

AIA Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the _____ day of June in the year 2018

BETWEEN the Architect's client identified as the Owner:

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

and the Architect:

Perkins+Will, Inc.
South Dakota Architect License Number(s): C-2460
80 South 8th Street, Suite 300
Minneapolis, Minnesota 55402

for the following Project:

Rushmore Plaza Civic Center Barnett Arena

This project is located on the northwest corner of the Rushmore Civic Center Plaza and will include:
Single concourse that would feed a one large single bowl with the premium level at the top of the bowl.
The arena will be designed with the current standards and needs of a modern traveling show. The expansion is roughly 12,300 seats and around 265,000 square feet.

The Owner and Architect agree as follows.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

§ 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: 06/2019.
- .2 Substantial Completion date: 08/2021.

§ 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, as applicable, provided that for any increases in the Architect's compensation or extensions of the Architect's schedule, the Architect demonstrates to Owner's reasonable satisfaction that the change in Initial Information will actually affect the schedule for performance or increase the cost of the Architect's services and the parties amend the Agreement accordingly. The Architect shall notify the Owner in writing within 14 days of any material change in the Initial Information that will affect the schedule, the services, or the Architect's compensation.

§ 1.4 The Owner has retained the Tegra Group to serve as the Owner's representative ("Owner's Representative") in connection with the Project. The Owner's Representative is not the Owner's agent and shall not have authority to bind the Owner or to act on the Owner's behalf. The Architect shall cooperate with the Owner's Representative and shall communicate with both the Owner and the Owner's Representative when transmitting any information required to be transmitted to the Owner under this Agreement. No supervision or review of any portion of the

Architect's services by the Owner's Representative shall relieve the Architect of any of its obligations under this Agreement.

§ 1.5 The Owner intends to retain a construction manager to provide preconstruction services during the design phases to assist Owner, Owner's Representative, and design team with cost estimating and Project phasing. The Owner intends to retain a Construction Manager at Risk ("Construction Manager") under a contract format that utilizes a Cost of the Work plus a Fee with a Guaranteed Maximum Price ("GMP"). Owner intends to select the Construction Manager prior to or during the Schematic Design Phase Services. All references in this Agreement to "Contractor" shall mean the entity hired by the Owner as the Construction Manager for the construction of the Project. The Architect will cooperate and coordinate with the other members of the Project team (including the Owner, the Owner's Representative, and the Construction Manager for the performance of the Architect's services hereunder and for value engineering and budgeting tasks of the Construction Manager).

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement and Exhibit A (Scope of Work). The Architect acknowledges and agrees that the intent of this Agreement is for the Architect to provide the complete architectural and engineering design services for all aspects of the Project. The Architect will be responsible to coordinate the design and engineering of all Work, including the services of its consultants and sub-consultants and coordination of any and all Drawings and Specifications in order to provide the complete design services and Construction Documents necessary for the Contractor to timely and properly complete the Work.

§ 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 (including as required to comply with the Contractor's Project schedule).

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The Architect agrees to assign Michael Harvey to lead the design of the Project ("Key Personnel"). The Key Personnel shall attend all applicable Project meetings. The Key Personnel shall be Owner's primary day-to-day design contacts from Project commencement through Project completion. Architect shall not replace its Key Personnel without Owner's prior written consent.

§ 2.4 Except with the Owner's knowledge and written 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:

- .1 Workers' Compensation insurance covering all persons employed or retained by the Architect in connection with the Project with statutory coverage limits and Employers Liability insurance with limits of not less than one million dollars (\$1,000,000.00). The Architect shall require its consultants to purchase and maintain such insurance covering their employees. All such Workers' Compensation policies shall include "Other States" coverage and a waiver of subrogation in favor of the Owner.
- .2 Professional Liability insurance written on a claims made basis with limits of liability in amounts not less than three million dollars (\$3,000,000.00) per claim and not less than three million dollars (\$3,000,000.00) annual aggregate insuring the Architect, and all persons for whose acts the Architect may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors, or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities for the Project. The deductible shall not exceed \$15,000. The Architect shall require its structural, mechanical and electrical consultants to carry similar insurance with limits of liability of not less than two million dollars (\$2,000,000.00) per claim and aggregate. The retroactive date of the Architect's policy shall be no later than the date the Architect first began providing services to the Owner.
- .3 Commercial General Liability insurance written on an "occurrence basis" with coverage of not less than one million dollars (\$1,000,000.00) combined single limit for any single occurrence insuring against bodily injury and property damage and of not less than two million dollars (\$2,000,000.00) aggregate and two million dollars (\$2,000,000) completed operations coverage.

