

Town of Windsor

Memorandum

April 9, 2024

TO: The Honorable Mayor and Town Council

FROM: William G. Saunders IV, Town Manager WGS IV

SUBJECT: Agreement – Architectural Services for New Municipal Building

Background

In the 2016-17 timeframe, the Town Council solicited the services of an architectural firm, Moseley Architects, to initiate design work on a new municipal building.

Specifics

The architects worked up several design options with cost estimates in 2016-2017. Due to several capital projects being considered at that time, to include the Town Center, the new public works building, and a sidewalk project, the municipal building project was tabled.

In conversations with the architect since the January 23, 2024, work session, he states that Moseley Architects would be glad to enter into an addendum to the original agreement to pick up where the previous Council left off. Given the tentative nature of the restart of this project, two new amendments to the agreement would be created; the first to finish schematic design and update cost estimates, and the second for design development through construction administration. It was also previously determined that the suitable building would be closer to 8,000 - 10,000 square feet, rather than the 5,000 square feet that was envisioned at the beginning of the design phase.

At their March 12, 2024, meeting, the Town Council tabled any action on the proposed amendment to the agreement for architectural services, due to the limited time that was available for the review of the document prior to the meeting.

Recommended Action

For your information

Enclosures

Amendment to Architectural Services Agreement
Original Architectural Services Agreement

 **AIA® Document G802® – 2017*****Amendment to the Professional Services Agreement***

PROJECT: *(name and address)*
Town of Windsor Town Hall
Windsor, Virginia

AGREEMENT INFORMATION:
Date: July 13, 2016

AMENDMENT INFORMATION:
Amendment Number: 002
Date: March 11, 2024

OWNER: *(name and address)*
Town of Windsor
Post Office Box 307
8 East Windsor Boulevard
Windsor, Virginia 23487

ARCHITECT: *(name and address)*
Moseley Architects P.C.
3200 Norfolk Street
Richmond, Virginia 23230

The Owner and Architect amend the Agreement as follows:

Additional Services to provide a Schematic Design update and completion consisting of minor adjustments to the previously completed Schematic Design submission enclosed as Exhibit A, including increasing the facility square footage by approximately 2,000 square feet up to a total facility size of approximately 10,000 square feet.

These Services were originally discussed in 2016 however the Town of Windsor requested the Services be put on hold. Due to the significant lapse of time, these Services will be computed using Architect's 2024 Hourly Rates, attached here to as Exhibit B.

The Schematic Design Updated Services shall consist of the following:

1. Prepare Schematic Design Documents and space program and conduct kick-off, project restart meeting with Town Stakeholders.
2. Revise space program, floor plan, and site plan exhibits. Kimley-Horn's services shall consist of the following:
 - 2.1 Kimley-Horn will update the existing site schematic design plans based upon the increase of the proposed building size by approximately 2,000 sf.
 - 2.2 Kimley-Horn will attend two SD development meetings with the client to discuss plan components.
 - 2.3 The Updated Site Schematic Design Plans will be comprised of the following:
 - 2.3.1 Layout Plan
 - 2.3.2 Preliminary Grading and Drainage Plan
 - 2.3.3 Preliminary Utility Plan
3. Conduct meeting with Town Stakeholders to review revised site plans and floor plans and Schematic Design exhibits.
4. Revise floor plan, site plan, and Schematic Design exhibits.
5. Conduct meeting with Town Stakeholders to review revised Schematic Design Exhibits.
6. Finalize Schematic Design Exhibits.
7. Prepare opinion of probable construction cost. A preliminary total project budget estimate for a 10,000 square foot town hall consistent with the current design and aesthetic is enclosed as Exhibit D.
8. Submit Schematic Design Documents to Town for review and approval.

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment:

Compensation for these services shall be the lump sum as indicated on the attached Exhibit C including all expenses for travel, communication, and reproduction (for the Architect's use) incurred by the Architect in providing the Services.

Schedule Adjustment:

Moseley Architects will develop a project schedule that is mutually agreeable to the Town and Moseley Architects as the Project progresses, but we envision that the Schematic Design update be completed in no more than four months.

SIGNATURES:

Moseley Architects P.C.
ARCHITECT (Firm name)

Town of Windsor
OWNER (Firm name)

SIGNATURE
Anthony J. Bell III, AIA
Vice President
PRINTED NAME AND TITLE

SIGNATURE
William Saunders, Town Manager
PRINTED NAME AND TITLE

DATE

DATE

MOSELEYARCHITECTS

ARCHITECTURE • ENGINEERING • PLANNING • INTERIOR DESIGN • CONSTRUCTION SERVICES

SCHEDULE OF HOURLY BILLING RATES CALENDAR YEAR 2024

Principals	\$256
Architects	
Senior Project Manager	\$237
Project Manager	\$186
Architect	\$178
Project Designer	\$118
Security and Detention Design	
Security Design Specialist	\$224
Moseley Engineering Director	\$256
Moseley Mechanical/Electrical/Plumbing/Engineering	
Senior Engineer	\$208
Engineer/Designer	\$170
Intern Technician	\$118
Moseley Structural Engineering	
Senior Engineer	\$186
Engineer/Designer	\$155
Intern Technician	\$118
Moseley Interior Design	
Interior Design Director	\$208
Senior Interior Designer	\$139
Project Interior Designer	\$118
Corrections Planner	\$256
Criminal Justice Consultant	\$202
Construction Administration	
Construction Administrator	\$178
Specification Writer	\$178
Sustainability Planning	
Sustainability Planning Director	\$208
Energy Analyst	\$174
Sustainability Coordinator	\$155
Administrative	\$82

Rates are subject to change on January 1 of each year.

