



# AIA<sup>®</sup> Document B133<sup>®</sup> – 2019

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

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

City of Lewisville  
151 W. Church Street  
Lewisville, TX 75057

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

GFF Inc. dba Good, Fulton, & Farrell, Inc.  
114 West 7th Street, Suite 200  
Austin, Texas 78701

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

Lewisville Nature Center  
1400 N. Kealy Ave adjacent to LLELA  
Lewisville, TX

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

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

The City plans to design and construct a new Nature Center on a roughly 2 acres property immediately adjacent to LLELA, along the east side of North Kealy Avenue and south of East Jones Street. The project will require ongoing coordination with the U.S. Army Corps of Engineers (USACE) to support permitting approvals and to ensure that all aspects of the project scope are compatible with USACE requirements and do not adversely impact the operations, management, or mission of LLELA.

Approximate total size is 14,000 square feet of conditioned space and 6,000 square feet unconditioned

- Expandable multi-purpose spaces / classrooms
- Arrival and entry space
- Interpretation and retail space
- Administration and storage space
- Design that responds to its natural context

Basic Services will include:

#### **Architectural Design and Construction Services:**

- Provide Architectural, Civil, Structural, and MEP design services from Schematic Design through the conclusion of Construction Documents, for the project described above, per the terms of the AIA B 133, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor, 2019 edition.
- Provide assistance during Bidding and Negotiation with evaluating the project costs, per the terms of the AIA B133, 2019 edition.
- Provide standard Contract Administration services for reviewing shop drawings, attending jobsite meetings, clarifying the intent of the construction documents, etc., per the terms of the AIA B 133, 2019 edition for up to 18 months. Basic Services shall include up to 36 site visits consisting of 2 site visits per

month and 2 punch list visits. Services beyond these amounts shall be Additional Services.

- Construction administration phase will start with the first submittal or shop drawing review, regardless of whether a permit has been obtained.
- Record Drawings based on revision issued by the Architect throughout the duration of the project.

**Landscape Architecture:**

Design landscape zones reflective of regional ecosystems, including:

- Cross Timbers woodlands (post oak, blackjack oak)
- Blackland Prairie (native grasses, forbs, pollinator species)
- Trinity River bottomlands (cottonwood, sycamore, willow)
- Integrate habitat-supportive amenities such as pollinator gardens, wetland demonstration areas, and accessible trail connections.
- Utilize native and drought-tolerant plant species exclusively; avoid cultivars and invasive species.
- Develop a long-term maintenance and stewardship strategy aligned with restoration goals.
- Provide up to (2) visits to tree farm for tree tagging

**Program Validation Services:**

- Conduct a focused two-week validation of the existing program informed by the 2024 design charrette, confirming key elements such as multipurpose classrooms, flexible learning spaces, outdoor learning/amphitheater areas, volunteer and citizen science spaces, and nature-based play features.

**Conceptual Design Services:**

- The design team will conduct a focused two-week conceptual design exercise to establish the overall vision, site organization, and architectural direction. This effort will translate project goals, community priorities, operational needs, and site constraints into a clear, cohesive framework, supported by a Conceptual Cost Estimate.

**Furniture Selection Services:**

- The Architect will recommend the interior systems furniture, case goods and chairs. We will start by developing furniture standards and work with a furniture manufacturer/dealer with pre-negotiated government rates (i.e. US Communities) as selected by the Owner to make recommendations for furniture. We will also make recommendations for finishes. The furniture dealer will provide all furniture and installation cost estimates and the final furniture documents and specifications. Furniture services may also include coordination of system furniture workstation mock-up(s) and chair selection evaluation of sample. GFF will provide Furniture installation oversight and punch list.

**Civil - Enhanced Offsite Drainage Study & Assessment:**

- Architect's Civil Engineer will complete a drainage study and downstream assessment for the proposed development. The purpose of this drainage study will be to calculate the downstream capacity to accept the increase in runoff from the proposed development.

**§ 1.1.2 The Project's physical characteristics:**

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

Design and construction of a new Nature Center on a roughly 2 acres property immediately adjacent to LLELA, along the east side of North Kealy Avenue and south of East Jones Street.

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

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

The Owner's Overall Budget for the Cost of Work is Ten Million Dollars (\$10,000,000)

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

- .1 Design phase milestone dates, if any:

14 months after the design notice to proceed is issued; approximately August 2027

- .2 Construction commencement date:

16 months after the design notice to proceed is issued; approximately October 2027

- .3 Substantial Completion date or dates:

Timeline and dates to be negotiated once a CMAR is identified

.4 Other milestone dates:

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

*(Indicate agreement type.)*

- AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

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

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

N/A

§ 1.1.7 *Intentionally excluded.*

§ 1.1.7.1 *Intentionally excluded.*

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

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

Marcus Gallegos  
151 W. Church Street  
Lewisville, TX 75057  
[mgallegos@cityoflewisville.com](mailto:mgallegos@cityoflewisville.com)  
469.635.5298

Ramel Company, LLC  
c/o Ramon Guajardo  
3320 Tex Blvd.  
Fort Worth, TX 76116  
817.800.5791

The above identified representatives are designated in that capacity for purposes identified in this Agreement and the Contract Documents. The Owner, as a municipality, acts by and through its city council and retains all authority for itself and does not grant, assign, or delegate its authority or contractual rights to the above identified representatives.

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

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

§ 1.1.10 The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

.1 Construction Manager:

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

.2 Land Surveyor:

.3 Geotechnical Engineer:

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

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:  
*(List name, address, and other contact information.)*

Jason Cave, AIA  
3030 Nowitzki Way, Suite 400  
Dallas, TX 75219  
[Jason.cave@gff.com](mailto:Jason.cave@gff.com)  
214-303-1500

The Architect's representative shall be available to the Owner at all reasonable times for consultation with the Owner. The Architect may not change its representative without written approval of the Owner, which shall not be unreasonably withheld.

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

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

.4 Civil Engineer:

.5 Landscape Architect:

.6 [Name any other consultants included in Architect's Proposal]:

§ 1.1.12.2 Consultants retained under Supplemental Services:

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

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation only if there are material changes to the scope of the Project or services. The Owner may, in its sole discretion, adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall endeavor to agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances and professional licensure. The Architect shall perform its services as expeditiously as is prudent considering the ordinary professional skill and care of a competent architect.