.4 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than one million dollars (\$1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

.5 Umbrella Liability with policy limits of not less than five million dollars (\$5,000,000) for each occurrence and in the aggregate.

The Architect may furnish these coverages under one policy or separate policies. Commercial general liability policies of insurance required to be provided by the Architect shall include the Owner as an additional insured and shall provide that such insurance is primary and that any other insurance available to the Owner is in excess of and non-contributory to the insurance provided by the Architect.

§ 2.6 All required insurance shall be maintained with responsible insurance carriers (each referred to as a "company") legally permitted to do business in the state where the Project is located, having a Bests rating of not less than A-X, and otherwise reasonably acceptable to the Owner. Upon the signing of this Agreement, the Architect shall deposit with the Owner certificates of insurance evidencing the required insurance coverage, bearing notations or accompanied by other evidence satisfactory to the Owner of the payment of all premiums thereunder. All insurance policies required to be obtained by the Architect hereunder shall include a waiver of subrogation by endorsement or otherwise in favor of the Owner and its agents, employees, officers, directors, and lenders. The waivers of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest.

§ 2.7 The Architect shall not allow insurance required by this Agreement to lapse, be canceled, reduced in coverage, non-renewed, or materially changed or have restrictive modifications added at any time. Certificates of insurance acceptable to the Owner shall be filed with the upon renewal or replacement of each required policy of insurance, and each policy shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. Failure of the Owner to object to a lack of a certificate of insurance required under Section 2.6 or this Section 2.7 or to the coverages indicated thereon or provided by the Architect shall not constitute a waiver by the Owner of any of the Architect's obligations. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Architect to the Owner with reasonable promptness.

§ 2.8 Insurance policies required by this Agreement shall be kept in full force and effect for the following periods:

(a) Commercial General Liability insurance shall be kept in full force and effect until receipt of final payment by the Architect hereunder;

(b) Workers' Compensation insurance shall be kept in force until receipt of final payment by the Architect hereunder. This Agreement shall be void and of no force and effect against the Owner unless, in compliance with the worker's compensation law, the Architect shall secure statutorily required worker's compensation insurance for the benefit of all such employees engaged in the performance of this agreement as are required to be insured under applicable law; and

(c) Professional Liability and Umbrella Liability insurance shall be kept in force for six years after final completion of the Project, provided it is commercially available.

(d) Automobile Liability insurance shall be kept in until receipt of final payment by the Architect hereunder.

If the Architect fails to provide or keep in force insurance as required under this Agreement, the Owner may purchase or pay premiums for such insurance on the Architect's behalf, and the Architect shall be liable to and indemnify the Owner for all of the Owner's costs related thereto, including attorneys' fees (including those fees and costs incurred in collecting and enforcing this Subparagraph).

§ 2.9 Compliance by the Architect with the insurance requirements of this Agreement shall not relieve the Architect from liability for amounts in excess of the limits of insurance.

