent such estimate has been approved by the Owner.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«As set forth in Exhibit B »

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services, subject to 11.1, and include the normal and reasonable expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Transportation and authorized out-of-town travel and subsistence;

- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project, provided that the Owner may pay these amounts directly if requested in sufficient time to process and issue the payment;
- .4 Printing, reproductions, plots, standard form documents, except that reproduction for internal coordination between the Architect and Owner and the Architect's consultants shall not be reimbursable;
- .5 Postage, handling, and delivery;
- .6 Employment of special consultants other than those listed in this Agreement if authorized in advance, in writing by the Owner; and
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 [Not Used.]
- .9 [Not Used.]
- .10 [Not Used.]
- .11 [Not Used.]
- .12 [Not Used.]

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

§ 11.8.3 Reimbursable Expenses must be itemized and submitted with supporting documentation to the Owner no later than 60 days after such expense is incurred by the Architect. Architect's failure to submit Reimbursable Expense timely to the Owner as required herein will be an irrevocable waiver of Architect's right to reimbursement for such Reimbursable Expense.

§ 11.9 [Not Used.]

« »

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

§ 11.10.1.2 [Not Used.]

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid « sixty » (« 60 ») days after the date the invoice is approved by the Owner shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

«Simple interest at the Ohio statutory rate. Architect shall give the Owner seven days written notice of late payment before interest shall begin to accrue.»

§ 11.10.2.2 [Not Used.]

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

§ 11.10.2.4 The Architect shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Architect's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Architect shall preserve these for at least 4 years, or for such longer period as may be required by law. In the event that the Architect's records are not available at the agreed upon time or place, or in the event that Owner

finds incomplete records or inaccurate accounting of paid expenses, the Architect must reimburse Owner for its time, travel, related expenses and Architect shall reimburse Owner the full amount of any discrepancies or overages.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

«§ 12.1 **Architect's Duties in General.** The Architect acknowledges that the Owner is entering this Agreement in reliance on the Architect's abilities to perform the Basic Services and any Additional Services requested under this Agreement on a timely basis. To the extent that any service hereunder shall be performed by consultants retained by the Architect, the term "Architect" as used in this Agreement shall be deemed to include any such consultant.

§ 12.2 The Architect acknowledges it will use its best professional skill and judgment to coordinate the design of the Project in order to (i) minimize disruption of the Owner's operations, and (ii) to ensure that the Project is coordinated as to phasing, timing, staging, design, and execution. However, it is understood that the Architect will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the responsibility of the Construction Manager.

§ 12.3 The Architect's duties and obligations, as set forth herein, and any liabilities arising hereunder shall at no time be diminished or released by reason of any approval by the Owner of the Drawings and Specifications or any other documents prepared by the Architect.

§ 12.4 The Architect, consistent with its Standard of Care and professional skills, agrees, based upon the manufacturers' specifications or observations, that materials and equipment specified shall be adequate for the purposes for which they are specified.

§ 12.5 Consistent with its Standard of Care, the Architect shall endeavor to anticipate problems related to zoning, building permits, building envelope including roofs and walls, availability of utilities, equipment and material shortages, proper balancing of the heating, ventilating, and air conditioning systems, security systems, and supplier delays.

§ 12.6 The Architect shall endeavor to maintain good working relations with the Owner, Construction Manager, contractors and subcontractors, shall further endeavor to solve problems and resolve disputes, if reasonably possible, promptly as they occur on the Project, and shall promptly advise the Owner of any action recommended with respect to the problems or disputes.

§ 12.7 **Privileged Communications.** All communications between the Owner's legal counsel and the Architect, while the Architect is acting as the agent for the Owner under the terms of this Agreement and which relate in any way to the administration of the construction of the Project or to the work of the Construction Manager any contractor, Subcontractor, materialman, or any other person rendering services in connection with the Project, shall be subject to the attorney-client privilege that can be waived only by the Owner. Any such communications and copies thereof that are written including without limitation, correspondence, notes, memoranda, notes of meetings and conversations that are reduced to writing and the like, upon notice from the Owner's legal counsel, shall be placed by the Architect in a separate file folder marked "Privileged and Confidential" and shall not be disclosed to any person other than the Architect's own legal counsel without the express written permission of the Owner. This provision is intended to protect the confidentiality of the Owner's communications with its counsel when the Architect comes into possession of such information in its capacity as agent of the Owner in the performance of its duties under this Agreement in the event of a dispute between the Owner and a third party. This paragraph is not intended to impede communications between the Architect and the Architect's counsel or between the Architect and any contractor seeking a decision from the Architect on a claim or dispute related to the Project.

§ 12.8 **Non-Discrimination.** Architect agrees:

- .1 That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Architect, subcontractor, nor any person acting on behalf of either of them, shall by reason of race, creed, sex, handicap, or color, discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

- .2 That neither the Architect, subcontractor, nor any person acting on behalf of either of them, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, handicap, or color.
- .3 That there shall be deducted from the amount payable to the Architect by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
- .4 That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.