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

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

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

§ 2.6 **Insurance.** The Architect shall maintain the following insurance until termination of this Agreement. Professional liability shall be maintained for not less than four (4) years following Substantial Completion of the Project as defined in the AIA Document A201-2017, as modified, Contract between Owner and the Contractor. Insurance of the following types and with indemnification limits not less than the amounts indicated is required:

Professional Liability:	\$5,000,000 per claim and \$10,000,000 in the aggregate
Worker's Compensation:	\$1,000,000.00
Comprehensive General Liability:	
Occurrence	\$2,000,000.00
Aggregate	\$4,000,000.00
Personal Injury	\$1,000,000.00 each person
(Coverage to include groups A, B, & C w/exclusion "C" aggregate removed)	
Automobile Liability:	\$1,000,000.00 combined single limit
Excess or Umbrella Policy for	
General Liability	\$5,000,000.00 each
Architect's Consultants	\$1,000,000.00

1. The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner’s Representative may contact the State Board of Insurance to confirm that the issuing company(ies) are admitted and authorized to issue such policies in the State of Texas.
2. The policy so issued in the name of the Architect shall also name the Owner as additional insured, except for professional liability insurance and worker’s compensation insurance.
3. **Architect shall ensure Architect’s consultants maintain the minimum level of insurance as required by Architect under this Agreement.** Architect’s naming of a consultant as an additional insured on any policy held by the Architect shall not relieve the Architect or its consultants of this obligation to provide separate coverage. All policies held by the Architect shall be primary coverage.
4. Architect shall furnish to Owner insurance endorsements and exclusions as well as Certificates of Insurance in forms satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, the Owner is named as additional insured. Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If the Architect neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Architect’s expense.
5. Insurance provided pursuant to this Section shall be considered a part of the Architect’s Basic Services and shall not be a Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.

6. Architect's General Liability, Automobile Liability, and Worker's Compensation Insurance policies shall be endorsed to provide a waiver of subrogation in favor of the Owner.

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

**§ 2.6.2** The Architect shall provide certificates of insurance and other evidence of insurance as the Owner may require to demonstrate compliance with the requirements in this Section 2.6.

**§ 2.7** Architect shall coordinate with its Consultants such that the Services are appropriately coordinated among the various disciplines. Architect assumes responsibility for the coordination of the Consultants' documents as part of Architect's Basic Services. Architect further agrees to provide its design documents, background information, and design intent for the Project to all Consultants involved in the Project in order to achieve an integrated, consistent overall design for the Project. Consultants are required to perform their services in accordance with the Standard of Care. Nothing in this Agreement or in any Agreement with any Consultant shall relieve Architect or any Consultant of liability for the consequences of any failure to perform services in accordance with such professional standards.

**§ 2.8** Architect shall be responsible for the completeness and accuracy of drawings and specifications prepared by or for Architect and for their compliance with all regulatory requirements, laws, standards, and statutes, including, but not limited to, the provisions of the Americans with Disabilities Act, and other applicable State and local accessibility requirements and building codes. Architect shall coordinate the work of all Consultants and shall direct all Consultants to make such revisions and modifications to such plans and drawings as may be necessary to comply with the permitting and other regulatory and legal requirements of the jurisdiction of the Project.

**§ 2.9** The Architect shall be responsible for the Architect's negligent acts or omissions, and for the negligent acts and omissions of the Architect's Consultants, their agents and employees, in the performance of their professional duties. Nothing in this Agreement shall relieve the Architect of liability for the consequences of its failure to perform services in accordance with this Agreement or the requisite Standard of Care.

**§ 2.10** Notwithstanding any provision of this Article to the contrary, services made necessary as a result of the Architect's failure to timely provide accurate or complete information, approvals, or clarifications, or to timely render decisions, shall be considered Basic Services.

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

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

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

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants; provided, however, that the Architect may not rely upon such information or any other information provided by or on behalf of the Owner when Architect knows or reasonably should know that the information is inaccurate, inadequate, incomplete, or otherwise unfit for its intended purpose, or would infringe upon the intellectual property rights of third parties. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of

construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Owner and Construction Manager and shall participate in developing and revising the Project schedule such that all Project milestones and completion targets are achievable. As it relates to the Architect's services, the Architect shall coordinate and provide input for the Project schedule.

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

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

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Architect shall at all times be an independent contractor and have sole responsibility for and control over all means, methods, techniques, sequences, and procedures for coordinating and scheduling its services to achieve the requirements of this Agreement. Nothing in this Agreement shall be deemed to imply or represent that the Architect, its supervisors, employees, or Architect's Consultants of any tier are the agents or employees of Owner. Neither party shall have the authority to bind or obligate the other in any manner as a result of the relationship created herein. As an independent contractor, the Architect: (a) assumes full responsibility for (i) the safety of all of the Architect's agents, directors, officers, employees, Architect Consultants and subconsultants (and the agents, officers, directors and employees of each of them), and (ii) the protection of all property owned, leased, or utilized by the Architect; (b) shall maintain complete supervision and control over the Architect's agents, employees, Architect Consultants and subconsultants; and (c) agrees to perform all of the Architect's obligations under this Agreement in accordance with the Architect's own methods subject to compliance with this Agreement.

§ 3.1.9 The Architect shall be responsible for the Architect's negligent acts or omissions, and for the negligent acts and omissions of the Architect's Consultants, their agents and employees, in the performance of their professional duties. Nothing in this Agreement shall relieve the Architect of liability for the consequences of its failure to perform services in accordance with this Agreement or the requisite standard of care.

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

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

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate.

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

### **§ 3.3 Schematic Design Phase Services**

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

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

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

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

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

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

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

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

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

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

#### § 3.4 Design Development Phase Services

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

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

Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

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

### § 3.5 Construction Documents Phase Services

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

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

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) documents that assist the Construction Manager with its procurement obligations for major elements of the Work and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

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

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

### § 3.6 Construction Phase Services

#### § 3.6.1 General

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

§ 3.6.1.2 The Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Guaranteed Maximum Price Amendment, as provided in the A133-2019 between the Owner and the Construction Manager, and terminates on the date the Architect provides certification of final payment indication completion as provided in the A201-2017, as modified.

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

### **§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. Failure to notify the Owner of observed defects and deficiencies constitutes a breach of this Agreement and shall be a deviation from the Architect's agreed standard of professional care.

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

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

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be subject to the Owner's approval.