MOSELEYARCHITECTS

**TOWN OF WINDSOR
NEW TOWN HALL
BUDGET ESTIMATE**

March 8, 2024

Since Moseley Architects has no control over the cost of labor and materials, current market conditions, or competitive bidding, Moseley Architects cannot guarantee the accuracy of this preliminary estimate of probable construction cost.

CONSTRUCTION COSTS			
One Story Town Hall Building*	7,900 SF @	\$300	\$2,368,318
Site work			\$2,052,919
2017 Construction Cost Subtotal			\$4,421,237
Increase to 10,000 SF	2,100 SF @	\$300	\$629,553
2017 Subtotal for 10,000 SF			\$5,050,790
Escalation to 2024		39.65%	\$7,053,429
Escalation to 2026 (construction midpoint)		8.00%	\$7,617,703
OTHER COSTS			
Furniture/Equipment Allowance	10,000 SF @	\$30	\$300,000
Architectural/Engineering Services		9.50%	\$724,000
Interior Design Services (Furniture Design)		9.00%	\$27,000
Testing and Inspections			\$76,000
Data/Telephone Allowance			\$152,000
Moving Expenses Allowance			\$25,000
Geotechnical Study			Included in A/E
Boundary and Topographic Survey			Included in A/E
Property Acquisition Allowance			Not included
Permitting and Utility Connection Fees			Not included
Legal Expenses			Not included
Financing Expenses			Not included
Other Costs Subtotal			\$1,304,000
Project Cost Subtotal			\$8,921,703
Recommended Project Budget Contingency (10%)			\$900,000
TOTAL			\$9,821,703

* The square footage is based on the previously submitted Schematic Design dated March 15, 2017.

 **AIA** Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Thirteenth day of July in the year Two Thousand Sixteen

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:

(Name, legal status, address and other information)

Town of Windsor
Post Office Box 307
8 East Windsor Boulevard
Windsor, Virginia 23487
Telephone Number: (757)242-4288

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

and the Architect:

(Name, legal status, address and other information)

Moseley Architects P.C.
3200 Norfolk Street
Richmond, Virginia 23230
Telephone Number: (804)794-7555

for the following Project:

(Name, location and detailed description)

Town of Windsor Space Needs Assessment, Master Plan, and Design Services Town Hall
Town of Windsor, Virginia

The Owner and Architect agree as follows.

Init.

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article ~~1~~ and in optional Exhibit A, 1, Initial Information:

~~(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state (State below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)~~

This Agreement is based on the following information.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

1.1.1 PROJECT INFORMATION

1.1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

To be determined as the Project progresses.

§1.1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Existing site selected by the Owner consisting of an approximately 5 acre parcel as bounded by Holland Drive to the north, Shirley Drive to the west, and US 460 (Windsor Boulevard) to the South.

§ 1.1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total, and if known, a line item break down.)

To be determined as the Project progresses.

§ 1.1.1.4 The Owner's other anticipated scheduling information, if any, not provided in Section 1.2:

To be determined as the Project progresses.

§ 1.1.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract, or construction management.)

A stipulated sum construction contract with a single Contractor pursuant to competitive bidding.

§ 1.1.1.6 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

Not Applicable.

1.1.2 PROJECT TEAM

§ 1.1.2.1 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address and other information.)

Michael Stallings, Town Manager
Town of Windsor
Post Office Box 307
8 East Windsor Boulevard
Windsor, Virginia 23487
Telephone Number: (757)242-4288

§ 1.1.2.2 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 information.)

Brian Camden, Program Manager
Alpha Corporation
295 Bendix Road
Suite 340
Virginia Beach, Virginia 23452
Telephone Number: (757)419-2306

§ 1.1.2.3 The Owner will retain the following consultants and contractors:
(List discipline and, if known, identify them by name and address.)

1. Materials Testing agency to be determined
2. Program Manager: Alpha Corporation

§ 1.1.2.4 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

Anthony J. Bell III, AIA, Vice President
Moseley Architects P.C.
3200 Norfolk Street
Richmond, Virginia 23230
Telephone Number: (804)794-7555

Init.

§ 1.1.2.5 The Architect will retain the consultants identified in Sections 1.1.2.5.1 and 1.1.2.5.2.
(List discipline and, if known, identify them by name and address.)

§ 1.1.2.5.1 Consultants retained under Basic Services:

.1 Structural Engineer

Moseley Architects P.C.

.2 Mechanical Engineer

Moseley Architects P.C.

.3 Electrical Engineer

Moseley Architects P.C.

.4 Civil Engineer

Kimley-Horn and Associates, Inc.
4500 Main Street
Suite 500
Virginia Beach, Virginia 23462

.5 Cost Estimating

Downey and Scott, LLC
6799 Kennedy Road
Unit F
Warrenton, Virginia 20187

.6 Geotechnical Engineer/Environmental Engineer

GET Solutions (as Subconsultant to Kimley-Horn and Associates)
204-B Grayson Road
Virginia Beach, Virginia 23462

.7 Special Inspections Services

Moseley Architects P.C.

.8 Furniture Design

Moseley Architects P.C.

.9 Surveyor

Canada Land Surveying
104 Church Street
Smithfield, Virginia 23430

§ 1.1.2.5.2 Consultants retained under Additional Services:

Not Applicable

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

(Provide other Initial Information.)

Init.

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User Notes:

(1330992506)

Architects' proposal letter dated July 5, 2016, attached hereto as Exhibit A.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

To be determined as Project progresses.

.2 Substantial Completion date:

To be determined as Project progresses.

