

## POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NOS. 1-9

### REGULAR MEETING

August 21, 2025, at 11:00 a.m.

ANCHOR LOCATION: 1201 E. Wilmington Ave, Suite 115, Salt Lake City, UT 84106

*This meeting is open to the public and may be joined using the following information:*

LINK: [Join the meeting now](#)

MEETING ID: 236 721 302 280 3

PASSCODE: rY3jc9uV

DIAL IN: 720-721-3140

PHONE CONFERENCE ID: 435 163 192#

<u>Trustees</u>	<u>Terms</u>
Jay Hardy - Chair	Term from June 28, 2024, to 4 years from appointment
Robert Booth – Treasurer/Vice Chair	Term from June 28, 2024, to 6 years from appointment
Zachary Clegg – Clerk/Secretary	Term from June 28, 2024, to 6 years from appointment
Trever Nicoll - Trustee	Term from June 28, 2024, to 4 years from appointment
Michael Ambre – Trustee	Term from June 28, 2024, to 6 years from appointment

### NOTICE OF MEETING AND AGENDA

1. Call to Order/Declaration of Quorum.
2. Preliminary Action Items.
  - a. Approve Agenda.
3. Public Comment – Members of the public may express their views to the Boards on matters that affect the Districts. Comments will be limited to three (3) minutes.
4. Action Items.
  - a. Approve Draft Minutes from July 29, 2025, Joint Meeting. **(Enclosure)**
  - b. Consider Adoption of Resolution Regarding Acceptance of District Eligible Costs (Cost Certification #02) and Administrative Costs.  
**(To be distributed under separate cover)**
  - c. Approval of Arcadis Reimbursement.
  - d. Standard Form of Agreement Between Owner (District No. 1) and Architect (M. Arthur Gensler, Jr. and Associates, Inc. d/b/a Gensler). **(Enclosure)**
5. Discussion Items.
6. Administrative Non-Action Items.
7. Adjourn.

## RECORD OF PROCEEDINGS

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### MINUTES OF THE MEETING OF THE POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NOS. 1-9

HELD  
July 29, 2025

The Meeting of Point Phase 1 Public Infrastructure District Nos. 1-9 was held at the offices of the Colmena Group, 1201 E. Wilmington Ave, Suite 115, Salt Lake City, UT 84106 and via MS Teams and Teleconference at 1:30 p.m.

#### ATTENDANCE

##### Trustees in Attendance:

Jay Hardy – Chair  
Robert Booth – Treasurer/Vice Chair  
Zachary Clegg – Clerk/Secretary  
Trevor Nicoll – Trustee  
Michael Ambre - Trustee

##### Also in Attendance:

Megan Murphy, Esq.; WBA Local Government Law  
Jake Downing, Brendan Campbell, and Jason Woolard; Pinnacle Consulting Group, Inc.  
Barrett Marrocco; The Connexion Group.  
Kelly Olson and Peggy Wylie; Gallagher.

#### ADMINISTRATIVE ITEMS

Call to Order: The Meeting of the Board of Trustees (collectively, the “Board”) of the Point Phase 1 Public Infrastructure District Nos. 1-9 (collectively, the “Districts”) was called to order by Mr. Downing.

Declaration of Quorum: Mr. Downing noted that a quorum was present, with five out of five Trustees in attendance.

Approval of Agenda: The Boards considered the approval of the agenda. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Booth, and upon vote, unanimously carried, it was

**RESOLVED** to approve the agenda, as presented.

#### PUBLIC COMMENT

There were no public comments to come before the board.

## RECORD OF PROCEEDINGS

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### ACTION ITEMS

Minutes – July 7, 2025, Joint Meeting: Mr. Downing presented the minutes of the July 7, 2025, Joint Meeting to the Board. Following review, upon a motion duly made by Director Booth, seconded by Director Hardy, and upon vote, unanimously carried, it was

**RESOLVED** to approve the minutes of the July 7, 2025, Joint Meeting as presented.

Declaration of Covenants Imposing and Implementing the Event Center Sales and Parking Add-on Public Improvement Fee: Ms. Murphy and Mr. Booth presented the Declaration of Covenants Imposing and Implementing the Event Center Sales and Parking Add-on Public Improvement Fee to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Clegg, and upon vote, unanimously carried it was

**RESOLVED** to approve ratification of the Declaration of Covenants Imposing and Implementing the Event Center Sales and Parking Add-on Public Improvement Fee, as presented.

Service Agreement between Pinnacle Consulting Group, Inc., and the Point Phase 1 Public Infrastructure District No. 1 for PIF Collection Services: Ms. Murphy presented the Service Agreement between Pinnacle Consulting Group, Inc., and the Point Phase 1 Public Infrastructure District No. 1 for PIF Collection Services to the Board. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Clegg, and upon vote, unanimously carried, it was

**RESOLVED** to approve ratification of the Service Agreement between Pinnacle Consulting Group, Inc., and the Point Phase 1 Public Infrastructure District No. 1 for PIF Collection Services, as presented.

Service Agreement between Pinnacle Consulting Group, Inc., and the Point Phase 1 Public Infrastructure District No. 1 for Accounting Services: Ms. Murphy presented the Service Agreement between Pinnacle Consulting Group, Inc., and the Point Phase 1 Public Infrastructure District No. 1 for Accounting Services to the Board. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Clegg, and upon vote, unanimously carried, it was

**RESOLVED** to approve ratification of the Service Agreement between Pinnacle Consulting Group, Inc., and the Point Phase 1 Public Infrastructure District No. 1 for Accounting Services, as presented.

## RECORD OF PROCEEDINGS

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First Amendment to the Joint Resolution Adopting Procurement and Administrative Rules: Ms. Murphy presented the First Amendment to the Joint Resolution Adopting Procurement and Administrative Rules to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Hardy, and upon vote, unanimously carried, it was

**RESOLVED** to approve the First Amendment to the Joint Resolution Adopting Procurement and Administrative Rules, subject to final review by legal counsel and Mr. Hardy.

Pre-Opening Services and Management Agreement Between the Point Phase 1 Public Infrastructure District No. 1 and Oak View Group: Mr. Hardy and Ms. Murphy presented the Pre-Opening Services and Management Agreement Between the Point Phase 1 Public Infrastructure District No. 1 and Oak View Group to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Hardy, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Pre-Opening Services and Management Agreement Between the Point Phase 1 Public Infrastructure District No. 1 and Oak View Group, subject to final review by legal counsel and Mr. Hardy.

Contract for Geotechnical Studies Between the Point Phase 1 Public Infrastructure District No. 1 and GSH Geotechnical, Inc.: Mr. Booth presented the Contract for Geotechnical Studies Between the Point Phase 1 Public Infrastructure District No. 1 and GSH Geotechnical, Inc., to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Contract for Geotechnical Studies Between the Point Phase 1 Public Infrastructure District No. 1 and GSH Geotechnical, Inc., as presented.

Contract for Parking Consulting Services with Metropolis: Mr. Clegg presented the Contract for Parking Consulting Services with Metropolis to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Clegg, seconded by Mr. Booth, and upon vote, unanimously carried, it was

## RECORD OF PROCEEDINGS

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**RESOLVED** to approve the Contract for Parking Consulting Services with Metropolis, subject to final legal review.

Assignment and Assumption of Standard Form of Agreement Between Owner and Architect with Arcadis: Mr. Booth and Ms. Murphy presented the Assignment and Assumption of Standard Form of Agreement Between Owner and Architect with Arcadis with the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve Assignment and Assumption of Standard Form of Agreement Between Owner and Architect with Arcadis, subject to final legal review.

Assignment and Assumption of Professional Services Agreement with Kimley-Horn and Associates, Inc.: Mr. Booth and Ms. Murphy presented the Assignment and Assumption of Professional Services Agreement with Kimley-Horn and Associates, Inc., and answered questions. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Nicoll, and upon vote, unanimously carried it was

**RESOLVED** to approve the Assignment and Assumption of Professional Services Agreement with Kimley-Horn and Associates, Inc., subject to final legal review.

Assignment and Assumption of Event Venue Professional Services Agreement with Kimley-Horn and Associates, Inc.: Mr. Booth and Ms. Murphy presented the Assignment and Assumption of Event Venue Professional Services with Kimley-Horn and Associates, Inc., to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Assignment and Assumption of Event Venue Professional Services Agreement with Kimley-Horn and Associates, Inc., subject to final legal review.

Assignment and Assumption of Landscape Architectural Professional Services Agreement with Rios, Inc.: Mr. Booth and Ms. Murphy presented the Assignment and Assumption of Landscape Architectural Professional Services Agreement with Rios, Inc., to the Board and answered questions, following review and discussion, upon a motion duly

## RECORD OF PROCEEDINGS

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made by Mr. Booth, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Assignment and Assumption of Landscape Architectural Professional Services Agreement with Rios, Inc., subject to final legal review.

Assignment and Assumption on Contract with Rios, Inc.: Mr. Booth and Ms. Murphy presented the Assignment and Assumption on Contract with Rios, Inc., to the Board and answered questions, following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Assignment and Assumption on Contract with Rios, Inc., subject to final legal review.