**§ 3.6.2.5** Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, as modified, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Construction Manager**

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

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

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

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably

delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

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

**§ 3.6.4.3** If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

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

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

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

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

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

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Owner may request Additional Services in addition to those listed below, which, if requested, shall be provided pursuant to the terms contained in this Section 4.1 and for the sums indicated in the written authorization by Owner. Under no circumstances will Owner be obligated to compensate the Architect or others for fees and expenses related to Supplemental or Additional Services unless the Owner has authorized the performance of such services in advance and in writing. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	Not Provided
§ 4.1.1.2 Programming	Not Provided
§ 4.1.1.3 Multiple Preliminary Designs	Not Provided
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Not Provided
§ 4.1.1.7 Building Information Model management responsibilities	Not Provided
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Not Provided
§ 4.1.1.10 Landscape design	Included in Basic Services
§ 4.1.1.11 Architectural interior design	Included in Basic Services
§ 4.1.1.12 Value analysis	Not Provided
§ 4.1.1.13 Cost estimating	Not Provided
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Included in Basic Services
§ 4.1.1.17 As-constructed record drawings	Not Provided
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided

§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22 Telecommunications/data design	Architect
§ 4.1.1.23 Security evaluation and planning	Architect
§ 4.1.1.24 Commissioning	Not Provided
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	
Furniture Selection Services	Architect
Interpretive Planning and Exhibit Design <ul style="list-style-type: none"> <li>• Exhibit Master Plan</li> <li>• Schematic Design Phase</li> <li>• Design Development Phase</li> <li>• Production Phase</li> </ul>	Architect
Civil – Species Impact Assessment	Architect
Civil – Cultural Resources Shovel Testing	Architect
Civil – USACE Permitting Process	Architect
Other Supplemental Services: <ul style="list-style-type: none"> <li>• Consultants other than those listed above.</li> <li>• Multiple Bid Packages</li> <li>• Assistance with Grant Funding Opportunities</li> <li>• Energy Modeling</li> <li>• Life-Cycle Cost Analysis</li> <li>• LEED or other third-party sustainability certification</li> <li>• Virtual reality or animation modeling</li> <li>• Submitting documents for permit to the authorities having jurisdiction on behalf of the Owner or the Contractor.</li> <li>• Revisions requested after the Design Development Phase, including those related to value engineering, can be provided hourly as an additional service.</li> </ul>	Not Provided

**§ 4.1.2 Description of Supplemental Services**

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

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

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

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

**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

## § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall be compensated as provided in section 11.3. Additional and Supplemental Services performed in excess of or absent authority provided through section 4.1 shall not entitle the Architect to additional compensation pursuant to Section 11.3 and/or an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization. The Owner's written authorization is subject to the limitation on authority in section 1.1.8 and applicable city council policies delegating limited financial approval authority. Authorization to proceed with Additional Services expected to exceed the delegable amount per city council policy require a formal amendment to this Agreement:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations from the Construction Manager and approved by the Owner, approvals given by the Owner, or a material change in the Project, including size, quality, complexity, the Owner's schedule, or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to the Architect's design decisions regarding scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are not reasonably foreseeable and are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .8 Assistance to the Initial Decision Maker, if other than the Architect;
- .9 Services necessitated by the replacement of the Construction Manager or conversion of the Construction Manager as the constructor project delivery method to an alternative project delivery method; and
- .10 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .11 Making revisions to the Drawings, Specifications, and other documents resulting from agreed modifications to the Control Estimate or approved change orders

§ 4.2.2 Intentionally omitted.

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

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Eighteen ( 18 ) visits to the site by the Architect during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion

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

§ 4.2.5 If the services covered by this Agreement have not been completed within Twelve ( 12 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within fifteen (15) days after receipt of written request, information relevant for the Architect to evaluate same.

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

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

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

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

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

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

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect.

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

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

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

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

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

§ 5.14 The Owner shall provide the Architect the AIA A133-2019, as amended, and the AIA A201-2017, as amended, prior to ninety percent construction document completion to evaluate and fully understand its duties and obligation in the construction phase. If the Architect believes the scope of obligation exceeds the Basic Services provide herein, the Architect may request payment for Additional Services. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

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

## **ARTICLE 6 COST OF THE WORK**

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

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

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work that the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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

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

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

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

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

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

#### **ARTICLE 7 COPYRIGHTS AND LICENSES**

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 As part of the total compensation which Owner has agreed to pay Architect for the professional services to be rendered under this Contract, Architect agrees that hard copies of all finished and unfinished "Instruments of Service" including but not limited to documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, bid packet/construction contract documents/advertisement for bids incorporating any Owner standard provisions provided by Architect, all of which are produced by Architect and paid for by Owner are, and will remain, the property of the Owner. Architect will furnish the Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however, ownership of the underlying work product shall remain the intellectual property of the Architect. Architect shall have the right to use such work products for Architect's purposes on this Project. However, such documents are not intended to be suitable for reuse by Owner or others. Any reuse without the express written consent of the Architect will be at the Owner's sole risk and without liability or legal exposure to the Architect. The above notwithstanding, Architect shall retain all rights in its standard drawing details, designs, specifications, databases, computer software, and any other proprietary and intellectual property information provided pursuant to this Contract.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate for any Instruments of Service, or portions thereof, that for which invoices remain unpaid at the time of Architect's termination.

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

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

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

§ 8.1.3 The Architect agrees to defend, indemnify and hold the Owner, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, to the extent that such damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Architect or its agent, consultant under contract, or any other entity over which the Architect exercises control, without waiving any governmental immunity available to the Owner under Texas law and without waiving any defenses of the parties under Texas law. The duty to defend shall not apply in the case of a claim based wholly or partly on the negligence of, fault of, or breach of contract by the Owner, its agents or employees, or other entity (excluding the Architect or its agent, employee, or subconsultant) over which the Owner exercises control, in which instance the Owner's reasonable attorney's fees shall be reimbursed by Architect in proportion to the Architect's liability. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

### **§ 8.2 Mediation**

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

§ 8.2.2 Mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement, unless the Parties agree on a mediation administered by a mutually selected mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the

place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

*(Check the appropriate box.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a state district court of competent jurisdiction located in Denton County, Texas.
- Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction. In no case does the Owner agree to arbitration.

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

#### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, and such failure continues for fifteen (15) days following written notice, it shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred.

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

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

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the state of Texas without regard to its conflict of laws principles.

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

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

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

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 and as required by the Texas Public Information Act or other law. This Section 10.8 shall survive the termination of this Agreement.

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

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

§ 10.10 **Complaints against Registered Architects.** The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Architects in Texas.

Complaints may be filed with:  
Texas Board of Architectural Examiners  
3333 Guadalupe, Suite 2-350  
Austin, Texas 78701-3942  
Telephone: 512-305-9000

**§ 10.11 Statutorily Required Disclaimers and Compulsory Contract Provisions.** The Texas Legislature has enacted laws requiring contracts between a governmental entity and certain vendors to contain specific language which is attached and made part of this Agreement as Exhibit B.