§ 2.10 Owner reserves the right to purchase and institute additional insurance policies and programs for the Project, including an Owner's Protective Professional Insurance (OPPI) policy and an Owner's Controlled Insurance Program (OCIP). Architect shall comply with any applicable requirements of imposed by any OPPI policy and OCIP for consultants, professionals, and contractors performing services at the Project site. If such additional requirements cause an increase in the Architect's insurance costs for the Project, the Architect will provide prompt written notice to the Owner prior to incurring such expenses. If the Owner thereafter directs the Architect to nonetheless comply with such additional requirements, the Owner and the Architect will agree upon an equitable increase in the compensation due to the Architect under this Agreement to account for such additional insurance costs. Likewise, if such additional requirements cause a decrease in the Architect's insurance costs for the Project, the Architect will provide prompt written notice to the Owner and the Owner and the Architect will agree upon an equitable decrease in the compensation due to the Architect under this Agreement to account for such reduced insurance costs.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3, Section 4.1, and Exhibit A (Scope of Services), and include usual and customary structural, mechanical, and electrical engineering services, as well as landscaping/urban planning design services. Services not set forth in Article 3, Section 4.1, and Exhibit A (Scope of Services) are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, including those services provided by any of the Architect's consultants or their respective sub-consultants, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner, and the Architect shall assist in developing the Owner's program to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants and shall prepare the design to accommodate such features, fixtures, and equipment as may be selected and/or designed by the Owner's separate consultants. The Architect shall be responsible for providing locations of floor boxes to accommodate systems furniture. The Architect may reasonably rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants, but only to the extent the Architect is not aware of any omission or inaccuracy or reasonably should not be aware of any such omission or inaccuracy. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 The Architect shall perform its services in accordance with the schedule set forth in Exhibit A (Scope of Services). Time is of the essence. 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 beyond the Architect's control, be exceeded by the Architect and the Architect must institute all steps necessary to recover such lost time, including adding additional staffing and/or increasing or adding overtime services without additional cost to the Owner.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's knowledge.

§ 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. The Architect's services shall comply with all laws, ordinances, rules, codes, regulations or other orders of any public authority having jurisdiction over the Project.

§ 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.

§ 3.1.7 The Architect shall be responsible for all clearances and elevation coordination in order to provide adequate accommodations of all building system installations, including the provision of adequate clearances for the installation of future finish installations on the Project.

§ 3.1.8 Direct communications are hereby authorized between the Architect's consultants and the Owner. The Architect shall be informed regarding the substance of any such communication. The Owner shall not direct the Architect's consultants.

§ 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 (e.g., LEED, WELL, etc.). 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 an architectural site plan, if appropriate, and preliminary building plans, sections and elevations, drawings of other building systems in the Architect's scope of services, prepared by the Architect's consultants; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Design Documents shall conform to the Owner's program and the Cost of the Work.

§ 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 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 At the conclusion of the Schematic Design Phase, the Architect will submit to the Owner and the Contractor drawings and specifications for the initial estimate of the Cost of the Work. The information to be delivered to the Owner shall include the Schematic Design Documents and a written narrative statement that includes the Architect's description of incomplete design elements of the Schematic Design Documents and the Architect's statement of the intended scope (including anticipated qualities and quantities) with respect to such incomplete elements.

§ 3.2.7 The Architect, Owner, Owner's Representative, and Contractor shall meet to review the Contractor's cost estimate, and shall cooperate with each other until they mutually agree upon the scope of work that aligns with the Owner's budget. If revisions to the Schematic Design Documents are required to comply with the Owner's budget, the Architect shall modify the written statement to reflect the revisions and request Owner approval of the Schematic Design. The Architect shall then incorporate the required revisions into the Design Development Documents without additional fee or expense to the Owner.

§ 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 identified in Exhibit A (Scope of Services) or are otherwise appropriate. 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 At 50% complete and 100% complete Design Development Phase, the Architect shall submit the Design Development documents to the Owner and the Contractor. The Architect shall meet with the Contractor to review the Design Development Documents. If revisions to the Design Development Documents are required to comply with the Owner's budget for the Cost of the Work at any time during the design process, the Architect will incorporate the required revisions into the Construction Documents at no additional cost to the Owner.

§ 3.3.4 The Guaranteed Maximum Price ("GMP") will be established at the conclusion of the Design Development Phase. The Architect will submit a GMP package to the Owner and the Contractor. The GMP package will include Design Development Documents, a written narrative which includes the Architect's description of incomplete elements of the Design Development Documents or Construction Documents and the Architect's statement of the intended scope (including anticipated qualities and quantities) with respect to incomplete elements. Further, the Owner, Architect, and Contractor will mutually agree on the deliverables to be included in the package used for determining the GMP. The Architect will meet with the Owner and the Contractor to review the GMP package.