### DISCUSSION ITEMS

Insurance Coverage: Mr. Olson and Ms. Wylie discussed Insurance Coverage with the Board and answered questions.

Regular Meeting Schedule: Mr. Downing discussed regular meeting scheduling with the Board.

### ADMINISTRATIVE NON-ACTION ITEMS

There were no Administrative Non-Action items discussed among the Boards.

### ADJOURNMENT

There being no further business to come before the Boards, upon a motion duly made by Mr. Booth, seconded by Mr. Hardy, and upon vote, unanimously carried, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

Respectfully Submitted,

\_\_\_\_\_  
Jake Downing, Recording Secretary for the Meeting.

# DRAFT AIA® Document B103™ - 2017

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

AGREEMENT made as of the « » day of «» in the year «»

**BETWEEN** the Architect's client identified as the Owner:  
POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah

c/o WBA, PC  
350 East 400 South, #2301  
Salt Lake City, UT 84111  
Attention: Blair M. Dickhoner  
bdickhoner@wbapc.com

and the Architect:  
M. ARTHUR GENSLER, JR. AND ASSOCIATES, INC.  
d/b/a GENSLER  
220 Montgomery Street, Suite 200  
San Francisco, CA 94104

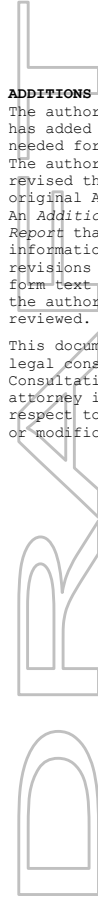
for the following Project:

The Project is comprised of \_\_\_\_

The Owner and Architect agree as follows.

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
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- 4 ADDITIONAL SERVICES
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- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES



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

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

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User Notes:

**9 TERMINATION OR SUSPENSION****10 MISCELLANEOUS PROVISIONS****11 COMPENSATION****12 SPECIAL TERMS AND CONDITIONS****13 SCOPE OF THE AGREEMENT****ARTICLE 1 INITIAL INFORMATION**

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

§ 1.1.1 The Owner's program for the Project:

[NTD: If applicable: "See Exhibit E – Owner's Project Requirements/Basis of Design."]

§ 1.1.2 The Project's physical characteristics:

« See description of Project above »

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

§ 1.1.4 The Owner's anticipated design and construction schedule: [NTD: If applicable: "See Exhibit A – Project Schedule."]

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:

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

[NTD: If applicable: "See Exhibit G – Design and Permit Phasing Plan"]

§ 1.1.7 Other Project information:

Architect acknowledges and understands the Project will be delivered using [NTD: state delivery method and attendant concerns (e.g., "a partial design-build delivery method under which the construction contractor will be responsible for furnishing the professional services necessary for the design of the Project's mechanical, electrical, plumbing and fire protection systems, and that such delivery method requires a high degree of collaboration, cooperation and coordination between the Architect and the construction contractor's design professionals.")]

§ 1.1.7.1 The Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the



completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7.2 The Owner's Sustainable Objective for the Project is Leadership in Energy and Environmental Design ("LEED") v4.0 Gold certifiable ("Sustainable Objective"), as further defined and described in AIA Document E204™–2017, Sustainable Projects Exhibit.

§ 1.1.7.3 As part of Basic Services, the Architect shall (i) produce a design which incorporates strategies approved by the Owner for sustainable site development, water savings, energy efficiency, materials selection and indoor environmental quality and (ii) involve LEED accredited individuals who understand the specific requirements necessary for the Project to achieve the Sustainable Objective. Without limiting the generality of the foregoing:

§ 1.1.7.3.1 The Architect shall develop, for the Owner's approval, a strategy for sustainable site development, water savings, energy efficiency, materials selection, indoor environmental quality and LEED certification (including, without limitation, targeting LEED credits utilizing the appropriate Green Building Rating System Project Checklist as a template for establishing green building goals, identifying potential LEED points, examining strategies for implementation, assessing the impact on the Owner's program and budget, and determining the LEED points to be targeted).

§ 1.1.7.3.2 The Architect shall attend and participate in meetings with the Contractor and the Owner to develop a mutual understanding of the LEED eligibility process and the green building goals established for the Project, LEED points targeted, implementation strategies selected, roles and responsibilities of the Architect, the Contractor and the other Project participants, list of systems and components for which LEED points are targeted, and the certification documentation required.

§ 1.1.7.3.3 The Architect shall monitor the compliance of the Contractor and subcontractors with the LEED eligibility plan and/or Specifications applicable to the Work related to LEED eligibility, including construction waste management, construction indoor air quality, and obtaining materials credits.

§ 1.1.7.3.4 The Architect will not allow substitutions or other changes in the Work unless the Architect determines that the requested substitution or change in the Work will not adversely impact the targeted LEED points or other requirements for LEED eligibility.

§ 1.1.7.3.5 The Architect will review all Shop Drawings, Product Data, Samples and other submittals for compliance with, inter alia, the requirements for LEED eligibility.

§ 1.1.7.3.6 The Architect shall collect from the Contractor and compile the data necessary to demonstrate LEED eligibility and, if desired by the Owner, for LEED certification (which may include As-Built Drawings, Shop Drawings and other submittals, operation and maintenance manuals, information and data regarding furnishings, fixtures and equipment, test results and information from testing agencies, calculations and documentation for each LEED credit targeted and/or claimed, and information regarding items furnished to and disposed from the Project). Such materials shall be collected and, if desired by the Owner, submitted by the Architect to the United States Green Building Council and any other appropriate parties, at intervals appropriate for purposes of evaluation, approval and pursuing certification.

§ 1.1.7.4 In furtherance of the foregoing, the Architect shall engage, as one of the Architect's Consultants, \_\_\_\_\_, to provide LEED and sustainability consulting services for the Project. Without limiting the Architect and its consultants shall design the Project to achieve the Sustainable Objective. As certification is governed by the USGBC and relies upon construction activities out of the design team's control, the Architect and its consultants cannot guarantee achievement of the Sustainable Objective, but shall be responsible for any failure to perform the activities required by this Section in accordance with the Standard of Care. Provided, however, the Owner recognizes that the achievement of such Sustainable Objective is subject to third parties over whom Architect has no control, and may require the cooperation of the Owner, Owner Consultants, the Contractor and others.

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

« »

§ 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:

« N/A »

§ 1.1.10 The Owner will retain the following consultants and contractors: [NTD: If applicable: "See Exhibit B – Owner's Consultants,"]

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

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

§ 1.1.12.1 Consultants retained under Basic Services: See Exhibit C – Architect's Consultants and Fees.

§ 1.1.12.2 Consultants retained under Additional Services:  
See Exhibit C Architects Consultants and Fees.

« »

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

«N/A »

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 Architect shall perform its services consistent with the standards of professional skill and care exercised by architectural firms of similar size and scale under the same or similar circumstances involving the design of first class commercial projects comparable to the Project where the Project is located ("Standard of Care") and subject thereto in accordance with current laws, statutes, codes, rules, regulations, ordinances and standards applicable for the location of the Project ("Legal Requirements"). 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 shall act as an independent contractor and at all times during the performance of its services and no term of this Agreement either expressed or implied, shall create an agency or fiduciary relationship. The services of Architect shall be provided by licensed architects and Consultants as required by the law in the State and as required by the terms of the Agreement. Architect represents and warrants that it is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the services and perform its obligations under this Agreement and under the Contract Documents (as defined in Section 1 of the General Conditions to the Contract for Construction) and the Contractor is familiar with all laws and regulations that may affect cost, progress, and performance of the Work, including, but not limited to, Sections 63G-6a-101, et seq., Utah Code Annotated 1953 (the "Utah Procurement Code"), and shall comply with all such applicable laws and regulations.

§ 2.2.1 The Architect shall hire all consultants ("Consultants") listed in Exhibit C Architects Consultants and Fees to

properly complete the services and perform its obligations under the Agreement, and Architect agrees, that it shall cooperate with and coordinate its services with the work performed by Owner's separate consultants, if any, for the orderly and coherent design of the Project.

**§ 2.2.2** The services to be rendered by the Architect consist of, and all references in this Agreement to the Architect's services shall be deemed to include, services rendered by the entity defined as the Architect and services rendered by employees of such entity and all consultants, specialists, and other persons, firms, or entities retained by the Architect to perform services pursuant to this Agreement. Any term or provision to the contrary notwithstanding, Architect shall be responsible for the timely and proper performance of all such services, subject to the licensing requirements of the state where the Project is located and in accordance with the Standard of Care.