## ARTICLE 11 COMPENSATION

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows: Compensation for Basic Services shall not increase regardless of any increase in the Project budget unless authorized by a written amendment to this Agreement as may be necessitated by an increase in Project scope that creates material differences to the Initial Information, or other changes that result in a material increase in the Architect's level of effort:

- .1 Stipulated Sum  
(Insert amount)

The basis of compensation shall be stipulated sum of One Million One Hundred Seventy Seven Thousand Eight Hundred Sixty Dollars (\$1,177,860.00)

- .2 Percentage Basis  
(Insert percentage value)

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

- .3 Other  
(Describe the method of compensation)

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

Interpretive Planning & Exhibit Design	\$137,500
Civil - Species Impact Assessment	\$4,400
Civil - Cultural Resources Shovel Testing	\$33,000
Civil - USACE Enhanced Permitting Process	\$37,300
Sub-Total:	\$212,200
Optional Services	
MEP - Rainwater Harvesting	\$17,375
MEP - PV Array Design	\$16,000
Total:	\$33,375

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

Principal-In-Charge: \$350 /hour  
Other Staff: 2.95 x Direct Personnel Expense

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect's consultants when not included

in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (        %), or as follows:  
*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

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

Programming & Concept Design	Seven percent ( 7 %)
Schematic Design Phase	Fifteen percent ( 15 %)
Design Development Phase	Twenty-five percent ( 25 %)
Construction Documents Phase	Twenty-one percent ( 21 %)
GMP Pricing Phase	Five percent ( 5 %)
Construction Phase	Twenty-seven percent ( 27 %)
<hr/>	
Total Basic Compensation	one hundred percent ( 100.00 %)

Accelerated Project Delivery is not anticipated, but can be provided by the Architect as an additional service.

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

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

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

Employee or Category	Rate (\$0.00)
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**§ 11.8 Compensation for Reimbursable Expenses**

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Printing, reproductions, plots, and standard form documents;
- .3 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus N/A percent ( %) of the expenses incurred. Reimbursable Expenses are included in Basic and Supplemental Services as those are defined herein. Failure by the Architect to obtain such written authorization for any amounts in excess of the estimate is an express waiver of its right to compensation for such expenses.

**§ 11.9 Payments to the Architect**

**§ 11.9.1 Progress Payments** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Timeliness of payments and interest due on late payments are governed by chapter 2251 of the Texas Government Code.

**§ 11.9.2** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect. The Owner shall have the right to withhold or offset from payments due Architect to the extent reasonably necessary to protect the Owner from costs or damages incurred related to the Architect's breach of this Agreement or the applicable Standard of Care.

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

## **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

The Parties acknowledge the involvement of the United States Army Corps of Engineers (USACE) in this Project. Project delays caused by USACE delays or processes shall not be a basis for suspension, termination, or requests for additional compensation by the Architect or for claims to be asserted by Owner against Architect for delay, so long as such delay is not caused by action or failure to act of the Architect.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE OWNER AGREES TO LIMIT ARCHITECT'S LIABILITY DUE TO ACTS, ERRORS OR OMISSIONS ALLEGED IN THE PERFORMANCE OF PROFESSIONAL SERVICES IN TORT OR CONTRACT, SUCH THAT THE TOTAL AGGREGATE LIABILITY OF THE ARCHITECT SHALL NOT EXCEED THE AMOUNT OF INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT.

Upon final completion and acceptance of the Project by the Owner, the Architect may, at its option, utilize the Project to qualify for the Energy Efficient Commercial Building Federal Tax Deduction (179D) as permitted under IRS guidelines. If requested, the Owner shall acknowledge the Architect as the "Designer" of the Project by completing an allocation form (that Architect will provide) and shall allow the Architect's independent third-party evaluation firm (and its licensed inspector) reasonable access to perform a one-time, on-site inspection and certification of the Project's HVAC, interior lighting and/or building envelope systems.

## **ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 Building Information Modeling Exhibit, if completed:

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

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.  
*(Insert the date of the E234-2019 incorporated into this agreement.)*

Other Exhibits incorporated into this Agreement:  
*(Clearly identify any other exhibits incorporated into this Agreement, including any*

*exhibits and scopes of services identified as exhibits in Section 4.1.2.)*


Exhibit A

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

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

\_\_\_\_\_  
**OWNER** *(Signature)*

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

  
\_\_\_\_\_  
**ARCHITECT** *(Signature)*

BY: Maria A. Gomez, Vice President

\_\_\_\_\_  
*(Printed name, title, and license number if required)*

# Additions and Deletions Report for AIA® Document B133® – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 22:07:11 CDT on 05/19/2026.

## Changes to original AIA text

### PAGE 1

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

### PAGE 2

The City plans to design and construct a new Nature Center on a roughly 2 acres property immediately adjacent to LLELA, along the east side of North Kealy Avenue and south of East Jones Street. The project will require ongoing coordination with the U.S. Army Corps of Engineers (USACE) to support permitting approvals and to ensure that all aspects of the project scope are compatible with USACE requirements and do not adversely impact the operations, management, or mission of LLELA.

Basic Services will include:

### PAGE 3

Design and construction of a new Nature Center on a roughly 2 acres property immediately adjacent to LLELA, along the east side of North Kealy Avenue and south of East Jones Street.

The Owner's Overall Budget for the Cost of Work is Ten Million Dollars (\$10,000,000)

### PAGE 4

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project: Intentionally excluded.

(*Identify and describe the Owner's Sustainable Objective for the Project, if any.*)

§ 1.1.7.1 Intentionally excluded.