§ 3.3.5 Upon the Architect's and the Owner's receipt of the Contractor's estimate of the GMP at the conclusion of the Design Development phase, the Owner, Architect and Contractor will review the Contractor's estimate of the GMP. The Architect, Owner and the Contractor shall cooperate with each other in connection with the establishment of the GMP until they mutually agree upon the GMP (such agreement not to be unreasonably withheld, delayed, or conditioned). Upon mutual agreement of the Architect, Owner and Contractor, the GMP will be included in the Owner's budget. If revisions to the Design Development Documents are required to comply with the Owner's budget, including the Cost of the Work represented by the GMP at the conclusion of the Design Development phase, the Architect shall make any required revisions to the Design Development Documents without additional fees or expenses to the Owner until the Design Development Documents support completion of the Work in conformity with the GMP. The Architect will then request the Owner's approval of the Design Development Documents in accordance with this Agreement.

§ 3.3.6 As part of its Basic Services, the Architect will include additive and deductive alternates in the Design Development Documents utilized by the Architect, Owner and Contractor to agree upon the GMP that have the potential to increase or decrease the Cost of the Work by approximately 5% of the Owner's budget for the Cost of the Work, and the Architect's compensation will not change because of incorporation of such alternates into the Project. The Architect will be responsible for providing complete Construction Documents for these alternates, including detailed Drawings and Specifications. If the Owner increases the GMP, the Architect will be compensated appropriately to the extent the Architect's expense in performing its Basic Services is materially affected by such increase.

§ 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. In addition, the Architect will meet as often as required with state and local building and fire code officials and, if necessary, with representatives of the State Building Code and Standards Division and State Department of Health. The Architect will be responsible for Project design conformance to all applicable statutes and codes, including variances thereof. When the Architect is of the opinion the statutes and codes, including variances, are internally inconsistent or inconsistent with other obligations of the Architect in this Agreement, the Architect will present to the Owner the inconsistencies for resolution.

§ 3.4.3 During the development of the Construction Documents, the Architect shall, if requested by the Owner in writing, 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 Prior to the conclusion of the Construction Documents Phase, the Architect will submit the Construction Documents to the Owner and the Contractor for their review. If revisions to the Construction Documents are required to comply with the GMP, the Architect will incorporate the required revisions into the Construction Documents without additional fee or expense to the Owner.

§ 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.

§ 3.4.6 The Architect shall prepare the Construction Documents in accordance with the Owner's program and stated needs, and the Construction Documents shall be consistent with professional care and in compliance with applicable laws, statutes, regulations, ordinances, and codes.

§ 3.4.6 The Construction Documents shall include a written description of the commissioning requirements for documenting and verifying that the installation and performance of the HVAC, plumbing, electrical, communication, security, emergency, fire and life safety and other systems which are part of the Project ("MEP Systems") are in conformity with the Contract Documents.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

Following the Owner's approval of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner in (1) confirming responsiveness of bids or proposals; and (2) determining the successful bid or proposal, if any.

§ 3.5.2 COMPETITIVE BIDDING

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

§ 3.5.2.2 If requested by the Owner in writing, the Architect shall assist the Owner and the Contractor in bidding the Project by

- .1 participate in pre-bid conferences for prospective bidders; and
- .2 assisting with 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.

§ 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 If requested by the Owner, the Architect shall assist the Owner and the Contractor in obtaining proposals by

- .1 assisting in organizing and participating in selection interviews with prospective trade subcontractors; and
- .2 participating in negotiations with prospective trade subcontractors if requested 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 trade contractors.

§ 3.5.4 The Owner in its sole discretion may choose to negotiate or select certain trade subcontractors for construction at an earlier phase.

§ 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, as modified for this Project consistent with this Agreement. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall be enforceable under this Agreement to the extent that the modifications are consistent with this Agreement and approved by the Architect. The Architect agrees to assign Joseph Dyer to lead the performance of the Construction Phase Services for the Project.