**§ 2.2.3** The Owner reserves the right to retain other architects, consultants, engineers, contractors, and others for similar or dissimilar services. It is understood between the parties that, under conditions when the Owner deems it beneficial to the Project, the Architect may be working in coordination and cooperation with other consultants who will be employed independently by the Owner and totally responsible to the Owner for their work and the performance of their respective agreements with the Owner. The documents and information prepared by such other consultants shall be used by the Architect in connection with the work of the Architect. Upon receipt of such documents and/or information Architect will promptly review such documents and/or information and will notify Owner in writing if Architect discovers such documents and/or information is inadequate for Architect's use or if Architect discovers errors, omissions, or inconsistencies therein through the exercise of the applicable Standard of Care. Otherwise, Architect will be entitled to rely upon the accuracy and completeness of such documents. Nothing in this Agreement shall be deemed to make the Architect responsible for technical errors or omissions of persons who are not: (i) employees or consultants of the Architect; or (ii) under the direction, supervision or control of the Architect.

**§ 2.3** Owner hereby approves of the key positions listed on Architect's Staffing Plan (Exhibit F) as the key positions to be occupied by Architect's key personnel, and Architect's assignments to such positions as shown thereon. Owner reserves the right to participate in the interview process, review resumes of, and approve (not to be unreasonably withheld) or reject, in Owner's reasonable discretion, all other personnel who are being considered by Architect for assignment to key positions in the performance of Services hereunder. Individuals assigned by Architect to such key positions shall not be removed from their positions or reassigned by Architect except in the case of an employee's voluntary or involuntary termination of employment, due to serious illness, death, or a bona fide family emergency. Unless otherwise directed or approved by Owner, individuals for whom Architect has obtained Owner's approval to be assigned to such key positions shall also be retained and assigned to the performance of Services in connection with the construction management phase of the Projects absent removal for permitted causes. Architect represents that the each member of the Staffing Plan (Exhibit F) has been carefully selected and assigned to the Project by Architect and is competent to complete the services required by the Agreement, regardless of whether such individual is (1) originally designated as a Project team member, (2) designated by Architect as replacement member to the Project team, or (3) approved by Owner. Owner, without assuming any liability therefor, shall have the right to approve (not to be unreasonably withheld) the any replacements of the personnel listed in the Staffing Plan or the right to require the replacement of any such key personnel.

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

**§ 2.5** Architect shall not engage in any activity, or accept any engagement, employment, interest, or contribution, that could create an appearance of impropriety of business affairs or the risk of compromise of Architect's professional judgment related to the Project.

**§ 2.6** Architect shall review laws, codes, and regulations applicable to the Architect's Services consistent with the Standard of Care. Architect's designs, plans, specifications, documents, and services shall conform to federal, state, and local statutes and regulations governing the Project and the Work (as defined in the Contract for Construction). The Architect's designs, documents, and services shall conform to federal, state, and local statutes, regulations, and codes governing the Project and the Work and the requirements of entities providing utility services to the Project.

Architect agrees and acknowledges that this duty is non-delegable, and Architect represents, subject to its Standard of Care, by signing, stamping, and approving drawings or preparing drawings or permitting drawings to be submitted for purposes of building permits (i) it has fully acquainted itself with and has actual knowledge of the scope of the Work, (ii) it has ascertained the codes which are applicable to the Project and that Architect's designs, documents, and services conform to such codes, (iii) it has visited the Project site and existing conditions, including, without limitation, the location of adjacent structures and utilities, and access to the Project site and is familiar with the general condition of the Project as of the date of this Agreement.

§ 2.7 Intentionally deleted.

§ 2.8 Intentionally deleted.

§ 2.9 Architect acknowledges and agrees that it is acting under this Agreement solely as an independent contractor, and not as a partner, joint venturer or employee of Owner and shall have no authority to act for, bind or obligate Owner in any manner whatsoever, except to the extent specifically set forth herein or as may hereafter be specifically authorized in a writing signed by Owner. Architect assumes all liabilities imposed upon Architect by law as a result of this status, including, but not limited to, all legal liability arising out of or related to activities of persons hired, employed or used by or on behalf of Architect in the performance of Architect's obligations under this Agreement.

§ 2.10 The Architect shall maintain the following insurance for the duration of this Agreement, except that professional liability coverage shall be maintained a period of ten (10) years following Substantial Completion of the Work pursuant to the Contract for Construction.

§ 2.10.1 Comprehensive General Liability ("CGL") for bodily injury and property damage on an occurrence basis with policy limits of not less than « Two Million Dollars » (\$ « 2,000,000 » ) for each occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate from all occurrences in each policy year, with endorsements for premises- operation, products-completed operation, and contractual liability (including coverage for the indemnity clauses in this Agreement).

§ 2.10.2 Automobile Liability ("AL") covering owned, non-owned and rented vehicles operated by the Architect with policy limits of not less than « One Million Dollars » (\$ « 1,000,000 » ) combined single limit and aggregate for bodily injury and property damage.

§ 2.10.3 Umbrella or excess liability insurance with policy limits of not less than Five Million Dollars (\$5,000,000) for each occurrence and Five Million Dollars (\$5,000,000) in the annual aggregate, following form over and no less broad than the CGL, AL and EL policies.

§ 2.10.4 Workers' Compensation at statutory limits and Employers Liability ("EL") with a policy limit of not less than « One Million Dollars » (\$ « 1,000,000 » ).

§ 2.10.5 Professional Liability on a claims-made basis covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than « FiveTenTen Million Dollars » (\$ « ~~5~~10,000,000 » ) per claim and ~~FiveTenTen~~ Million Dollars (\$~~5~~10,000,000) in the aggregate.

§ 2.10.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.10. The certificates will show the Owner Parties as additional insureds on the CGL, AL, umbrella or excess policies. Architect will provide the Owner with appropriate insurance policy endorsements reflecting that the Owner has been added as an additional insured and that Owner will be provided with thirty (30) days' notice prior to any cancellation of Architect's insurance.

§ 2.10.7 All of the Architect's insurance policies shall be issued by reputable companies licensed or authorized to do business in the state in which the Project is located with an AM Best rating of A/X or better, and shall include provisions requiring 30 days' prior written notice to the Owner Parties of cancellation, non-renewal, or material changes in coverage. The CGL, AL and any excess/umbrella insurance policies shall include the Owner Parties as

additional insureds on a primary and non-contributory basis under endorsements acceptable to the Owner Parties.

**§ 2.10.8** The parties intend that none of Architect's insurers shall subrogate against the Owner and Owner Parties. Accordingly, Architect agrees to cause all of its insurers to waive subrogation rights against Owner and Owner Parties. Further, Architect waives all rights against Owner and Owner Parties and their members, principals, officers, subsidiaries, and employees; for all liabilities, losses, costs, damages or expenses (including attorney's fees) covered by any of Architect's liability insurance policies, or to the extent that such liabilities, losses, costs, damages or expenses (including attorney's fees) would have been covered if such insurance had been purchased as required by this Agreement. Such insurance policies shall provide such waivers of subrogation by endorsement or otherwise and shall contain no provision that would invalidate or restrict the parties' waiver and release of the rights of recovery in this section. The foregoing waivers shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; even though that person or entity did not pay the insurance premium directly or indirectly; and whether or not the person or entity had any insurable interest in any damaged property covered under any such policies.

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

**§ 3.1** The Architect's Basic Services consist of those described in Article 3 and customarily included therewith or reasonably inferable therefrom. Services not included in Basic Services are Additional Services.

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

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. Such written notice shall not be deemed a waiver, limitation, or modification of the Architect's duties or obligations under the Agreement unless Owner gives prior written confirmation to proceed in response thereto.

**§ 3.1.2.1** The Architect shall give prompt written notice to the Owner of any fault, defect, error, omission, or inconsistency in the Project, the Contract Documents, or any information or services provided to the Architect by Owner, which are known by Architect.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

**§ 3.1.4** Upon the Owner's request, the Architect shall participate in developing and revising the Project schedule as it relates to the Architect's services.

**§ 3.1.5** Intentionally Omitted.

**§ 3.1.6** The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval. Determination of acceptance or rejection of substitution shall not be unreasonably withheld, conditioned, or delayed.

**§ 3.1.7** The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project.

**§ 3.1.8** The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall comply with applicable design requirements imposed by those authorities and entities.

**§ 3.1.9** The Instruments of Service shall not favor a particular product; and where specific products are referenced, the Instruments of Service shall identify at least three (3) acceptable brands (to the extent available) and the use of a “brand name or equal” specification shall only be for the purpose of describing the standard of quality, performance and characteristics desired, and shall not be intended to limit or otherwise restrict competition. If the Architect believes a particular “brand name” or model should be specified as the only acceptable brand or model, the Architect shall so advise the Owner and request the Owner’s written consent; and the Architect shall not specify in the Instruments of Service products, equipment or materials that do not have “or equal” alternatives without the Owner’s prior written consent.

**§ 3.1.10** The Architect shall promptly, upon request by the Owner, or notice or discovery by Architect, during any phase of the Project, make necessary modifications, revisions, or corrections of errors, ambiguities, or omissions in the drawings and specifications included in Architect's scope of work as Basic Services and without additional compensation, except as otherwise expressly provided herein for Additional Services.