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

§ 2.2.1 Subject to the standard of care set forth in Section 2.2 for applying professional judgment to the information used or relied upon, Architect and its Consultants may use and rely upon design elements, technical standards, test results, and all other information ordinarily or customarily furnished or published by others, including, but not limited to, specialty contractors, manufacturers, fabricators, and suppliers.

§ 2.2.2 By training and experience, the Architect does not possess the expertise to assess the environmental and human health impacts of varying types and quantities of substances contained in building products. To the extent the Architect collects product manufacturer materials disclosing product contents, the Owner acknowledges that it is not relying upon the Architect for any analysis of material composition or the human or environmental health impacts of specific material selections. The Architect shall be entitled to rely exclusively on information furnished by manufacturers and material suppliers. The Owner acknowledges that the Architect does not possess the expertise to (1) evaluate the specific chemical composition of products or materials, (2) recognize that a product includes any particular chemicals or substances, or (3) evaluate the information furnished by the manufacturers or material suppliers, in order to determine the environmental and human health impacts of varying types and quantities of substances contained in building products. To the extent the Owner requires such analysis, any assessments or evaluations of this kind shall be conducted by a toxicologist or other trained professionals retained by the Owner.

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

§ 2.4 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.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. ~~If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:~~

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

Each occurrence \$1,000,000.00, general aggregate \$2,000,000.00

.2 Automobile Liability

Combined single limit \$1,000,000.00

.3 Workers' Compensation

As required by statute and Employer's liability with a \$500,000 limit

.4 Professional Liability

Claims-made basis, \$1,000,000.00 per claim, and \$1,000,000.00 aggregate.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

~~§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. Needs Assessment/Master Plan/Conceptual Plan Alternatives (task indicated as "on-site" shall occur in the Town of Windsor):~~

.1 Project Organization – Architect shall meet with the Owner to establish communication procedures; decision makers; project schedule; and provide space needs questionnaires to occupant groups (on-site).

.2 Architect will meet with the Owner to determine the specific space needs (number of rooms, room sizes, room adjacencies, equipment needs, etc.) for the new Municipal Building and Master Plan. Architect will submit information from the meeting in a memorandum for review and comment by the Owner.

.3 Architect will review data and information relevant to space needs as provided by the Owner; strategic plans; departmental staffing history; and growth trends.

.4 Architect will develop a detailed architectural space program and sketches to illustrate specific areas, such as a typical office space, conference space, and workstation. The program will provide the approximate gross size of the building which will be used to develop a preliminary cost estimate and used for site planning evaluations. Architect will meet with the Owner for review of space program progress and recommendations (telephone conference). Architect will finalize space program including an executive summary and submit to Owner.

.5 Architect will assemble and review available information on the building site selected by Owner. The site shall be analyzed based on the following program requirements:

- Adequacy of buildable site area for required building and parking.
- Potential of site to meet site design guidelines.
- Accessibility.
- Zoning requirements.
- Availability and adequacy of utilities.
- Storm water issues.
- Potential environmental issues.
- Impact on existing Town facilities and/or neighboring property.

- Factors that may adversely impact the site construction cost.
- Availability to add future Town buildings.

The site evaluation will be based upon review of the available existing site mapping, information, and data.

Initiate boundary and topographic survey (Additional Service, refer to Article 4.1).

Architect will develop master plan options for Owner to select one option for development into Master Plan (site plan). Services consist of development of one conceptual design for one site Master Plan for up to three different conceptual floor plans for the Municipal Building.

Architect will meet with Owner to review site evaluation progress, master plan development progress, conceptual design progress, and recommendations (on-site). This shall be Community Meeting 1.

.6 Prepare opinion of probable budget cost estimate for the Master Plan (including construction cost, A/E cost of services, and other associated project costs) to complete the future Municipal Building. Prepare final report in narrative and graphic form consisting of the following:

- Executive summary.
- Space program and equipment program.
- Budget estimates of probable total project cost.
- Site Master Plan.
- Conceptual building plan.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval. As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, 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.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project, shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

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

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

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

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

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

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's written approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 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 Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. ~~The~~ If requested by the Owner, the Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents ~~Documents~~ documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's written approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

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

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

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 ~~BIDDING OR NEGOTIATION PHASE SERVICES~~ BIDDING PHASE SERVICES

§ 3.5.1 GENERAL

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

§ 3.5.2 COMPETITIVE BIDDING

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

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

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;

- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

~~§ 3.5.3 NEGOTIATED PROPOSALS~~

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

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

- ~~.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;~~
- ~~.2 organizing and participating in selection interviews with prospective contractors; and~~
- ~~.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

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

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§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

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

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and 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

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completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the 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 Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of ~~other~~ information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. ~~The Architect shall review Shop Drawings Contractor's design professional shall verify the accuracy, adequacy, and suitability of the performance and design criteria. The Architect shall review shop drawings~~ and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, ~~certifications~~ certifications, statements confirming performance and design criteria and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, 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 requests for information.