### PAGE 5

.4 ~~Civil Engineer~~Other consultants and contractors:

.4 Civil Engineer:

.5 Landscape Architect:

.6 [Name any other consultants included in Architect's Proposal]:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation only if there are material changes to the scope of the Project or services. The Owner ~~shall~~ may, in its sole discretion, adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall endeavor to agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

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

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

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

~~§ 2.6.1 Commercial General Liability with policy limits of not less than (\$ ) for each occurrence and (\$ ) in the aggregate for bodily injury and property damage.~~

~~§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$ ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 2.6.4 Workers' Compensation at statutory limits.~~

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

~~§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ 2.6.7~~

Professional liability shall be maintained for not less than four (4) years following Substantial Completion of the Project as defined in the AIA Document A201-2017, as modified, Contract between Owner and the Contractor. Insurance of the following types and with indemnification limits not less than the amounts indicated is required:

Professional Liability: \$5,000,000 per claim and  
\$10,000,000 in the aggregate

Worker's Compensation: \$1,000,000.00

Comprehensive General Liability:

Occurrence \$2,000,000.00

Aggregate \$4,000,000.00

Personal Injury \$1,000,000.00 each person

(Coverage to include groups A, B, & C

w/exclusion "C" aggregate removed)

Automobile Liability: \$1,000,000.00 combined single limit

Excess or Umbrella Policy for

General Liability \$5,000,000.00 each

PAGE 8

Architect's Consultants \$1,000,000.00

1. The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner. The Owner's Representative may contact the State Board of Insurance to confirm that the issuing company(ies) are admitted and authorized to issue such policies in the State of Texas.
2. The policy so issued in the name of the Architect shall also name the Owner as additional insured, except for professional liability insurance and worker's compensation insurance.
3. **Architect shall ensure Architect's consultants maintain the minimum level of insurance as required by Architect under this Agreement.** Architect's naming of a consultant as an additional insured on any policy held by the Architect shall not relieve the Architect or its consultants of this obligation to provide separate coverage. All policies held by the Architect shall be primary coverage.
4. Architect shall furnish to Owner insurance endorsements and exclusions as well as Certificates of Insurance in forms satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar days prior written notice to Owner, and a statement that, except for professional liability insurance and worker's compensation insurance, the Owner is named as additional insured. Architect shall permit Owner to examine the insurance policies, or at Owner's option, Architect shall furnish Owner with copies, certified by the carrier(s), of insurance policies required. If the Architect neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance at Architect's expense.
5. Insurance provided pursuant to this Section shall be considered a part of the Architect's Basic Services and shall not be a Reimbursable Expense within the scope of Section 11.8, or other provisions of this Agreement.

6. Architect's General Liability, Automobile Liability, and Worker's Compensation Insurance policies shall be endorsed to provide a waiver of subrogation in favor of the Owner.

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

**§ 2.6.2** ~~The Architect shall provide certificates of insurance~~ and other evidence of insurance as the Owner that evidence may require to demonstrate compliance with the requirements in this Section 2.6.

**§ 2.7** Architect shall coordinate with its Consultants such that the Services are appropriately coordinated among the various disciplines. Architect assumes responsibility for the coordination of the Consultants' documents as part of Architect's Basic Services. Architect further agrees to provide its design documents, background information, and design intent for the Project to all Consultants involved in the Project in order to achieve an integrated, consistent overall design for the Project. Consultants are required to perform their services in accordance with the Standard of Care. Nothing in this Agreement or in any Agreement with any Consultant shall relieve Architect or any Consultant of liability for the consequences of any failure to perform services in accordance with such professional standards.

**§ 2.8** Architect shall be responsible for the completeness and accuracy of drawings and specifications prepared by or for Architect and for their compliance with all regulatory requirements, laws, standards, and statutes, including, but not limited to, the provisions of the Americans with Disabilities Act, and other applicable State and local accessibility requirements and building codes. Architect shall coordinate the work of all Consultants and shall direct all Consultants to make such revisions and modifications to such plans and drawings as may be necessary to comply with the permitting and other regulatory and legal requirements of the jurisdiction of the Project.

**§ 2.9** The Architect shall be responsible for the Architect's negligent acts or omissions, and for the negligent acts and omissions of the Architect's Consultants, their agents and employees, in the performance of their professional duties. Nothing in this Agreement shall relieve the Architect of liability for the consequences of its failure to perform services in accordance with this Agreement or the requisite Standard of Care.

## PAGE 9

**§ 2.10** Notwithstanding any provision of this Article to the contrary, services made necessary as a result of the Architect's failure to timely provide accurate or complete information, approvals, or clarifications, or to timely render decisions, shall be considered Basic Services.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants; provided, however, that the Architect may not rely upon such information or any other information provided by or on behalf of the Owner when Architect knows or reasonably should know that the information is inaccurate, inadequate, incomplete, or otherwise unfit for its intended purpose, or would infringe upon the intellectual property rights of third parties. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.4** The Architect shall submit information to the Owner and Construction Manager and shall participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services such that all Project milestones and completion targets are achievable. As it relates to the Architect's services, the Architect shall coordinate and provide input for the Project schedule.

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

**§ 3.1.8** Architect shall at all times be an independent contractor and have sole responsibility for and control over all means, methods, techniques, sequences, and procedures for coordinating and scheduling its services to achieve the requirements of this Agreement. Nothing in this Agreement shall be deemed to imply or represent that the Architect, its supervisors, employees, or Architect's Consultants of any tier are the agents or employees of Owner. Neither party shall have the authority to bind or obligate the other in any manner as a result of the relationship created herein. As an independent contractor, the Architect: (a) assumes full responsibility for (i) the safety of all of the Architect's agents, directors, officers, employees, Architect Consultants and subconsultants (and the agents, officers, directors and employees of each of them), and (ii) the protection of all property owned, leased, or utilized by the Architect; (b) shall maintain complete supervision and control over the Architect's agents, employees, Architect Consultants and subconsultants; and (c) agrees to perform all of the Architect's obligations under this Agreement in accordance with the Architect's own methods subject to compliance with this Agreement.

#### PAGE 10

**§ 3.1.9** The Architect shall be responsible for the Architect's negligent acts or omissions, and for the negligent acts and omissions of the Architect's Consultants, their agents and employees, in the performance of their professional duties. Nothing in this Agreement shall relieve the Architect of liability for the consequences of its failure to perform services in accordance with this Agreement or the requisite standard of care.

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

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. ~~The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.~~

#### PAGE 11

**§ 3.5.3** During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) ~~the Conditions of the Contract for Construction (General, Supplementary and other Conditions)~~ documents that assist the Construction Manager with its procurement obligations for major elements of the Work and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

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

**§ 3.5.5** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7<sub>7</sub> and request the Owner's approval of the Construction Documents.

#### PAGE 12

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

**§ 3.6.1.2** ~~Subject to Section 4.2, the~~ The Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement Amendment, as provided in the A133-2019 between the Owner and the Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment, and terminates on the date the Architect provides certification of final payment indication completion as provided in the A201-2017, as modified.

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

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. ~~However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.~~ On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. Failure to notify the Owner of observed defects and deficiencies constitutes a breach of this Agreement and shall be a deviation from the Architect's agreed standard of professional care.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be ~~final if consistent with the intent expressed in the Contract Documents~~ subject to the Owner's approval.

**§ 3.6.2.5** Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, as modified, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

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**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals, such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information, such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of 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.