**§ 3.1.11** Intentionally Omitted.

**§ 3.1.12** Prior to proceeding with the performance of services under this Agreement, the Architect shall secure the Owner's written approval of each Phase of Architect's services, as approval of such services may be limited by the Owner in any such approval to individually identified portions of the Project. Promptly upon receiving such Owner's approval, the Architect shall proceed to perform such subsequent services; provided, however, that any delay incurred in obtaining such written approval from the Owner (in excess of time permitted for the Owner response in this Agreement or the Project program) shall be added to the time allotted the Architect to fulfill this Agreement.

**§ 3.1.13** Before beginning the Construction Documents Phase (as defined in Section 3.4.1 below), the Architect shall compile or otherwise obtain from the local, state, and federal governmental authorities having jurisdiction over the Project a list of documents, applications, forms, approvals, etc., necessary to obtain all required permits for construction, including but not limited to grading permits, mechanical, electrical, plumbing, and other trade or specialty permits.

As set forth in Section 1.1.6, the Architect acknowledges and agrees that it has adequately addressed a phased approach for the design phase services required by this Article 3 in its calculation of its fees for Basic Services, and that such fees are sufficient for such a phased design approach. Accordingly, Architect shall not be entitled to additional compensation for any additional costs incurred by Architect or its Consultants arising from such a phased design approach.

## **§ 3.2 SCHEMATIC DESIGN PHASE SERVICES**

**§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review current laws, codes, and regulations relevant to the Architect’s services to be provided hereunder.

**§ 3.2.1.1** Before performing any Schematic Design Services (as defined in Section 3.2.5 below), the Architect shall review the Owner’s program together with the Owner.

**§ 3.2.1.2** Before performing any Schematic Design services, the Architect shall inform the Owner in writing as to which of the information designated in the Agreement as “Owner-provided” is necessary for the performance of the Architect’s services. Upon the request of the Owner, the Architect shall, as part of the Architect’s services, prepare or assist with the preparation of a list of Consultants that the Architect believes to be reputable, competent, and appropriately licensed to perform such work.

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

reasonably needed for the Project that the Architect may become aware of.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project and shall not proceed with incorporating any such alternative approaches into the Project without the prior written approval of the Owner.

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

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

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

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

**§ 3.2.6** The Architect shall analyze the comparative costs and benefits of (a) alternative materials, (b) structural, mechanical, enclosure, and other significant building systems, (c) site engineering as well as overarching issues of program, budget, and aesthetics, and shall report the results of this analysis in written form to the Owner. The Architect shall review the alternatives with the Owner to determine which, if any, are to be incorporated into the Project.

**§ 3.2.7** The Architect shall, if requested by Owner, suggest alternative designs or changes consistent with the Standard of Care that can be made to the design in order to bring the Cost of the Work within the Owner's budget.

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

### **§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES**

**§ 3.3.1** Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. In the process of preparing Design Development Documents, Architect shall explore selected variations as may be reasonably requested by the Owner for the design of the Project which are consistent with the Schematic Design Documents. The Design Development Documents shall contain complete information to allow Owner to approve them on a well-informed basis.

**§ 3.3.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development



Documents to the Owner and the Cost Consultant. If directed by the Owner, the Architect shall meet with the Cost Consultant to review the Design Development Documents.

**§ 3.3.3** Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

#### **§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

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

**§ 3.4.2** The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. The Construction Documents shall comply with Applicable Laws in effect at the time of preparation and as reasonably interpreted by Architect as a design professional. To the extent that the Construction Documents do not comply with Applicable Laws, as stated above, the Architect shall make all necessary revisions to the Construction Documents without additional cost to the Owner. The Architect will advise the Owner of any required changes which may affect the cost model of the Project.

**§ 3.4.3** The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

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

**§ 3.4.4.1** As soon as reasonably practicable during the development of the Construction Documents, the Architect shall provide to the Owner for the Owner's approval a list of anticipated tests, inspections, or reports that are required by the Construction Documents. This list should designate the anticipated party responsible for the engagement of providers of those services. Nothing in the Agreement shall impose upon the Owner a duty to third parties to assure that the Contractor, Subcontractors, and/or others are adhering to applicable rules, regulations, law and standards nor shall anything in the Agreement be construed to be a grant of authority to the Architect to act in a way with regard to hazardous materials and those rules, regulations, law, and standards, except as otherwise set forth expressly herein. In preparing Construction Documents, the Architect shall provide language that puts the Contractor on notice that it is responsible for adherence to applicable rules, regulations, law, and standards with regard to hazardous materials, the abatement and remediation, and/or prohibitions against, and limitations on, their introduction.

**§ 3.4.5** Upon receipt of the Owner's estimate of the Cost of the Work at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Article 6 and request the Owner's approval of the Construction Documents.

#### **§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

##### **§ 3.5.1 GENERAL**

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



### § 3.5.2 COMPETITIVE BIDDING

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

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

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

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

### § 3.5.3 NEGOTIATED PROPOSALS

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

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

- .1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 participating in a reasonable number of selection interviews with prospective contractors; and
- .3 participating in a reasonable number of negotiations with prospective contractors.

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

### § 3.5.4 DESIGN REVISIONS

§ 3.5.4.1 The Architect shall address minor clarifying revisions reasonably requested in writing by Owner related to detailing and constructability (and unrelated to any value engineering initiatives or scope changes) in or to the Design Development and/or Construction Documents during the period prior to the Construction Administration phase. All revisions to the Construction Documents related to obtaining approvals and permits from the authority having jurisdiction are included as part of Basic Services. However, if the clarifying revisions conflict with previous instructions or approvals given by the Owner or authority having jurisdiction, such changes would be an Additional Service.

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 With regard to Work covered by and/or contemplated under this Agreement, as may be amended, the Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction as modified by the Owner, Architect, and Contractor. If the Owner and Contractor modify AIA Document A201-2017 to impose a more onerous obligation on the Architect, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services and report to the Owner errors, defects, omissions, inconsistencies, deficiencies and/or deviations from Construction Documents that are observed by the Architect or its Consultants in accordance with the terms set forth below. The Architect shall not have authority to act on behalf of the Owner. 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 since these are solely the Contractor's responsibility under the Contract Documents, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work. The Architect shall evaluate alternates and substitutions proposed by the Contractor in an expeditious manner and shall give the Owner written notice of such proposed alternates and substitutions.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and subject to Section 3.6.6.3 and Section 3.6.6.5 terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall perform on-site observations of construction not to exceed four (4) person-days per month at times the Architect considers appropriate based on the progress of the Contractor's operations, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and observe, 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 Construction Documents consistent with the applicable Standard of Care. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Construction Documents, and (2) defects and deficiencies observed in the Work. Within Architect's scope of services hereunder and exercising the Standard of Care, the Architect will exercise the Standard of Care in observing and promptly reporting to the Owner any defects or deficiencies in the Work. However, Architect is not a guarantor of Contractor's performance and shall not be responsible for Contractor's failure to construct the Work in accordance with the Contract Documents. Any defective Drawings and/or Specifications furnished by Architect will be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use or payment for all or part of the Architect's services hereunder, or of the Project itself, shall in no way alter the Architect's obligations or the Owner's rights hereunder.

§ 3.6.2.2 The Architect shall advise the Owner when any portion of the Work does not conform to the Construction Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Architect shall not order corrective work without Owner's prior written approval, except in the event of an emergency threatening harm to persons or material harm to property, provided that Architect shall immediately notify Owner in writing of such emergency.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Construction Documents on written request of the Owner. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in writing or in the form of drawings.

#### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 Based on Architect's on-site observations, the schedule of values if applicable, and evaluations of the Contractor's Application for Payment, the Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the exercise of the Standard of Care and Architect's professional evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's professional knowledge, information and belief, exercising the Standard of Care, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Construction Documents. Except as expressly provided otherwise in the Contract Documents, Architect shall review and certify the amounts due Contractor and issue Certificates for Payment within seven (7) calendar days after submission by Contractor of each of its Applications for Payment.

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

the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain records of all Applications for Payment, Certificates for Payments, and any other writings associated therewith until the expiration of all applicable statute of limitations relating to the Work.

**§ 3.6.4 SUBMITTALS**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval which approval shall be in writing. 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, but in no event in excess of ten (10) days after submission by Contractor after each submission.

**§ 3.6.4.2** In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, as necessary to ascertain their conformance with the Construction Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or 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 Construction Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, except to the extent Architect is aware, at that time, of any material deficiency therein.

**§ 3.6.4.4** The Architect shall review and respond to requests for information about the Construction 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 shall acknowledge the receipt of each Contractor-generated Request for Information ("RFI") within three (3) days after receiving it. The Architect shall simultaneously issue a written answer to the Contractor and the Owner to such requests within any time limits agreed upon in writing, or otherwise with promptness necessary to avoid unnecessary delay or cost, but in no case more than fourteen (14) days after the RFI is received by the Architect, unless more time is required due to multiple disciplines needed to contribute to the response or other RFIs have been identified as a priority to respond to in shorter time periods, thus requiring an extension of time to respond to other less critical pending RFIs. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications, and any other documents, in response to requests for information. All responses to a reasonable and customary number of RFIs given the scope and complexity of the Project are included as Basic Services, and under no circumstances shall they be considered an Additional Service. Should an excessive number of unnecessary or incomplete RFIs be issued, Architect and Owner shall discuss what impact if any this will have on fee and project schedule.