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

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize 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 the provisions of Section 4.3, 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 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating 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 check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. (Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	<u>Architect</u>	<u>To be provided as Part of Basic Services</u>
§ 4.1.1 Programming (B202™ 2009)		
§ 4.1.2 Multiple preliminary designs	<u>Not Provided</u>	
§ 4.1.3 Measured drawings	<u>Not Provided</u>	
§ 4.1.4 Existing facilities surveys	<u>Not Provided</u>	
§ 4.1.5 Site Evaluation and Planning (B203™ 2007)	<u>Not Provided</u>	
§ 4.1.6 Building Information Modeling (B202™ 2008) information modeling	<u>Not Provided</u>	
§ 4.1.7 Civil engineering	<u>Architect</u>	<u>To be provided as Part of Basic Services</u>
§ 4.1.8 Landscape design	<u>Architect</u>	<u>To be provided as Part of Basic Services</u>
§ 4.1.8 Landscape design§		
§ 4.1.9 Architectural Interior Design (B252™ 2007)		
§ 4.1.10 Value Analysis (B204™ 2007)	<u>Not Provided</u>	
§ 4.1.11 Detailed cost estimating	<u>Architect</u>	<u>To be provided as Part of Basic Services</u>
§ 4.1.12 On-site Project Representation (B207™ 2008) project representation	<u>Not Provided</u>	
§ 4.1.13 Conformed construction documents	<u>Not Provided</u>	
§ 4.1.14 As-Designed Record As-designed record drawings	<u>Not Provided</u>	
§ 4.1.15 As-constructed record drawings	<u>Architect</u>	<u>To be provided as an Additional Service, refer to Article 4.2.9.</u>
§ 4.1.15 As-Constructed Record drawings		
§ 4.1.16 Post-occupancy evaluation	<u>Not Provided</u>	
§ 4.1.17 Facility Support Services (B210™ 2007)	<u>Not Provided</u>	
§ 4.1.18 Tenant-related services	<u>Not Provided</u>	
§ 4.1.19 Coordination of Owner's consultants	<u>Not Provided</u>	
§ 4.1.20 Telecommunications/data design	<u>Not Provided</u>	
§ 4.1.21 Security Evaluation and Planning (B206™ 2007)	<u>Architect</u>	<u>To be provided as Part of Basic Services</u>
§ 4.1.22 Commissioning (B211™ 2007)	<u>Not Provided</u>	
§ 4.1.23 Extensive environmentally responsible design	<u>Not Provided</u>	
§ 4.1.24 LEED® Certification (B214™ 2012) (B214™ 2007)	<u>Not Provided</u>	
§ 4.1.25 Fast-track design services	<u>Not Provided</u>	
§ 4.1.26 Historic Preservation (B205™ 2007)	<u>Not Provided</u>	
§ 4.1.27 Furniture Design and Procurement	<u>Architect</u>	<u>To be provided as an Additional</u>

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§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™ 2007)	Architect	Service, refer to Article 4.2.1. To be provided as an Additional Service, refer to Article 4.2.2.
§ 4.1.28 Topographic and Boundary Survey		
§ 4.1.29 Phase I Environmental Site Assessment	Architect	To be provided as an Additional Service, refer to Article 4.2.3.
§ 4.1.30 Geotechnical Investigation	Architect	To be provided as an Additional Service, refer to Article 4.2.4.
§ 4.1.31 Stormwater Management Plan	Architect	To be provided as an Additional Service, refer to Article 4.2.5.
§ 4.1.32 Stormwater Pollution Prevention Plan (SWPPP)	Architect	To be provided as an Additional Service, refer to Article 4.2.6.
§ 4.1.33 Special Inspection Services	Architect	To be provided as an Additional Service, refer to Article 4.2.7.
§ 4.1.34 Extended Construction Contract Administration	Architect	To be provided as an Additional Service, refer to Article 4.2.8.

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

§ 4.2.1 FURNITURE DESIGN SERVICES OF ARCHITECT

§ 4.2.1.1 GENERAL

§ 4.2.1.1.1 The Architect shall consult with the Owner, research applicable criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

§ 4.2.1.1.2 The Architect shall prepare, and periodically update, a schedule that identifies milestone dates for decisions required by the Owner, services furnished by the Architect and completion of documentation to be provided by the Architect. The Architect shall coordinate the Furniture Design Services schedule with the Owner's Project schedule.

§ 4.2.1.1.3 The Architect shall submit documents to the Owner at intervals appropriate to the process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely upon approvals received from the Owner to complete the Furniture Design Services.

§ 4.2.1.1.4 Except with the Owner's knowledge and consent, the Architect shall not (1) accept trade discounts, (2) have a significant financial interest, or (3) undertake any activity or employment or accept any contribution if it would reasonably appear that such activity, employment, interest or contribution could compromise the Architect's professional judgment.

§ 4.2.1.2 PROGRAMMING PHASE SERVICES OF ARCHITECT – FURNITURE DESIGN

§ 4.2.1.2.1 The Architect shall consult with representatives of the Owner to review the applicable requirements of the Project in order to understand the goals and objectives of the Owner with respect to their impact on the Owner's furniture requirements.

§ 4.2.1.2.2 The Architect shall assist the Owner in the preparation of a budget for the Work.

§ 4.2.1.2.3 The Architect shall gather information furnished by the Owner's designated representatives to aid the Architect in understanding the Owner's furniture requirements.

§ 4.2.1.2.4 The Architect shall develop personnel space standards based upon an evaluation of the existing conditions at the Owner's facilities, and the functional requirements and standards of the Owner. Personnel space standards shall take into consideration the design and layout of furniture system workstation environments, if applicable. The proposed space standards shall be submitted for the Owner's review and approval.

§ 4.2.1.4.5 The Architect shall develop a general understanding of the Owner's equipment requirements, including data, telecommunications, and reproduction equipment related to furniture.

§ 4.2.1.4.6 The Architect shall prepare a written summary of observations and make recommendations with respect to the planning of the facility for the Owner's review and approval.

§ 4.2.1.4 SCHEMATIC DESIGN PHASE SERVICES OF ARCHITECT – FURNITURE DESIGN

§ 4.2.1.4.1 Based on the approved written program, the Architect shall prepare the design concept for the furniture of the Project, indicating types and quality.

§ 4.2.1.4.2 The Architect shall review with the Owner alternative designs and methods for procurement of the furniture.