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

**§ 4.1.1** The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Owner may request Additional Services in addition to those listed below, which, if requested, shall be provided pursuant to the terms contained in this Section 4.1 and for the sums indicated in the written authorization by Owner. Under no circumstances will Owner be obligated to compensate the Architect or others for fees and expenses related to Supplemental or Additional Services unless the Owner has authorized the performance of such services in advance and in writing. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	<u>Not Provided</u>
§ 4.1.1.2 Programming	<u>Not Provided</u>
§ 4.1.1.3 Multiple Preliminary Designs	<u>Not Provided</u>
§ 4.1.1.4 Measured drawings	<u>Not Provided</u>
§ 4.1.1.5 Existing facilities surveys	<u>Not Provided</u>
§ 4.1.1.6 Site evaluation and planning	<u>Not Provided</u>
§ 4.1.1.7 Building Information Model management responsibilities	<u>Not Provided</u>
§ 4.1.1.8 Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.9 Civil engineering	<u>Not Provided</u>
§ 4.1.1.10 Landscape design	<u>Included in Basic Services</u>
§ 4.1.1.11 Architectural interior design	<u>Included in Basic Services</u>
§ 4.1.1.12 Value analysis	<u>Not Provided</u>
§ 4.1.1.13 Cost estimating	<u>Not Provided</u>
§ 4.1.1.14 On-site project representation	<u>Not Provided</u>
§ 4.1.1.15 Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.16 As-designed record drawings	<u>Included in Basic Services</u>
§ 4.1.1.17 As-constructed record drawings	<u>Not Provided</u>
§ 4.1.1.18 Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.19 Facility support services	<u>Not Provided</u>
§ 4.1.1.20 Tenant-related services	<u>Not Provided</u>
§ 4.1.1.21 Architect's coordination of the Owner's consultants	<u>Not Provided</u>
§ 4.1.1.22 Telecommunications/data design	<u>Architect</u>
§ 4.1.1.23 Security evaluation and planning	<u>Architect</u>
§ 4.1.1.24 Commissioning	<u>Not Provided</u>
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.26 Historic preservation	<u>Not Provided</u>
§ 4.1.1.27 Furniture, furnishings, and equipment design	<u>Not Provided</u>
§ 4.1.1.28 Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.29 Other Supplemental Services	
<u>Furniture Selection Services</u>	<u>Architect</u>
<u>Interpretive Planning and Exhibit Design</u>	<u>Architect</u>
<ul style="list-style-type: none"> <li>• <u>Exhibit Master Plan</u></li> <li>• <u>Schematic Design Phase</u></li> <li>• <u>Design Development Phase</u></li> <li>• <u>Production Phase</u></li> </ul>	
<u>Civil – Species Impact Assessment</u>	<u>Architect</u>
<u>Civil – Cultural Resources Shovel Testing</u>	<u>Architect</u>
<u>Civil – USACE Permitting Process</u>	<u>Architect</u>

<p><u>Other Supplemental Services:</u></p> <ul style="list-style-type: none"> <li>• <u>Consultants other than those listed above.</u></li> <li>• <u>Multiple Bid Packages</u></li> <li>• <u>Assistance with Grant Funding Opportunities</u></li> <li>• <u>Energy Modeling</u></li> <li>• <u>Life-Cycle Cost Analysis</u></li> <li>• <u>LEED or other third-party sustainability certification</u></li> <li>• <u>Virtual reality or animation modeling</u></li> <li>• <u>Submitting documents for permit to the authorities having jurisdiction on behalf of the Owner or the Contractor.</u></li> <li>• <u>Revisions requested after the Design Development Phase, including those related to value engineering, can be provided hourly as an additional service.</u></li> </ul>	<p><u>Not Provided</u></p>
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The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall be compensated as provided in section 11.3. Additional and Supplemental Services perform in excess of or absent authority provided through section 4.1 shall not entitle the Architect to additional compensation pursuant to Section 11.3 and/or an appropriate adjustment in the Architect’s schedule.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner’s written authorization. The Owner’s written authorization is subject to the limitation on authority in section 1.1.8 and applicable city council policies delegating limited financial approval authority. Authorization to proceed with Additional Services expected to exceed the delegable amount per city council policy require a formal amendment to this Agreement:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations ~~given by~~from the Construction Manager ~~and approved by~~ the Owner, approvals given by the Owner, or a material change in the Project, including size, quality, complexity, the Owner’s schedule, or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager’s estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner’s budget, except where such excess is due to ~~changes initiated by the Architect in the Architect’s design~~ decisions regarding scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are not reasonably foreseeable and are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner ~~or Construction Manager~~ not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;
- .7 ~~Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;~~
- .8 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~

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- ~~.9~~ Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- ~~.10~~ Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- ~~.118~~ Assistance to the Initial Decision Maker, if other than the Architect;
- ~~.129~~ Services necessitated by the replacement of the Construction Manager or conversion of the Construction Manager as the constructor project delivery method to an alternative project delivery method; and
- ~~.1310~~ Services necessitated by the Owner's delay in engaging the Construction Manager;
- ~~.1411~~ Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or modifications to the Control Estimate; and
- ~~.15~~ Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

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

- ~~.1~~ Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
  - ~~.2~~ Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Construction Manager prepared coordination drawings, or prior Project correspondence or documentation;
  - ~~.3~~ Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
  - ~~.4~~ Evaluating an extensive number of Claims as the Initial Decision Maker; or
  - ~~.5~~ Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.
- or approved change orders

**§ 4.2.2** Intentionally omitted.

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

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**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, ~~including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.~~ The Owner shall furnish to the Architect, within fifteen (15) days after receipt of written request, information relevant for the Architect to evaluate same.

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

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

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

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

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

**§ 5.14** The Owner shall ~~coordinate~~ provide the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement ~~Architect the AIA A133-2019, as amended, and the AIA A201-2017, as amended, prior to ninety percent construction document completion to evaluate and fully understand its duties and obligation in the construction phase. If the Architect believes the scope of obligation exceeds the Basic Services provide herein, the Architect may request payment for Additional Services.~~ The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

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

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

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

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

**§ 7.2** ~~The~~ As part of the total compensation which Owner has agreed to pay Architect ~~and for the Architect's~~

consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants professional services to be rendered under this Contract. Architect agrees that hard copies of all finished and unfinished "Instruments of Service" including but not limited to documents, data, studies, surveys, drawings, specifications, field notes, maps, models, photographs, preliminary reports, reports, bid packet/construction contract documents/advertisement for bids incorporating any Owner standard provisions provided by Architect, all of which are produced by Architect and paid for by Owner are, and will remain, the property of the Owner. Architect will furnish the Owner with electronic copies in .PDF format, to the extent they are available, of all of the foregoing to facilitate coordination; however, ownership of the underlying work product shall remain the intellectual property of the Architect. Architect shall have the right to use such work products for Architect's purposes on this Project. However, such documents are not intended to be suitable for reuse by Owner or others. Any reuse without the express written consent of the Architect will be at the Owner's sole risk and without liability or legal exposure to the Architect. The above notwithstanding, Architect shall retain all rights in its standard drawing details, designs, specifications, databases, computer software, and any other proprietary and intellectual property information provided pursuant to this Contract.