**§ 3.6.4.5** The Architect shall include in the Contract Documents a requirement that the Contractor issue a number (in a single and consecutive series) to each RFI prepared by the Contractor, Subcontractors, the Owner, or others, before submittal of the RFI to the Architect. The Architect shall refer to that RFI by number in all subsequent correspondence, Change Orders, Change Directives, reports, etc., related to that RFI or its resolution.

**§ 3.6.4.6** The Architect shall maintain records of submittals, copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents, and any other writings associated with such submittals until the expiration of all applicable statute of limitations and statute of repose.

### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 If requested by Owner, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. Upon the request of the Owner, Architect will review and recommend approval or disapproval of the Contractor's change order proposals, including requests for adjustments to the Contract Sum or Contract Time and shall report the results of its analysis in writing to the Owner within a reasonable period of time, but in no case later than seven (7) days after the Architect's receipt of the request.

**Commented [MM1]:** Make sure to comply with [UCA 63G-6a-1207](#) when approving Change Orders.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work, until the expiration of all applicable statutes of limitations and statutes of repose relating to the Work.

### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct on-site observations to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion subject to the Owner's approval; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment subject to the Owner's approval based upon a final on-site observation indicating the Work complies with the requirements of the Contract Documents. The Architect shall assist with the preparation of, and sign off on, the punch list items concurrently with the issuance of the certificate of Substantial Completion.

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

§ 3.6.6.3 Upon Owner's request, during the tenth (10<sup>th</sup>) month after the date(s) of Substantial Completion, the Architect shall visit the Project to review the Work and shall prepare a report to be issued to the Owner and, at the Owner's direction, to the Contractor indicating outstanding Work to be corrected and warranty issues to be addressed by the Contractor. With the exception of site review and preparation of this report, to the extent that services are required of the Architect for correction or satisfaction of a warranty and such services are requested in writing by the Owner and are not required, in whole or in part, as a result of the Architect's failure to fully perform its services, such services shall be considered an Additional Service.

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

**Commented [MM2]:** Per [UCA 13-8-5\(4\)](#) retainage must be placed in an interest-bearing account and must be paid as set forth in [UCA 13-8-5\(5\)](#). Cannot exceed 5%.

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

§ 3.7 Basic Services includes services necessary to achieve the Owner's project requirements for sustainability, as set forth in the description of the Project, including preparation of environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, and/or LEED® certification.

### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

If the Architect believes that a modification of its duties, obligations, and responsibilities will increase the cost of its performance, before performing services based upon the changed scope or within ten (10) days, whichever comes first, the Architect shall submit to the Owner a written request for an equitable adjustment of its fees. Such request

shall specify the added scope and the anticipated correlative costs related to the change in scope.

Any request for equitable adjustment shall be specific and accompanied by sufficient documentation to enable the Owner to make an informed decision as to the request. Under no circumstances will the Architect be entitled to an equitable adjustment when the subject modification is attributable in whole or in part to the negligence of the Architect or the Architect’s failure to fully perform its obligations and duties under the Agreement.

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

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1		
§ 4.1.2		
§ 4.1.3		
§ 4.1.4		
§ 4.1.5		
§ 4.1.6		
§ 4.1.7		
§ 4.1.8		
§ 4.1.9 Architectural Interior Design	Architect for Amenity Building Only	
§ 4.1.10		
§ 4.1.11		
§ 4.1.12		
§ 4.1.13		
§ 4.1.14		
§ 4.1.15		
§ 4.1.16		
§ 4.1.17		
§ 4.1.18		
§ 4.1.19 Coordination of Owner’s consultants	Architect	
§ 4.1.20 Telecommunications/data design	Architect	
§ 4.1.21		

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§ 4.1.22		
§ 4.1.23		
§ 4.1.24		
§ 4.1.25		
§ 4.1.26		

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

See Exhibit C Architects Consultants and Fees.

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

§ 4.3.1 Under no circumstances will the Owner be obligated to compensate the Architect or others for fees and expenses related to Additional Services unless the Owner has authorized the performance of such services in writing in advance. Should the Architect believe that the proposed Additional Services are essential for the complete performance of its professional responsibilities, it shall clearly notify the Owner of that fact in writing, stating the objective basis for that belief prior to performing such Additional Services. If the Owner determines that the proposed Additional Services (which the Architect has suggested are essential) are included in the Architect’s services, the Architect shall perform them, submitting written notice to the Owner within five (5) days of Owner’s determination and before performing those services, stating that the Architect disputes the Owner’s determination that those services are services and that the Architect does not waive its right to seek compensation for those services by performing them. If the Architect fails to timely provide such notice, it shall be deemed to have waived the right for compensation for performing the Additional Services.

§ 4.3.2 Additional Services shall include, but are not limited to, the following:

- .1 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;
- .2 NOT USED;
- .3 Subject to the applicable Standard of Care, changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or required by building code, fire, safety and other inspectors of the authority having jurisdiction after the authority has issued a building permit or otherwise approved Instruments of Service as conforming with Legal Requirements;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .5 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect, as a representative of Owner, is party thereto or a breach of Architect's Standard of Care is at issue;
- .6 Evaluation of the qualifications of contractors providing proposals; or
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction;

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional

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User Notes:

Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 « Three » ( « 3 » ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor « Two » ( « 2 » ) site visits to determine whether Work is substantially complete in accordance with the requirements of the Contract Documents;
- .2 No less than one (1) one-day site visit every other week;
- .3 « Two » ( « 2 » ) site visits for any portion of the Work to determine final completion.

§ 4.3.4 If through no fault of the Architect the Construction Phase services covered by this Agreement have not been completed within 3090 days after the date of Substantial Completion of the Work as identified in the project schedule provided in this Agreement, and the Architect demonstrates to the reasonable satisfaction of the Owner that the Architect has incurred additional costs in providing extended Construction Phase Services, the Architect shall be entitled to submit a request for Additional Services compensation.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner will give to the Architect information that the Owner possesses regarding the site relative to zoning, historic preservation, and other restrictions on the Owner's use of the property that are then known to the Owner and materially relevant to the Architect's services. The Architect will confirm the receipt of that information and its current applicability to the Project. 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.

§ 5.2 Owner shall identify a representative authorized to act on Owner's behalf with respect to the Project. Neither Owner's designation, nor the conduct of Owner or Owner's representative acting within the scope of its duties shall be construed to limit, reduce or waive the Standard of Care or any other duties or obligations of Architect under the Agreement. Architect acknowledges and agrees that any special and unique skill, expertise, or licenses of Owner's representative shall not be deemed to create any heightened duty on the part of Owner or its representative, or lesser duty on the part of Architect.

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

§ 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 with reasonable promptness. No approval by Owner under this Agreement shall be construed to (1) relieve Architect of liability or otherwise limit Architect's duties under the Agreement; (2) extend the time for Architect to perform; or (3) create a duty on the part of Owner to Architect, to Architect's insurers, or creditors, or to any other person or entity to supplement, publish, or distribute this information..

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

§ 5.6 As applicable and as reasonably requested by Architect in order to perform the services required hereunder, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation,



ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

§ 5.9 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.

§ 5.10 Intentionally Omitted.

§ 5.11 Upon the Architect's request, the Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 Intentionally omitted.

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

#### ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall reasonably cooperate with the Architect in making such adjustments.

§ 6.4 When the Owner's most recently approved budget is exceeded by (1) any estimate of the Cost of the Work, or the bona fide proposed Cost of the Work, as determined by bidding or negotiation, the Owner may at its discretion and without other cause (a) approve an increased budget, (b) reject the design or Contract Documents and any bids or proposals submitted by potential Contractors, (c) direct the Architect to revise the design and/or the Contract Documents to conform to the approved budget at no additional cost to Owner, unless such nonconformance is due to a change in market conditions or reliance on cost estimating provided by or through the Owner, (d) revise the program or the scope of Work, or (e) terminate the Agreement for convenience.

§ 6.5 Nothing in this Agreement shall be construed to authorize any adjustment of the budget or the Contract Sum or the Project Schedule without the express written authorization of the Owner. Furthermore, nothing referred to in this Article 6 shall be deemed to waive, limit, deviate or modify the Architect's Standard of Care or any other duties or obligations of the Architect under the Agreement.



## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The term “Instruments of Services” shall mean all work product, including all Drawings, Specifications, shop drawing submittals, Building Information Models, plans, data compilations or calculations, studies, reports, project-related documents, models, photographs, and other expression created by the Architect, or other so-called instruments of service, in any form, including native format, and all ideas incorporated therein, and all intellectual property rights associated therewith, which are prepared by or on behalf of Architect or any of its Consultants in connection with the Project and/or this Agreement. The Architect warrants that in transmitting Instruments of Service, or any other information, the Architect is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. Upon each payment to Architect of undisputed sums then due and owing, any and all right, title, and interest in the Instruments of Service developed by the Architect or any of its Consultants as of the time of such payment shall fully and completely transfer and be conveyed and assigned to Owner, including without limitation all copyrights and patents. The Owner’s obligation to pay the Architect is expressly conditioned upon the Architect’s obtaining a valid written comprehensive assignment of ownership rights from its Consultants in terms identical to those that obligate the Architect to the Owner as expressed in this subparagraph, which copyrights the Architect, in turn, hereby assigns to the Owner. The Owner, in return, hereby grants the Architect a nonexclusive license to (i) reproduce the documents for purposes relating directly to the Architect’s performance of this Project, for the Architect’s archival records, and for the Architect’s reproduction of drawings and photographs in the Architect’s marketing materials, provided the contents of those materials, as to this Project, are approved as requested in Paragraph 10.7 of this Agreement, and (ii) reproduce and/or reuse the individual elements and aspects used by Architect in connection with its design of the Project on or with respect to other projects and/or services provided by Architect to third parties (provided that, notwithstanding the foregoing or any other contrary provision of this Agreement, Architect shall not repeat the overall massing and/or design of the Project). Notwithstanding the foregoing, the Architect shall retain ownership rights to any pre-existing intellectual property or standard construction details or conventions embodied in the Instruments of Service. No other Project-related documents may be reproduced for any other purpose without the express written permission of the Owner. No other copyrights are included in this grant of nonexclusive license to the Architect. This nonexclusive license shall terminate automatically and immediately upon the occurrence of either a breach of this Agreement by the Architect or the commission by the Architect of a tort or a crime potentially affecting the Owner or the Project. This nonexclusive license is granted to the Architect alone and shall not be assigned by the Architect to any other person or entity.

Other provisions of this Agreement notwithstanding, this nonexclusive license shall terminate automatically upon an Architect’s assignment of this nonexclusive license to another or its attempt to do so. However, nothing in this paragraph shall be construed to preclude the Architect from, in turn, assigning to its Consultants a nonexclusive license coextensive with the Architect’s applying to the documents originally created by that Consultant. In connection with the foregoing, Architect shall secure in writing from all subconsultants any ownership rights or interests necessary to fulfill the Architect’s obligations under this Agreement.

Owner agrees to indemnify and hold Architect harmless from and against any and all claims, liabilities, suits, demands, losses, and expenses, including reasonable attorneys’ fees and legal costs, arising out of Owner’s unauthorized use, reuse, transfer, or modification of the Instruments of Service without Architect’s professional involvement. Architect agrees to indemnify and hold Owner harmless from and against any and all claims, liabilities, suits, demands, losses, and expenses, including reasonable attorneys’ fees and legal costs, arising out of Architect’s unauthorized use, reuse, transfer, or modification of the Instruments of Service.

§ 7.2 If requested by the Owner from time to time, the Architect shall provide copies of the Instruments of Service prepared in a CADD format, called Drawing Files, or called a Building Model if a Building Information Modeling program is used, to the Owner. With the Owner’s approval, Drawing Files or Building Information Models that may be used for supplemental information only may be provided to the Contractor, subject to the Contractor’s agreement to a reasonable data transfer agreement provided by the Architect. Such Drawing Files or Building Models shall not be relied upon for construction, and shall not be used as a substitute for paper Instruments of Service issued for Construction.

**§ 7.3** Architect shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project documents, including, but not limited to, information, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the prior express written permission of Owner. Architect shall not disclose any of the foregoing to any other person except to its employees, Consultants and contractors who need to know such information in order to perform the services whose contracts include similar restrictions on the use of confidential information. Submissions or distribution of all or any portion of the Construction Documents to meet official regulatory requirements in connection with obtaining approvals and permits for the Project or for other purposes in connection with the development of the Project or as requested by Owner is not to be construed as publication in derogation of Owner's rights.

**§ 7.3.1** Should Architect become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, Architect shall immediately cease the copying and any other activity which is the potential source of infringement, and within seven (7) calendar days investigate the potential infringement; (b) submit to Owner copies of all documents relating to that awareness, the notice, or the object thereof; and (c) issue to Owner a complete written response and analysis of the potential infringement and the course of action recommended by Architect. Architect shall submit to Owner a supplement of the initial report within seven (7) calendar days of Architect's receipt of, or awareness of, additional related information. Nothing in this Agreement shall be deemed to relieve Architect of its obligations under this Article 3, nor shall Owner's receipt of the information indicated in this Article give rise to any duty or obligation on the part of Owner.

**§ 7.4** In the event of a breach or threatened breach of the provisions of this Article 7, Owner shall be entitled to an injunction restraining such breach or threatened breach without having to prove actual damages or threatened irreparable harm. Such injunctive relief as Owner may obtain shall be in addition to all of the rights and remedies available at law and in equity. This Section 7.4 shall survive the termination of this Agreement.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

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

**§ 8.1.2** Intentionally Omitted.

**§ 8.1.3** To the fullest extent permitted by law, Architect shall indemnify, defend (excluding claims covered under Architect's professional liability insurance policy, the defense costs for which shall be reimbursed by Architect), Owner, any lender for the Project, and any party with an interest in the Project and their respective parents, subsidiaries, shareholders, partners, members, trustees and affiliates at every tier, and all of their respective officers, directors, employees, partners, members, trustees and shareholders of all of the foregoing, including but not limited to 112-130 Fifth Avenue Development WA, LLC (collectively, the "Owner Parties") from and against any and all liabilities, costs, expenses, damages, judgments, reasonable attorneys' fees and costs, and disbursements (collectively, the "Claims"), to the extent caused by the negligent performance by Architect of the professional services under this Agreement, any breach of this Agreement by Architect, or Architect's negligent failure to comply with all applicable laws, ordinances and regulations of all governmental authorities relating to the Project work, excluding, however, any Claims to the extent resulting from the negligence of Owner, its employees, agents, consultants, contractors, or construction managers in the performance of their work or services. For purposes of this Section 8.1.3, "attorneys' fees and costs" shall include all professional and attorney's fees and costs incurred by Owner whether relating to third party claims or claims between Owner and Architect. The provisions of this Section 8.1.3 shall survive the termination or expiration of this Agreement.

**§ 8.1.4** Nothing in this Article shall reduce or increase the applicable Standard of Care or the Architect's obligations related to the completeness of the Contract Documents merely because a Contractor is selected by a process of

negotiation as opposed to competitive bidding.

**§ 8.1.5** Notwithstanding anything to the contrary contained in this Agreement or in any of the other Contract Documents, no partner of Owner, nor any person or entity holding any interest in Owner shall be personally liable, whether directly or indirectly, by reason of any default by Owner in the performance of any of the obligations of Owner under this Agreement, including, without limitation, Owner's failure to pay Architect as required hereunder, and in the event of any such default, Architect hereby agrees to look solely to Owner's interest in the Project site to secure the performance and payment of all such obligations.

**§ 8.1.6** Except as otherwise set forth herein, the Architect and Owner waive any consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable to the following categories of consequential damages: (i) loss of use; (ii) loss of profit; (iii) loss of business; (iv) loss of income; and (v) loss of reputation. Provided, however, the Owner does not waive any rights to pursue recovery from the Architect for the following categories of damages: (i) Owner's additional carrying costs on any construction loan arising from a delay in Project completion caused by the negligent acts, errors or omissions of the Architect or its Consultants; and (ii) increased construction costs arising from a delay in Project completion caused by the negligent acts, errors or omissions of the Architect or its Consultants.

**§ 8.1.7** The Owner agrees the Architect's total liability arising out of or related to this Agreement for ~~economic losses or economic~~ damages sustained by the Owner in connection with a breach by the Architect of this Agreement will not exceed the sum calculated by adding Ten Million and No/100 Dollars (\$10,000,000.00) to the Architect's Basic Services Fee set forth in Section 11.1 of the Agreement, ~~plus the limits of insurance set forth in the Consultant's Professional Liability Insurance Schedule attached hereto as Exhibit \*\*\*~~. Provided, however, the foregoing limitation of liability shall not apply to: (1) damages incurred by the Owner as a result of a claim arising under Section 8.1.3 of this Agreement ~~for, including but not limited to a~~ third-party claims concerning the death or bodily injury to any person or the destruction or damage to any property (including such a claim made by an employee of the Architect); (2) ~~any recovery or proceeds available under the insurance required by this Agreement or other available insurance policies (except for the Architect's professional liability insurance policy and any of the policies listed in the Consultant's Professional Liability Insurance Schedule attached hereto as Exhibit \*\*\*, which, for the sake of clarity, shall be subject to the limitation amount set forth above) any claim asserted or covered, or any recovery or proceeds available, under any insurance (other than professional liability insurance policies which are not included in this exception) maintained by the Architect (other than the Architect's professional insurance policy, which is not included in this exception) or any of Architect's consultants, sub-consultants, subcontractors, sub-subcontractors, vendors, or suppliers;~~ (3) any claims involving a negligent act, error or omission of any of Architect's consultants, sub-consultants, subcontractors, sub-subcontractors, vendors, or suppliers ~~which are not covered under the Consultant's Professional Liability Insurance Schedule attached hereto as Exhibit \*\*\*; recoverable from the insurance policies carried by those consultants, sub-consultants, subcontractors, sub-subcontractors, vendors, or suppliers;~~ (4) or any claims or damages caused in whole or in part by the gross negligence, fraudulent acts or intentional misconduct of the Architect, Architect's consultants, sub-consultants, subcontractors, sub-subcontractors, vendors, or suppliers. Further, the foregoing limitation of liability shall be null and void if Architect fails at any time to maintain the insurance required by Section 2.10 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 shall be subject to mediation as a condition precedent to litigation. 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 litigation.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement or other mutually agreed to qualified forum. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in

**Commented [LR3]:** We're seeking a reasonable cap on total exposure based on our fee and scope. With an anticipated fee of approx \$3M this \$13M limit would be over 4x our fee. We can consider a straight \$10m cap on liability (so over 3x fee) but not with the carve out for negligent acts and claims covered by insurance. Any claim brought would have to be based on some negligence on our part and would be covered by insurance, so those carve outs render this an unlimited cap on liability.