§ 3.6.1.2 The Architect shall attend all weekly progress meetings and advise and consult with the Owner and Contractor 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 and Section 3.6.6.5, 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 or the date applicable governmental authorities issue a Final Certificate of Occupancy, whichever occurs first. The Architect shall not issue the final Certificate of Payment until the Owner confirms, in writing, that the Contractor has satisfied all of the conditions under AIA Document A201-2007.

§ 3.6.1.4 The Architect will review and answer requests by the Contractor for additional information about the Contract Documents. A request for additional information about the Contract Documents will be in a form reasonably acceptable to the Architect and will include a written statement that indicates the specific Drawings or Specifications in need of clarification. The Architect will advise the Owner regarding such requests and the responses thereto. The Architect will provide the Owner a copy of all requests and responses if requested by the Owner.

§ 3.6.1.5 If deemed appropriate by the Architect or the Owner, the Architect will prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

§ 3.6.1.6 The Architect shall not cause changes in the Work without the written approval of Owner. Should the Architect cause changes in the Work without the Owner’s approval, any costs incurred due to these changes or to reinstate the original requirements shall, at the discretion of the Owner, be paid by the Architect.

§ 3.6.1.7 The Architect shall review and answer promptly, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall consult with the Owner regarding such requests and the responses thereto. The Architect shall provide the Owner with a copy of all requests and responses.

§ 3.6.1.7.1 The Architect’s Construction Phase services also shall include on-site representation to directly address with the Contractor architectural, structural, and MEP matters consistent with the terms of this Agreement.

§ 3.6.1.8 If deemed appropriate by the Architect and the Owner, the Architect shall prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

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

§ 3.6.1.10 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 secure faithful performance by the Contractor and shall not be liable for results of interpretations or decisions rendered in good faith. In any dispute between the Owner and the Contractor, the Architect shall, upon request by Owner, advise the Owner on issues concerning the Contractor's performance under the Contract Documents. The Architect will make recommendations to the Owner regarding issues concerning the aesthetics of the Project.

§ 3.6.1.11 The Architect shall render in writing within a reasonable time an opinion as to claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's opinions on matters relating to aesthetic effect shall be the final determination if consistent with the intent expressed in the Contract Documents and approved by the Owner.

§ 3.6.1.12 The Architect shall, before the beginning of construction, conduct one pre-construction conference, and thereafter construction progress meetings, and shall prepare and distribute appropriate records and minutes of such conferences and meetings.

§ 3.6.1.13 The Architect, together with consultants as required, shall after the beginning of construction of the Project, but prior to beginning of specific parts of the Project, administer pre-installation conferences as defined by the Construction Documents.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall conduct on-site inspections of the Project construction and hold construction progress meetings at intervals appropriate to the stage of construction, or as otherwise directed by the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies in the Work, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and prepare and forward to the Owner a field report for each on-site inspection within three (3) working days after the completion of each such visit, with such report being in the form of AIA Form G711 or any equivalent form. The Architect shall also 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 upon the prior written approval of Owner. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority, upon prior written notice to Owner, 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 acknowledges that the Owner has independent rights to reject or stop the Work if the Contractor fails to correct Work that does not conform to the Contract Documents.

§ 3.6.2.4 Upon the Owner's request, the Architect shall advise the Owner with respect to Claims by the Contractor.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall, within seven days following the Architect's receipt of the Application for Payment from the Contractor, review and either reject the Application for Payment, or portion thereof, and give the

Contractor notice thereof, or approve and certify the amounts due the Contractor and shall issue to the Owner certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the Project site and evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents and the Contractor is entitled to payment in the amount certified by the Architect. 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 be a representation that the Architect has confirmed that the Contractor has submitted all required data and information with its Application for Payment, but 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 and stamp each such application on the date it was received by the Architect.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall promptly 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 conformance with information given and the design concept expressed in the Contract Documents and confirming that submittals are in conformance with 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 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. No "design-build" or "design-assist" scopes of Work will be included in the Contract Documents except as specifically detailed by the Architect to, and thereafter approved by, the Owner, and the Architect shall specifically identify in writing for the Contractor any specifications that the Architect considers to be performance specifications (and all such performance specifications shall be clearly labeled as such in the Contract Documents). The Architect shall review and approve or take other appropriate action in connection with shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, subject to the standard of care and scope of services under this Agreement.