§ 12.9 Notices. A Notice is any written notice to the Owner or the Architect. Written Notice to the Architect shall be deemed to have been duly served if delivered in person to an officer or any other official of the Architect or if delivered to or sent by registered or certified mail, return receipt requested, to the last known business address of the Architect. Written Notice to the Owner shall be deemed to have been duly served if delivered in person or sent by registered or certified mail, return receipt requested to the Owner's representative identified in the Agreement. When sent by certified mail to either party, any written notice shall be considered properly delivered to the other party three (3) days after the date sent.

§ 12.10 Modification. No modification or waiver of any of the terms of this Agreement or of any other Contract Documents will be effective against a party unless set forth in writing and signed by or on behalf of a party. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this Agreement.

§ 12.12 Ethics. The Architect is aware of the ethics responsibilities in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code.

§ 12.13 Findings for Recovery. The Architect is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, this Agreement is void, and the Architect will immediately repay to the Owner any funds paid under this Agreement.

§ 12.14 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail. Facsimile or electronic signatures shall be effective as originals.

§ 12.15 Federal Grant Funding. The Owner will pay all or part of the Contract Sum using Federal grant funding. Accordingly, the "Contract Provisions for Non-Federal Entity Contracts under Federal Award" attached hereto as Exhibit C shall apply. »

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, as modified
- .2 «[Not Used.] »
- .3 Exhibits:
(Check the appropriate box for any exhibits 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.)

« Exhibit A — Architect’s proposal dated [redacted] (to the extent not inconsistent with this Agreement)
Exhibit B – Architect’s Hourly Rates Schedule
Exhibit C – Contract Provisions for Non-Federal Entity Contracts under Federal Award »

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

« Owner RFQ is incorporated by reference to the extent not inconsistent with this Agreement. »

This Agreement entered into as of the day and year of execution by the Owner.

OWNER *(Signature)*
« »

(Printed name and title)

(Date)

ARCHITECT *(Signature)*
« »

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

(Date)

CERTIFICATE OF FUNDS
(ORC 5705.41)

The undersigned, Fiscal Officer for the Owner, hereby certifies in connection with the preceding Agreement that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the Agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance.

Dated: _____

Fiscal Officer

Exhibit C

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

All provisions provided below are hereby incorporated by reference into the Agreement and by entering into the Agreement, Contractor certifies the following:

Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

(A) Contracts for more than the simplified acquisition threshold, currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Rule (A) above, the Owner reserves all rights and privileges under the applicable laws and regulations with respect to this procurement process in the event of breach of contract by either party.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Pursuant to Rule (B) above, Owner reserves the right to terminate any agreement resulting from this procurement process pursuant to the terms of the Agreement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Rule (C) above, this provision is hereby incorporated by reference into the Agreement.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback"

Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Rule (D) above, Contractor will follow all applicable Davis-Bacon Act provisions.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Rule (E) above, Contractor certifies that Contractor will follow all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of the Agreement.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Rule (F) above, Contractor certifies that during the term of the Agreement, Contractor agrees to comply with all applicable requirements referenced in Rule (F) above.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Rule (G) above, Contractor certifies that during the term of the Agreement, Contractor agrees to comply with all applicable requirements as referenced in Rule (G) above.

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Rule (H) above, Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Rule (I) above, as applicable, Contractor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

Record Retention Requirements

Contractor certifies that during the term of the Agreement, Contractor will comply with the record retention requirements detailed in 2 CFR § 200.333. The Contractor further certifies that all records will be retained as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Energy Policy and Conservation Act Compliance

To the extent applicable, Contractor certifies that during the term of the Agreement, Contractor will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Buy American Provisions Compliance

To the extent Contractor has agreed to comply with applicable provisions of the Buy American Act with a particular public entity, Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act shall follow the applicable procurement rules calling for free and open competition.

Recovered Materials (2 C.F.R. § 200.322)

Contractor agrees to the extent practical it complies with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

Access to Records (2 C.F.R. § 200.336)

Contractor agrees that duly authorized representatives of the Agency shall have access to any books, documents, papers and records of Contractor that are directly pertinent to Contractor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Contractor's personnel for the purpose of interview and discussion relating to such documents.

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Contractor, nor its subcontractors shall provide or install equipment, services, or systems that uses "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, "covered telecommunications equipment" is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); telecommunications or video surveillance services provided by such entities or using such equipment; or telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Complying with Federal, State, and Local Laws

Contractor agrees to comply with federal, state, and local laws, rules, regulations, and ordinances, as applicable. It is further acknowledged that Contractor certifies compliance with provisions, laws, acts, regulations, etc. as noted above.

This certification shall be effective through the term of the Contractor's Agreement