**Commented [AR4R3]:** LPC is willing to limit the consultants' liability to the limits of professional liability established by a schedule to be attached to this agreement. Please see the revised language and let us know if it is acceptable to Gensler. If so, please send a schedule listing the professional liability insurance limits for each consultant.

**Commented [RA5]:** Acceptable as revised. The new carveout in (3) completely undercuts the insurance recovery carveout in (2) and thus must be deleted. I have also made a modification to (2).

advance of litigation, 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.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

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

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (*Specify*)

### **§ 8.3. CONSOLIDATION OR JOINDER**

**§ 8.3.1** Architect waives all objections to joinder of Architect as a party to any mediation, arbitration, or lawsuit related to this Project in which Owner is joined or is otherwise positioned as a party and in which Architect's conduct or its performance of professional services is in any way relevant to the subject of a dispute. Further, Architect hereby waives all objections to joinder of any other party to any mediation, arbitration or lawsuit between Owner and Architect relating to Project.

**§ 8.3.2** The parties agree that the forum for any mediation, arbitration, lawsuit or any other legal proceeding shall be in the State where the Project is located.

**§ 8.3.3** The parties agree that they will voluntarily produce, without the service of any subpoena, their employees, officers, directors and related entities for depositions in any pending mediation, arbitration, lawsuit or other legal proceeding between the parties. This voluntary production shall apply to such persons who reside out of the State and beyond 70 miles from where a lawsuit or other type of legal proceeding is pending. The parties also agree that they will cooperate with each other to produce their former employees, officers, directors and related entities for depositions in any pending mediation, arbitration, lawsuit or other legal proceeding between the parties.

### **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, excepting payments disputed in good faith by Owner, as a condition precedent to Architect's right to suspend services hereunder, the Architect shall give 15 days' written notice to the Owner of the Architect's intent to suspend services hereunder, during which time the Owner has the right to cure any such amount due. The notice shall specify detailed grounds for the intended termination or suspension. In the event the Owner does not cure such non-payment within the time permitted and Architect properly suspends services by written notice to the Owner, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all reasonable sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services.

**§ 9.2** In the event that Architect fails to perform its obligations under this Agreement and does not cure the same within fifteen (15) days of such failure to perform, Owner may terminate this Agreement upon not less than five (5) days' written notice.

**§ 9.3** If Owner suspends the Project for more than 180 cumulative days for reasons other than Architect's failure to

perform its services in accordance with the terms of the Agreement, Architect may terminate this Agreement by giving not less than twenty-one days' written notice. If Architect does not terminate the Agreement due to project suspension over 180 days, upon resumption of services Architect shall be entitled to a mutually agreeable adjustment in fee to reflect increased hourly rates, inflation, and other restart costs.

**§ 9.4** The Owner may terminate this Agreement upon not less than five days' written notice to the Architect for the Owner's convenience and without cause. In the event of such termination Architect shall deliver all Instruments of Service to the Owner within seven (7) after the termination becomes effective.

**§ 9.5** In the event of termination not the fault of the Architect, the Architect shall be compensated for undisputed services fully and satisfactorily performed prior to termination, together with Reimbursable Expenses then due.

**§ 9.6** Intentionally Deleted.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

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

**§ 10.2** Time is of the essence of this Agreement.

**§ 10.3** Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Architect may not assign its interests or obligations under this Agreement without the written consent of Owner, which consent may be withheld by Owner in its sole and absolute discretion. Owner reserves the right upon notice to Architect to assign this Agreement to an institutional lender providing financing for the Project or to other persons ready and capable of performing Owner's obligations under the Agreement.

**§ 10.4** The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities or liability 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 Owner, however, shall be deemed to be a third-party beneficiary of any agreement between the Architect and any Consultant which the Architect may engage for the Project, and the Owner may, subject to applicable provisions of law, exercise its rights against any such Consultant to recover directly any damages resulting from the consultant's errors, omissions, negligent acts or breaches of contract. All contracts with consultants must expressly provide that the Owner is a third party beneficiary and that the Owner may enforce such contracts as a third party beneficiary, to the extent allowed by law.

**§ 10.6** The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site unless the toxic materials or substances were brought to the Project by Architect or any party for whom Architect is liable pursuant to the terms of the Contract Documents.

**§ 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 as approved by Owner. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

**§ 10.8** If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) avoid violating the law, creating risk of significant harm to the public or preventing the Architect from establishing a claim or defense in an adjudicatory proceeding.

§ 10.9 The captions preceding the Articles of this Agreement have been inserted solely as a matter of convenience, and such captions in no way define or limit the scope of any provisions of this Agreement.

§ 10.10 If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

§ 10.11 All Consultants engaged by the Architect for the Project shall be engaged, and at all times operate under, a consulting agreement in form and content approved in writing by the Owner which must specifically provide the Owner with rights to enforce such agreement as a third party beneficiary.

§ 10.12 Unless ordered by a court of competent jurisdiction or otherwise agreed in writing between Architect and Owner, during all disputes, or actions, claims or other matters arising out of or relating to this Agreement or the breach thereof, provided Owner continues to pay undisputed amounts, Architect shall perform the services to be provided by Architect hereunder and shall comply with the schedule as it relates to such services.

§ 10.13 The Architect shall obtain from all of its Consultants providing goods or services for the Project, full and complete executed lien waivers for the Project, in form and content provided by the Owner, waiving all lien rights for work performed or goods provided at any time prior to and including the date of the previous fee payment date provided that Owner has paid all corresponding fees for such goods or services. The Owner may withhold payment hereunder attributable to any consultants who have failed to provide appropriate lien waivers.

**Commented [MM6]:** Statutory forms of lien waivers can be found at [UCA 38-1a-802](#)

§ 10.14 The Architect shall administer its consultant agreements and shall deliver any and all notices of default delivered thereunder to the Owner. From time to time as requested by the Owner, the Architect shall provide the Owner with an accounting of all fees, costs, and expenses incurred or owing with respect to any consultant agreement.

§ 10.15 Owner and Architect acknowledge that Owner's approval of any of Construction Documents shall be as to the aesthetics only and shall not constitute Owner's approval of the competency of any such documents (all such responsibility therefor shall remain solely with Architect).

§ 10.16 Owner shall have the right to disapprove any portion of the Architect's Services on the Project, including, without limitation, any drawings and specifications, and any addenda, revisions or schedules thereto, for any reasonable cause, including, without limitation, aesthetics, the costs of the Work are likely to exceed Owner's Project budget, or the design, once constructed, does not function properly. Owner's right to disapprove shall not be deemed a waiver or limitation of Architect's duties and obligations under the Agreement.

§ 10.17 Notwithstanding anything to the contrary in this Agreement, Architect shall keep and maintain full and detailed records of any and all materials, correspondence, memoranda, recordings, drawings, and specifications, including, without limitation Design Documents and other drawings and specifications, Owner consents and authorizations, notices, Change Orders, Construction Change Directives, and any other documents prepared by Architect or furnished by Owner or the Contractor to Architect in connection with the Architect's Services provided under this Agreement (collectively, the "Project Records"). Architect shall keep such Project Records until the expiration of all applicable statutes of limitation relating to the Work and shall make them available to Owner at any time, upon the written request of Owner.

§ 10.18 Terms not otherwise defined shall the meanings given in the General Conditions of the Contract for Construction between Owner and Contractor.

§ 10.19 Intentionally Omitted.

§ 10.20 The services provided by Architect are, for the purposes of this Agreement, deemed to be personal services.