§ 4.2.1.4.3 The Architect shall assist the Owner in the preparation of a preliminary Project schedule and estimate of the Cost of the Work.

§ 4.2.1.4 DESIGN DEVELOPMENT PHASE SERVICES OF ARCHITECT – FURNITURE DESIGN

§ 4.2.1.4.1 Based on the approved Schematic Design, the Architect shall obtain product data and prepare illustrations for furniture, furnishings and equipment as may be appropriate for the Project, including specially designed items or elements, to indicate finished appearance and functional operation.

§ 4.2.1.4.2 The Architect shall illustrate the design character of the Project. Such illustrations may include drawings, plans, elevations, renderings, photographs, and samples of actual materials, colors and finishes.

§ 4.2.1.4.3 The Architect shall assist the Owner in the preparation of adjustments to the preliminary schedule and estimate of the Cost of the Work.

§ 4.2.1.5 CONTRACT DOCUMENTS PHASE SERVICES OF ARCHITECT – FURNITURE DESIGN

§ 4.2.1.5.1 Based on the approved Design Development drawings and other documents, including schedule and estimate of the Cost of the Work, the Architect shall prepare Drawings, Specifications and other documents required to describe the requirements for the fabrication, procurement, shipment, delivery and installation of furniture, furnishings and equipment for the Project.

§ 4.2.1.5.2 The Architect shall assist the Owner in the preparation of the necessary Quotation Documents.

§ 4.2.1.6 QUOTATION PHASE SERVICES OF ARCHITECT – FURNITURE DESIGN

§ 4.2.1.6.1 The Architect shall assist the Owner in establishing a list of proposed vendors for furniture..

§ 4.2.1.6.2 The Architect shall assist the Owner in obtaining quotations for furniture.

§ 4.2.1.6.3 The Architect shall prepare written responses to questions from vendors preparing quotations and provide written clarifications and interpretations of the Quotation Documents in the form of addenda.

§ 4.2.1.6.4 The Architect shall assist the Owner in the review of quotations including conformance with the design concept expressed in the Contract Documents.

§ 4.2.1.6.5 Quotation Documents include the Quotation Requirements and the proposed Contract Documents.

§ 4.2.1.6.6 The Architect shall assist the Owner in awarding and preparing agreements with vendors.

§ 4.2.1.6.7 If the Owner and Architect agree that the Architect will purchase furniture on behalf of the Owner with funds provided by the Owner, the duties and compensation related to such Additional Services shall be set forth in a separate agreement.

§ 4.2.1.7 CONTRACT ADMINISTRATION PHASE SERVICES OF ARCHITECT – FURNITURE DESIGN

§ 4.2.1.7.1 The Architect shall provide administration of the contracts for furniture as set forth below..

§ 4.2.1.7.2 The Architect will assist the Owner in coordinating schedules for fabrication, delivery and installation of the Work, but will not be responsible for any failure of a Vendor to meet schedules for completion or to perform its respective duties and responsibilities in conformance with such schedules.

§ 4.2.1.7.3 The Architect shall review and approve or take other appropriate action upon a Vendor'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.

§ 4.2.1.7.4 As the buyer of goods, the Owner shall receive, inspect, and accept or reject furniture at the time of their delivery to the premises and installation unless otherwise agreed. The Architect is not authorized to act as the Owner's agent in contractual matters.

§ 4.2.1.7.5 The Architect shall review final placement and inspect for damage, quality, assembly and function in order to determine that furniture is in accordance with the requirements of the Contract Documents. The Architect may recommend to the Owner acceptance or rejection of furniture.

§ 4.2.1.7.6 The Architect shall visit the Project premises at intervals appropriate to the stage of the Vendor's installation 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. The Architect shall not have control over, charge of or be responsible for the means, methods, techniques, sequences or procedures of fabrication, shipment, delivery or installation, or for the safety precautions and programs in connection with the Work, as these are solely the Vendor's rights and responsibilities under the Contract Documents.

§ 4.2.1.8 OWNER'S RESPONSIBILITIES – FURNITURE DESIGN SERVICES OF ARCHITECT

§ 4.2.1.8.1 The Owner shall be responsible for negotiations and obligations of the lease, if any, and shall serve as the contact with the lessor. The Owner shall provide information contained in the lease and lessor correspondence relevant to the Project.

§ 4.2.1.8.2 The Owner shall be responsible for the relocation or removal of existing furniture and the contents from the facility, otherwise provided in this Agreement.

§ 4.2.1.8.3 The Owner shall establish and update an overall budget for the furniture for the Project, and the Owner's other costs and reasonable contingencies related to all of these costs. The Cost of this portion of the Work shall be the total cost including applicable taxes or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect. A reasonable allowance for contingencies shall be included for market conditions at the time of quotations and for changes in the Work. The Cost of the Work does not include the compensation of the Architect and Architect's consultants, the costs of financing or other costs that are the responsibility of the Owner.

§ 4.2.2 Architect will provide property line and topographical surveying for the five acre parcel identified above. Work will include level B utility designation services of the site and adjacent property.

§ 4.2.3 Architect will prepare a Phase I Environmental Assessment of the site. The services will consist of the following: The purpose of our assessment will be to determine whether activities are occurring, or may have occurred on or near the property, that may be considered recognized environmental conditions, controlled recognized environmental conditions, historical recognized environmental conditions and/or de minimis conditions associated

with the property. This assessment will be performed in general accordance with the scope and limitations of ASTM Standard 1527-13 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

§ 4.2.4 The Architect will provide a Geotechnical Evaluation and Report of the subject area. Geotechnical engineering will consist of the following:

§ 4.2.4.1 Contact the local underground utility service company prior to beginning field services, in order to identify the location of underground utilities in the work area. Stake the proposed boring locations in the field. Architect cannot accept liability for damage to unidentified utilities. If private utilities are located on site, the Owner will be notified for assistance in identifying the private utilities. If required, Architect can coordinate a private utility contractor as an Additional Service.