**§ 7.3** The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate for any Instruments of Service, or portions thereof, that for which invoices remain unpaid at the time of Architect's termination.

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

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

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. ~~The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.~~

**§ 8.1.3** ~~The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees~~

harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

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

§ 8.1.3 The Architect agrees to defend, indemnify and hold the Owner, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, to the extent that such damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Architect or its agent, consultant under contract, or any other entity over which the Architect exercises control, without waiving any governmental immunity available to the Owner under Texas law and without waiving any defenses of the parties under Texas law. The duty to defend shall not apply in the case of a claim based wholly or partly on the negligence of, fault of, or breach of contract by the Owner, its agents or employees, or other entity (excluding the Architect or its agent, employee, or subconsultant) over which the Owner exercises control, in which instance the Owner's reasonable attorney's fees shall be reimbursed by Architect in proportion to the Architect's liability. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

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

~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, Mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement, unless the Parties agree on a mediation administered by a mutually selected mediator. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

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[ X ] Litigation in a state district court of competent jurisdiction located in Denton County, Texas.

### **§ 8.3 Arbitration**

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

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

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

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

~~§ 8.3.4 Consolidation or Joinder~~

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

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

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

~~§ 8.4~~ In no case does the Owner agree to arbitration.

~~§ 8.3~~ The provisions of this Article 8 shall survive the termination of this Agreement.

~~§ 9.1~~ If the Owner fails to make payments to the Architect in accordance with this Agreement, and such failure continues for fifteen (15) days following written notice, it shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

~~.1~~ Termination Fee:

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

~~§ 9.7~~ Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

~~§ 9.98~~ The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

~~§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3 state of Texas without regard to its conflict of laws principles.~~

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

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

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~~§ 10.8 If the Architect or Owner receives information specifically designated as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 and as required by the Texas Public Information Act or other law. This Section 10.8 shall survive the termination of this Agreement.~~

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

~~§ 10.10 Complaints against Registered Architects. The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Architects in Texas.~~

Complaints may be filed with:

Texas Board of Architectural Examiners

3333 Guadalupe, Suite 2-350

Austin, Texas 78701-3942

Telephone: 512-305-9000

~~§ 10.11 Statutorily Required Disclaimers and Compulsory Contract Provisions. The Texas Legislature has enacted laws requiring contracts between a governmental entity and certain vendors to contain specific language which is attached and made part of this Agreement as Exhibit B.~~

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows: Compensation for Basic Services shall not increase regardless of any increase in the Project budget unless authorized by a written amendment to this Agreement as may be necessitated by an increase in Project scope that creates material differences to the Initial Information, or other changes that result in a material increase in the Architect's level of effort:

Principal-In-Charge: \$350 /hour

Other Staff: 2.95 x Direct Personnel Expense

<u>Programming &amp; Concept Design</u>	<u>Seven percent ( 7 %)</u>
Schematic Design Phase	Fifteen percent ( 15 %)
Design Development Phase	<u>Twenty-five percent ( 25 %)</u>
Construction Documents Phase	<u>Twenty-one percent ( 21 %)</u>
<u>GMP Pricing Phase</u>	<u>Five percent ( 5 %)</u>
Construction Phase	<u>Twenty-seven percent ( 27 %)</u>
<hr/>	
Total Basic Compensation	one hundred percent ( 100.00 %)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate. Accelerated Project Delivery is not anticipated, but can be provided by the Architect as an additional service.

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

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

- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web-sites, and extranets;~~
- ~~.3 Permitting and other fees required by authorities having jurisdiction over the Project;~~
- ~~.4 Printing, reproductions, plots, and standard form documents;~~
- ~~.5 Postage, handling, and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.7 3 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~
- ~~.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;~~
- ~~.9 All taxes levied on professional services and on reimbursable expenses;~~
- ~~.10 Site office expenses;~~
- ~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and~~
- ~~.12 Other similar Project related expenditures.~~

**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.6 are in addition to the types-

and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)* Reimbursable Expenses are included in Basic and Supplemental Services as those are defined herein. Failure by the Architect to obtain such written authorization for any amounts in excess of the estimate is an express waiver of its right to compensation for such expenses.

## **§ 11.409 Payments to the Architect**

### **§ 11.10.1 Initial Payments**

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

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

### **§ 11.10.2 Progress Payments**

**§ 11.9.1 Progress Payments** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. ~~Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (-) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.~~ Timeliness of payments and interest due on late payments are governed by chapter 2251 of the Texas Government Code.

*(Insert rate of monthly or annual interest agreed upon.)*

%

## **PAGE 27**

**§ 11.9.2** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, ~~or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~ The Owner shall have the right to withhold or offset from payments due Architect to the extent reasonably necessary to protect the Owner from costs or damages incurred related to the Architect's breach of this Agreement or the applicable Standard of Care.

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

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE OWNER AGREES TO LIMIT ARCHITECT'S LIABILITY DUE TO ACTS, ERRORS OR OMISSIONS ALLEGED IN THE PERFORMANCE OF PROFESSIONAL SERVICES IN TORT OR CONTRACT, SUCH THAT THE TOTAL AGGREGATE LIABILITY OF THE ARCHITECT SHALL NOT EXCEED THE AMOUNT OF INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT.

Upon final completion and acceptance of the Project by the Owner, the Architect may, at its option, utilize the Project to qualify for the Energy Efficient Commercial Building Federal Tax Deduction (179D) as permitted under IRS guidelines. If requested, the Owner shall acknowledge the Architect as the "Designer" of the Project by completing an allocation form (that Architect will provide) and shall allow the Architect's independent third-party evaluation firm (and its licensed inspector) reasonable access to perform a one-time, on-site inspection and certification of the Project's HVAC, interior lighting and/or building envelope systems.

## Variable Information

### PAGE 1

AGREEMENT made as of the day of in the year  
City of Lewisville

151 W. Church Street  
Lewisville, TX 75057

GFF Inc. dba Good, Fulton, & Farrell, Inc.