§ 10.21 All notices or other communications required or permitted hereunder shall be in writing, and shall be conclusively deemed to have been duly given: (i) when hand delivered to the other party; (ii) if sent by email, when received at the address, number, or email address set forth in this Agreement, provided, however, that notices given by facsimile or email shall not be effective unless either (a) a duplicate copy of such facsimile or email notice is promptly given by depositing the same in a United States post office with first-class postage prepaid and addressed to the parties as set forth in this Agreement, or (b) the receiving party delivers written confirmation of receipt for such notice either by facsimile, email, or any other method permitted under this Section 8.17; (iii) three (3) business days after the same have been deposited in a United States post office with first-class or certified mail return receipt requested, postage prepaid and addressed to the parties set forth in this Section; or (iv) the next business day after the same have been deposited with a national overnight delivery guaranteed, provided that the sending party receives confirmation of delivery from the delivery service provider. Owner and Architect understand that neither notice nor approval of any item requiring Owner's written approval under this Agreement, shall be deemed or considered given by any discussions, correspondence, communications, or emails not in compliance with the above (even if accounted for in meeting minutes from any Project meeting).

§ 10.22 This Agreement and the documents incorporated herein have been carefully reviewed and negotiated by both parties at arm's length and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. The parties waive the effect of any statutory or common law provision which construes ambiguities in a contract against the party that drafted the contract. The section headings are for convenience and reference only, and in no way define or limit the scope and content of this Agreement or in any way affect its provisions. All exhibits to this Agreement are incorporated herein by this reference.

§ 10.23 No waiver, amendment, extension or variation in the terms of the Contract Documents shall be valid against a party unless in writing and signed by such party and then only to the extent specifically set forth in the writing. No failure or delay on the part of a party in exercising any right, power or privilege under the Contract Documents, nor any course of dealing between the parties, will waive, amend or vary the terms of the Contract Documents.

§ 10.24 Notwithstanding anything to the contrary herein, no officer, employee or other representative of Owner shall have any personal liability to Architect or any other party for any acts or omission, whether based on a claim of negligence, any other tort or otherwise, arising out of or relating to 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:

See Exhibit C Architects Consultants and Fees.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
See Exhibit C Architects Consultants and Fees.

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

See Exhibit C Architects Consultants and Fees.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus «Ten» percent («10» %), or as otherwise stated below: N/A

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the



compensation for each phase of services shall be as follows:

See Exhibit C Architects Consultants and Fees.

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

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

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

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

« See Exhibit D »

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, which shall not in total exceed 7% of the compensation for Basic Services, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Intentionally Omitted;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner; and
- .8 Site office expenses.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus « Ten » percent ( « 10 » %) of the expenses incurred.

§ 11.9 Intentionally omitted.

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of « Zero Dollars » (\$ « 0.00 ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ninety (90) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

9% « per annum »

§ 11.10.3 Detailed records of Reimbursable Expenses and services performed on the basis of hourly rates shall be maintained by Architect and available to Owner or Owner's authorized representative at mutually convenient times. Owner shall be permitted, at its sole expense, to make copies in connection with any inspection performed by



Owner or its representative. All records shall be maintained in accordance with generally accepted accounting principles, consistently applied. If any inspection by Owner of Architect's records, books, correspondence, instructions, receipts, vouchers, memoranda, and any other data relating to the Reimbursable Expenses or services performed on the basis of hourly rates reveals an overcharge, Architect shall pay Owner upon demand an amount equal to one hundred twenty percent (120%) of such overcharge, plus the administrative and out of pocket expenses incurred by Owner in connection therewith.

§ 11.10.4 Architect hereby waives all rights to payment by Owner for otherwise Reimbursable Expenses when (a) the expense was incurred more than ninety (90) days before the date on which Owner receives the invoice from Architect initially requesting reimbursement for that expense; (b) the first invoice for that expense is not accompanied by detailed documentation indicating the project-related nature of the expense and approved in writing by Owner; or when (c) that evidence is produced in a form that is inconsistent with the form of the invoice.

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1.1 Attorneys' Fees. The prevailing party in any action to enforce or interpret this Agreement shall be entitled to an award of its costs and reasonable attorneys' fees from the other party. As used herein, whether a party will be considered to be the "prevailing" party shall be determined based on the totality and disposition of all claims and counterclaims filed in the legal action. In the event of multiple claims and/or counterclaims, it is the parties' intent that in the event that one party would prevail as to less than all of the claims or counterclaims, so that each party could be said to be the "prevailing" party as to a portion of the claims and/or counterclaims, the total costs and fees, including reasonable attorneys' fees, incurred by both parties in connection with all of their respective claims and the total dollar amount awarded to or avoided by each of the parties would be considered, and the amount of the costs and fees, including reasonable attorneys' fees, to be awarded to each party would be equitably determined on a pro rata basis based on such consideration.

§ 12.1.3 Owner shall use commercially reasonable efforts to cause the Construction Contracts to include provisions describing Architect's role as stated in this Agreement with respect to construction. Owner shall use commercially reasonable efforts to cause Contractor(s) to name Architect as an additional insured on the commercial general liability insurance required of Contractor(s) on the Project.

§ 12.1.4 It is understood that Architect's services are not being performed for the benefit of contractor or subcontractor, supplier, fabricator, manufacturer, consultant or other third party not affiliated with the Owner, its successors or assigns shall be deemed to be a third party beneficiary of the performance of the services provided by Architect on the Project.

§ 12.1.6 Architect may require third parties to sign customary electronic disclaimers in connection with the electronic generation, storage, transmittal or publishing of any documents and other information and materials prepared by the Architect and its consultants.

§ 12.1.7 NOT USED.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and the documents incorporated herein constitute a stand-alone agreement and shall not be deemed to be construed in accordance with the provisions, terms, and requirements of any other document not expressly incorporated herein, including without limitation, standard form contracts promulgated by any related industry trade organization. This Agreement may be amended only by written instrument signed by both Owner and Architect.

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

AIA Document B103™–2017, Standard Form Agreement Between Owner and Architect, as modified by the parties

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User Notes:

(1764707664)

AIA Document E204™-2017 , Sustainable Projects Exhibit

.1 Other documents:

*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

- Exhibit A – Project Schedule.
- Exhibit B – Owner’s Consultants.
- Exhibit C – Architect’s Consultants and Fees.
- Exhibit D – Architect’s Hourly Billing Rates
- Exhibit E – Owner’s Project Requirements/Basis of Design
- Exhibit F – Architect’s Staffing Plan
- Exhibit G – Design and Permit Phasing Plan

**ARTICLE 14 SPECIAL PROVISIONS**

§ 14.1 If this Agreement is a “multiyear contract” as defined in Section 63G-6a-103(49), Utah Code Annotated 1953, then it is subject to the provisions of Section 63G-6a-104, Utah Code Annotated 1953.

§ 14.2 Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Owner, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Owner and, in particular, governmental immunity afforded to or available to the Owner pursuant to Sections 63G-7-101, et seq., Utah Code Annotated 1953 (the “Governmental Immunity Act of Utah”).

§ 14.3 The Parties understand that all material provided or produced under this Agreement may be subject to Sections 63G-2-101, et seq., Utah Code Annotated 1953 (the “Utah Government Records Access and Management Act”).

§ 14.4 During the performance of this Agreement, the Owner may disclose Personal Identifying Information to the Architect. “Personal Identifying Information” means a Social Security number; a financial account number, or credit or debit card number; a required security code, access code, or password;; an official state or government-issued driver’s license or identification card number, as defined as “Personal information” in Utah Code § 13-44-102(4); or an address, birth date, Social Security number, tax identification number, passport number, driver license number, non-driver government-issued identification number (including a military identification number), telephone number, bank account number, student identification number, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image file, photograph, computer screen name, personal identification code, or account balance, overdraft history, or payment history, as defined as “Identifying information” or “Personally identifiable information” in Utah Code § 13-40-102(7), (14). In compliance with Utah Code §§ 78B-4-701, et seq., the Cybersecurity Affirmative Defense Act, the Architect agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Architect; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

§ 14.5 Audits

Commented [MM7]: See [UCA 63G-6a-1206](#).

§ 14.5.1 The Architect shall keep full and detailed books and records that relate to this Agreement and exercise such controls as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to Owner.

§ 14.5.2 The Architect shall preserve these books and records for a period of six (6) years after final payment under this Agreement, or until all audits initiated under § 19.5.4 within the six (6) year period have been completed, whichever is later.

§ 14.5.3 The Architect shall require subcontractors to maintain all books and records relating to a subcontract for a period of six (6) years after final payment under a subcontract, or until all audit initiated under § 14.5.4 within the six (6) year period have been completed, whichever is later.

§ 14.5.4 Owner or an audit entity under contract with Owner may audit the books and records of the Architect and the Architect shall provide in the Architect's subcontractors that Owner or an audit entity under contract with Owner may audit the books and records of the subcontractor. An audit under this section: (1) is limited to the books and records that relate to this Agreement and/or subcontracts entered into pursuant to this Agreement; and (2) may only occur at a reasonable place and time.

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

**OWNER**

POINT PHASE 1 PUBLIC INFRASTRUCTURE  
DISTRICT NO. 1, a quasi-municipal corporation  
and political subdivision of the State of Utah

**ARCHITECT**

\_\_\_\_\_  
(Signature)

« »

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name and title)