§ 4.2.4.2 Foundation Design: Locate and advance two (2) 20-foot deep Standard Penetration Test (SPT) borings within the proposed building footprint. This boring depth is considered sufficient as it extends beneath the anticipated shallow foundation influence zone.

§ 4.2.4.3 Pavement Design: Collect one (1) bulk soil sample from the approximate subgrade level of the proposed pavement area. This sample will be submitted for Proctor and CBR testing, pursuant to ASTM and VTM standards. In addition, one (1) 10-foot deep SPT boring will be drilled at the CBR test location.

§ 4.2.4.4 BMP Design: Locate and advance one (1) 15-foot deep SPT boring within the proposed BMP area. Also, a temporary groundwater monitoring well will be installed at this location to obtain a 24-hour groundwater reading along with infiltration testing.

§ 4.2.4.5 SPT borings will be performed with the use of a power drill rig, using rotary wash "mud" and hollow stem drilling procedures. The soil samples will be obtained with a Split-Spoon Sampler in general accordance with the Standard Penetration Test (SPT) method ASTM D 1586. These samples will be taken continuously from the ground surface to depths of 10 to 12 feet, and at 5-foot intervals thereafter, starting at 13 feet below existing grade.

§ 4.2.4.6 Perform a laboratory testing program on selected soil samples collected from the borings in order to determine in-situ moisture content, moisture-plasticity relationships (Atterberg Limits) and sieve analysis as deemed necessary

§ 4.2.4.7 Conduct a Geotechnical engineering evaluation of the available data with respect to foundation, pavement, BMP, and earthwork related design. Also, provide discussions related to groundwater conditions and its impact on the construction, if any.

§ 4.2.4.8 Provision of seismic site criteria for use in structural analysis and design as required by the VA Building Code; to include site class definition based on IBC.

A geotechnical engineering report will be prepared and signed by a registered Professional Engineer presenting data, soil boring logs, observations, evaluations and Blow count (N-value or blows/foot for non-SPT sampler) for driven samples. All services will be conducted in accordance with ASTM standards, and in support of the structural and civil design team members.

§ 4.2.5 Architect will prepare a stormwater management design for the site that meets the required stormwater regulations of the County and State.

§ 4.2.5.1 Architect will perform water quality calculations to meet the requirements of the new state stormwater regulations for phosphorus and nitrogen.

§ 4.2.5.2 Architect will prepare a design narrative for submittal to the County detailing the stormwater management design.

§ 4.2.6 Architect will prepare and file a Storm Water General Permit Registration Statement for the Project with the Virginia Department of Environmental Quality (DEQ). The Owner will submit the permit fee to Architect; after which, Architect will submit the check along with related forms to the DEQ.

§ 4.2.6.1 Architect will prepare a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of Virginia Regulation 4 VAC 50-60-10 et. seq. (Part II D). The principal elements of the SWPPP will be as follows:

- Site description.
- Site-specific sources of pollution including any discharges from the site.
- Site-specific erosion and sediment (E&S) and stormwater pollution controls, including a description of each major activity at the site, long and short term E&S goals, stabilization practices and structural practices.
- Summary of maintenance requirements for all pollution prevention measures at the site.
- Summary of Required Inspections and forms to be used to document such inspections.
- Instructions to Contractor and Contractor Certification Statement.

§ 4.2.6.2 Architect will incorporate, by reference, the principal elements of the Authority having jurisdiction-approved erosion and sediment control measures. Following completion of the SWPPP, Architect will submit it to the Contractor. It is the responsibility of the Contractor to ensure that the SWPPP is located on the project site at all times during construction.

§ 4.2.6.3 Architect's services do not include inspections, notifications or certifications during construction and implementation of the proposed erosion and sediment control measures. Services also do not include revisions to the Erosion and Sediment Control Plan and/or SWPPP as a result of changes to the proposed erosion and sediment control measures made during construction. There are specific requirements of the Contractor as part of the program and our services do not include assistance for these services. Preparation of an additional SWPPP or modifications to the SWPPP for improvements or work beyond those included on the Erosion and Sediment Control Plan, including borrow sites, are specifically excluded from our Scope of Services.

§ 4.2.7 Special Inspection Services: The Architect shall provide the Special Inspection Services for the Project. The Architect shall prepare and implement a Statement of Special Inspections (including Schedule of Special Inspections) in accordance with the requirements of the Virginia Uniform Statewide Building Code (VUSBC). The documents be will suitable for submission to the Building Official as required by the VUSBC for permit issuance. The Owner will retain a separate materials testing agency and laboratory to monitor suitability of foundation subgrade and to perform materials testing and inspection services. The Architect will coordinate with the testing agency and laboratory throughout the Project and will review and take appropriate action with inspection and testing reports submitted by the testing agency. At completion of the Project, the Architect will prepare and submit a *Final Report of Special Inspections* as required by the VUSBC for issuance of a Certificate of Occupancy.

§ 4.2.8 Architect will provide Extended Construction Contract Administration Phase services in accordance with Article 4.3.2.6.

§ 4.2.9 Architect will provide Record Drawings based on Contractor's marked up as-built Construction Documents.