114 West 7th Street, Suite 200  
Austin, Texas 78701

Lewisville Nature Center

1400 N. Kealy Ave adjacent to LLELA

Lewisville, TX

### PAGE 2

Approximate total size is 14,000 square feet of conditioned space and 6,000 square feet unconditioned

- Expandable multi-purpose spaces / classrooms
- Arrival and entry space
- Interpretation and retail space
- Administration and storage space
- Design that responds to its natural context

#### Architectural Design and Construction Services:

- Provide Architectural, Civil, Structural, and MEP design services from Schematic Design through the conclusion of Construction Documents, for the project described above, per the terms of the AIA B 133, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor, 2019 edition.
- Provide assistance during Bidding and Negotiation with evaluating the project costs, per the terms of the AIA B133, 2019 edition.
- Provide standard Contract Administration services for reviewing shop drawings, attending jobsite meetings, clarifying the intent of the construction documents, etc., per the terms of the AIA B 133, 2019 edition for up to 18 months. Basic Services shall include up to 36 site visits consisting of 2 site visits per month and 2 punch list visits. Services beyond these amounts shall be Additional Services.

### PAGE 3

- Construction administration phase will start with the first submittal or shop drawing review, regardless of whether a permit has been obtained.
- Record Drawings based on revision issued by the Architect throughout the duration of the project.

### **Landscape Architecture:**

Design landscape zones reflective of regional ecosystems, including:

- Cross Timbers woodlands (post oak, blackjack oak)
- Blackland Prairie (native grasses, forbs, pollinator species)
- Trinity River bottomlands (cottonwood, sycamore, willow)
- Integrate habitat-supportive amenities such as pollinator gardens, wetland demonstration areas, and accessible trail connections.
- Utilize native and drought-tolerant plant species exclusively; avoid cultivars and invasive species.
- Develop a long-term maintenance and stewardship strategy aligned with restoration goals.
- Provide up to (2) visits to tree farm for tree tagging

### **Program Validation Services:**

- Conduct a focused two-week validation of the existing program informed by the 2024 design charrette, confirming key elements such as multipurpose classrooms, flexible learning spaces, outdoor learning/amphitheater areas, volunteer and citizen science spaces, and nature-based play features.

### **Conceptual Design Services:**

- The design team will conduct a focused two-week conceptual design exercise to establish the overall vision, site organization, and architectural direction. This effort will translate project goals, community priorities, operational needs, and site constraints into a clear, cohesive framework, supported by a Conceptual Cost Estimate.

### **Furniture Selection Services:**

- The Architect will recommend the interior systems furniture, case goods and chairs. We will start by developing furniture standards and work with a furniture manufacturer/dealer with pre-negotiated government rates (i.e. US Communities) as selected by the Owner to make recommendations for furniture. We will also make recommendations for finishes. The furniture dealer will provide all furniture and installation cost estimates and the final furniture documents and specifications. Furniture services may also include coordination of system furniture workstation mock-up(s) and chair selection evaluation of sample. GFF will provide Furniture installation oversight and punch list.

### **Civil - Enhanced Offsite Drainage Study & Assessment:**

- Architect's Civil Engineer will complete a drainage study and downstream assessment for the proposed development. The purpose of this drainage study will be to calculate the downstream capacity to accept the increase in runoff from the proposed development.

14 months after the design notice to proceed is issued; approximately August 2027

16 months after the design notice to proceed is issued; approximately October 2027

Timeline and dates to be negotiated once a CMAR is identified

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

N/A

Marcus Gallegos

151 W. Church Street

Lewisville, TX 75057

469.635.5298

Ramel Company, LLC

c/o Ramon Guajardo

3320 Tex Blvd.

Fort Worth, TX 76116

817.800.5791

The above identified representatives are designated in that capacity for purposes identified in this Agreement and the Contract Documents. The Owner, as a municipality, acts by and through its city council and retains all authority for itself and does not grant, assign, or delegate its authority or contractual rights to the above identified representatives.

#### **PAGE 5**

Jason Cave, AIA

3030 Nowitzki Way, Suite 400

Dallas, TX 75219

214-303-1500

The Architect's representative shall be available to the Owner at all reasonable times for consultation with the Owner. The Architect may not change its representative without written approval of the Owner, which shall not be unreasonably withheld.

#### **PAGE 17**

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Eighteen ( 18 ) visits to the site by the Architect during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion

**§ 4.2.5** If the services covered by this Agreement have not been completed within Twelve ( 12 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that

time shall be compensated as Additional Services.

**PAGE 22**

[  ] Litigation in a state district court of competent jurisdiction located in Denton County, Texas.

**PAGE 24**

The basis of compensation shall be stipulated sum of One Million One Hundred Seventy Seven Thousand Eight Hundred Sixty Dollars (\$1,177,860.00).

**PAGE 25**

<u>Interpretive Planning &amp; Exhibit Design</u>	<u>\$137,500</u>
<u>Civil - Species Impact Assessment</u>	<u>\$4,400</u>
<u>Civil - Cultural Resources Shovel Testing</u>	<u>\$33,000</u>
<u>Civil - USACE Enhanced Permitting Process</u>	<u>\$37,300</u>
Sub-Total:	<u>\$212,200</u>

Optional Services

<u>MEP - Rainwater Harvesting</u>	<u>\$17,375</u>
<u>MEP - PV Array Design</u>	<u>\$16,000</u>
Total:	<u>\$33,375</u>

<u>Programming &amp; Concept Design</u>	<u>Seven percent ( 7 %)</u>
<u>Schematic Design Phase</u>	<u>Fifteen percent ( 15 %)</u>
<u>Design Development Phase</u>	<u>Twenty-five percent ( 25 %)</u>
<u>Construction Documents Phase</u>	<u>Twenty-one percent ( 21 %)</u>
<u>GMP Pricing Phase</u>	<u>Five percent ( 5 %)</u>
<u>Construction Phase</u>	<u>Twenty-seven percent ( 27 %)</u>
Total Basic Compensation	one hundred percent ( 100.00 %)

**PAGE 26**

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

**PAGE 27**

The Parties acknowledge the involvement of the United States Army Corps of Engineers (USACE) in this Project. Project delays caused by USACE delays or processes shall not be a basis for suspension, termination, or requests for additional compensation by the Architect or for claims to be asserted by Owner against Architect for delay, so long as such delay is not caused by action or failure to act of the Architect.

[  ] Other Exhibits incorporated into this Agreement:

Exhibit A



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Maria Gomez, Vice President, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 22:07:11 CDT on 05/19/2026 under Order No. 20240080712 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ - 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*



Vice President

*(Title)*

5/19/2026

*(Dated)*