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 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 services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 ~~Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, ~~meeting or hearing;~~
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, the Architect may suspend performance of the Additional Services, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 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 submittal of the Contractor
- .2 Twenty (20) visits to the site by the Architect over the duration of the Project during construction
- .3 ~~(1) inspections~~ One (1) inspection 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 ~~(1) inspections~~ One (1) inspection for any portion of the Work to determine final completion

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including ~~a written program which shall set forth the~~

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Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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

§ 5.3 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.

§ 5.4 ~~The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and Architect shall prepare a topographic and boundary survey in accordance with Article 4.2.2. The Owner shall furnish a written legal description of the site. The surveys and legal information surveys, prepared by the Architect shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

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

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

§ 5.7 ~~The Architect shall provide Special Inspection services in accordance with Article 4.2.7. The Owner shall furnish all other 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.~~

§ 5.8 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.

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

§ 5.9.1 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any defect(s) or suspected defect(s) in the Architect's professional services or Instruments of Service, so that the Architect may be afforded the opportunity to address such alleged defect(s). The Owner shall include in the Owner/Contractor Agreement a similar notification requirement on the part of the Contractor. Failure by the Owner or the Contractor to promptly notify the Architect in writing of the discovery or suspicion of such defect(s) shall relieve the Architect of liability for any damages caused by the defect(s) in excess of the damages that would have been incurred if the Owner and/or Contractor had given prompt notification to the Architect when such defect(s) were first discovered or suspected by the Owner and/or Contractor, and the Architect had promptly corrected such defects.

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

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

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

§ 5.13 The Owner shall advise and provide to the Architect specification criteria that identify those chemicals or substances that the Owner desires the Architect to avoid when specifying products to be included in the improvements being designed for the Owner. The Architect shall endeavor to specify products from manufacturers that have made information disclosing product contents publically available, and shall further endeavor, based solely on a review of the information furnished by the manufacturers and material suppliers, to avoid specifying products that contain the substances identified by the Owner. The Architect shall be entitled to rely exclusively on information furnished by manufacturers and material suppliers. The Owner acknowledges that the Architect does not possess the expertise identified under Section 2.2.2. Accordingly, the Owner warrants that it will retain a chemist, toxicologist, or other qualified professional to determine the environmental and human health impacts of varying types and quantities of substances contained in building products or to make other assessments required by the Owner:

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

ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, ~~through no fault of the Architect~~, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

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§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect 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.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

§ 7.3 Upon execution of full payment of all sums due or anticipated to be due Architect under this Agreement and upon performance of all the Owner's obligations under this Agreement, 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, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers; as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author 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.

§ 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 Under no circumstances shall the transfer of ownership of the Drawings, Specifications, electronic data or other Instruments of Service be deemed to be a sale by the Architect, and the Architect makes no warranties, express or implied, of merchantability or of fitness for a particular purpose.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10-5 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 A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 8.2 MEDIATION

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

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

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction X Litigation in Isle of Wight, Virginia Circuit Court

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Other (Specify)

~~§ 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.~~

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid 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.

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7. due.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 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 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. Virginia law.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction. No headings or numbering of Sections or Paragraphs in This Agreement shall be interpreted or construed to change or modify the duties and obligations of Owner or Architect.

§ 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. other.

§ 10.3.1 Notwithstanding Section 10.3, the Owner may propose an assignment of its rights and responsibilities under this Agreement to a third party, including a lender, when the following conditions have been met: prior to any assignment, the Owner and the Owner's proposed assignee shall furnish to the Architect reasonable evidence that arrangements have been made by the proposed assignee to fulfill all of the Owner's obligations, including financial obligations, under this Agreement. If the Architect has no reasonable objection to the proposed assignment, the Owner may then assign the Agreement. Any expense incurred by the Architect as a result of the assignment shall be considered as an Additional Service and compensated in accordance with this Agreement. If the Architect has reasonable objections, the Owner shall endeavor to resolve all such objections and obtain the Architect's acceptance prior to assigning the Agreement.

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

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. The Owner agrees to include a provision in all contracts with contractors and other entities involved in this Project to carry out the intent of this Paragraph.

§ 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.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

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

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

Compensation shall be the lump sum of One Hundred Eighty-three Thousand, Six Hundred Forty-two (\$183,642.00), to be allocated as follows:

<u>Space Needs Assessment/Master Plan/Conceptual Design</u>	
Project Organization:	included below
Space Needs Assessment/Master Plan/Conceptual Design:	\$ 8,122.00
Subtotal Space Needs/Master Plan:	\$ 8,122.00
<u>Basic Services</u>	
Schematic Design Phase:	\$ 18,202.00
Design Development Phase:	\$ 25,022.00
Construction Documents Phase:	\$ 59,980.00
Bidding Phase:	\$ 4,572.00
Construction Contract Administration:	\$ 32,650.00
Subtotal Basic Services:	\$ 140,426.00
<u>Furniture Design and Procurement</u>	
Furniture Design and Procurement:	\$ 16,008.00
Subtotal Furniture Design and Procurement:	\$ 16,008.00
<u>Additional Services/Optional Services</u>	
Topographic and Boundary Survey:	\$ 2,875.00
Phase I Environmental Site Assessment:	\$ 2,730.00
Geotechnical Investigation:	\$ 4,669.00
Stormwater Management Plan:	\$ 3,000.00
Stormwater Pollution Prevention Plan (SWPPP):	\$ 2,500.00
Special Inspection Services:	\$ 3,312.00
Subtotal Additional Services/Optional Services:	\$ 19,086.00
Total All Services:	\$ 183,642.00

§ 11.2 For Additional Services designated in Section 4.1, 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.)

In accordance with 11.1.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Compensation for Extended Construction Contract Administration Phase Services shall be \$2,700.00 per month.

Compensation for other Additional Services shall be as mutually agreed as Additional Services are required.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (—%), ten percent (10%), or as otherwise stated below:

~~§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:~~

Schematic Design Phase	percent (%)
Design Development Phase	percent (%)
Construction Documents Phase	percent (%)
Bidding or Negotiation Phase	percent (%)
Construction Phase	percent (%)
Total Basic Compensation	one hundred percent (100 %)

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

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

SCHEDULE OF HOURLY BILLING RATES

Hourly rates will remain at the rates below through completion of construction of the Municipal Building.

<u>Principals</u>	<u>\$200.00</u>
<u>Employee or Category</u>	<u>Rate</u>
<u>Architects</u>	
Senior Project Manager	<u>177.00</u>
Project Manager	<u>138.00</u>
Architect	<u>133.00</u>
Architectural Designer	<u>87.00</u>
<u>Security and Detention Design</u>	
Security Design Specialist	<u>166.00</u>
<u>Engineering Director</u>	<u>200.00</u>
<u>Mechanical/Electrical/Plumbing/Engineering</u>	
Senior Engineer	<u>154.00</u>

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<u>Engineer/Designer</u>	<u>126.00</u>
<u>Intern Technician</u>	<u>87.00</u>
<u>Structural Engineering</u>	
<u>Senior Engineer</u>	<u>138.00</u>
<u>Engineer/Designer</u>	<u>115.00</u>
<u>Intern Technician</u>	<u>87.00</u>
<u>Corrections Planner</u>	<u>\$200.00</u>
<u>Criminal Justice Consultant</u>	<u>\$150.00</u>
<u>Construction Administration</u>	
<u>Construction Administrator</u>	<u>\$133.00</u>
<u>Specification Writer</u>	<u>\$133.00</u>
<u>Sustainability Planning</u>	
<u>Sustainability Planning Director</u>	<u>154.00</u>
<u>Energy Analyst</u>	<u>129.00</u>
<u>Sustainability Coordinator</u>	<u>115.00</u>
<u>Interior Design</u>	
<u>Interior Designer</u>	<u>87.00</u>
<u>Administrative</u>	<u>\$61.00</u>

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- .1 ~~Transportation and authorized out-of-town travel and subsistence; subsistence for travel other than to the Town of Windsor from the Architect's offices;~~
- .2 ~~Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents; documents with the exception of the following:
 - Reproduction of documents for in-house use;
 - Ten (10) copies of the Space Needs Assessment/Master Plan Submission;
 - Two (2) copies of the Schematic Design submission;
 - Two (2) copies of the Design Development submission;
 - Four (4) copies of the Construction Documents submission;
- .5 Postage, handling and delivery;
- .6 ~~Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- .7 ~~Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner; Owner (unless specifically included in Basic Services);~~
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 ~~All taxes levied on professional services and on reimbursable expenses;~~
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

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

Inlt.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Not Applicable

§ 11.10 PAYMENTS TO THE ARCHITECT

~~§ 11.10.1 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.~~

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) 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.

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

%—Twelve percent (12%) per annum

§ 11.10.3 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 and final dispute resolution proceeding.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

12.1 Neither the Architect nor the Architect's consultants have offered any fiduciary service to the Owner and no fiduciary responsibility shall be owed to the Owner by either the Architect or the Architect's consultants as a consequence of the Owner and Architect entering into this Agreement.

12.2 NON-DISCRIMINATION. During the performance of this Agreement, the Architect agrees as follows:

12.2.1 The Architect will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Architect. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

12.2.2 Architect shall state in all solicitations or advertisements for employees placed by or on behalf of the Architect that the Architect is an equal opportunity employer.

12.2.3 Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient compliance with this provision.

12.2.4 The Architect agrees to include the provisions of 12.2.1, 12.2.2, and 12.2.3 above in every subcontract over \$10,000 so that the provisions will be binding upon each subcontractor.

12.3 During the performance of this Agreement, the Architect agrees to (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicant/s for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on its behalf that it maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every

subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement in which the employees of the Architect are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

12.4 Architect's services, Instruments of Service, and work product are intended for the sole use and benefit of Owner and are not intended to create any third-party rights or benefits or for any use by any other person or entity or for any other purpose.

12.4.1 Architect's Services shall be limited to those expressly set forth in this Agreement. Architect shall have no other obligations or responsibilities for the Project except as agreed to in writing.

12.4.2 Owner recognizes that the Contractor and Subcontractors will be solely in control of the Project site and exclusively responsible for construction means, methods, scheduling, sequencing, jobsite safety and compliance with all Construction Documents and directions from Owner or building officials. Architect shall not be responsible for construction related damages, losses, costs, or claims, except only to the extent caused by Architect's sole negligence.

12.4.3 If Value Engineering, or some other format that results in similar evaluations, is performed on this Project, upon the written request or direction of Owner, Architect shall provide its opinion to the Owner with respect to proposed or requested changes in materials, products, or equipment. Architect shall be entitled to rely on the accuracy and completeness of the information provided in conjunction with the requested substitution. Owner acknowledges that such changes may result in a reduction in the quality and performance of the project and accepts that risk in recognition of the objectives of the change. Accordingly, Architect shall not be responsible for errors, omissions, or inconsistencies in information by others or in any way resulting from incorporating such substitution into the Project.

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 Owner and Architect.

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

- 1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- 2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

Exhibit A – Architect's cost proposal dated July 5, 2016

- 3 2 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

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

OWNER



(Signature)

Michael Stallings, Town Manager
Town of Windsor

(Printed name and title)

ARCHITECT



(Signature)

Anthony V. Bell III, AIA, Vice President
Moseley Architects P.C.

(Printed name and title)

Init.