§ 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. The Architect shall advise the Owner, in writing, if the Architect becomes aware that the Work is proceeding in the absence of shop drawing and submittals that have been reviewed and approved, or are required to be reviewed and approved, in accordance with 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. The Architect shall, if requested by the Owner, prepare Change Orders and Construction Change Directives for Owner's approval or review and advise Owner in connection with Change Orders submitted by the Contractor. The Architect will consult with and provide its recommendations to the Owner as to the necessity for any change, provide assistance to the Owner in the evaluation and negotiation of Change Orders and Construction Change Directives as part of its Basic Services. If necessary, the Architect shall prepare, reproduce and distribute Drawing and Specifications that describe Work to be added, deleted or modified.

§ 3.6.5.2 The Architect shall prepare and maintain (1) a continuous listing of all Change Orders, both those proposed and those executed, (2) a second continuous listing of all Construction Change Directives, and (3) a third continuous listing of all approved minor changes in the Work, and, in addition, shall provide copies of such records to the Owner.

§ 3.6.5.3 The Architect shall promptly review requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or the Contract Time.

§ 3.6.5.4 If Architect determines that implementation of the requested changes would result in an adjustment if any schedule or the Cost of the Work, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a change in service of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 3.6.5.5 Upon completion of the Construction Phase, the Architect will prepare and deliver to the Owner the BIM model and two paper sets of as-constructed record Drawings and Specifications incorporating revisions made by the Architect during the Construction Phase and field changes noted on the Contractor's marked-up field set.

§ 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. Substantial Completion will be deemed to occur when the Work has been fully and satisfactorily completed in accordance with the Contract Documents so that the Owner may utilize the Project for its intended purpose. In no event may Substantial Completion be deemed to have occurred unless (i) a temporary certificate of occupancy has been issued by the appropriate governmental authorities and (ii) all Work has been approved and accepted by the Architect and Owner, subject only to punch list items remaining. The Architect shall notify the Owner, in writing, when, in the Architect's opinion, construction of the Project is substantially complete, and then when fully complete including all punch lists and closeout items. Upon determining that the Work is Substantially Complete, the Architect shall prepare, execute, and provide to Owner a Certificate of Substantial Completion for the Work, or portions thereof, using AIA Document G704/CMA. The Architect shall issue a final Certificate for Payment to Owner when, in the Architect's opinion, the Contractor has fully complied with all requirements of the Contract Documents. Issuance of a Certificate of Substantial Completion and final Certificate for Payment will constitute a representation by the Architect to the Owner that, to the Architect's reasonable knowledge, information and belief, the Work as referenced therein has been substantially or finally completed, as the case may be, in accordance with 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 inspect and review the facility operations and performance, and shall provide a list of defects in the Project to the Owner at least two weeks prior to the one-year anniversary of the date of Substantial Completion. Architect shall provide assistance in enforcing any warranty issues by the Contractor.

§ 3.6.6.6 When the Architect is notified that the Contractor believes a portion of the Project is Substantially Complete, the Architect shall review the Work performed for that portion of the Project. If the Architect finds such Work to be Substantially Complete, it shall prepare and deliver to the Owner and Contractor a punch list of all incomplete and unsatisfactory items as either reported to or observed by the Architect. The Architect shall also specifically inspect the Work with the Owner and shall add to the punch list any additional items discovered during that review. The Architect, Contractor and Owner shall agree to a data base on which all punch lists for the Project will be prepared to enhance the parties' access to punch list information.

§ 3.6.6.7 The Architect's responsibility to provide Basic Services for the post-construction phase commences upon Substantial Completion of the Project and terminates at the earlier of: (i) the date the final payment has been made to the Contractor; or (ii) three hundred and sixty five (365) days following Substantial Completion of the Project. The Architect must also participate in the inspections set forth in Section 3.6.6.8 as Basic Services, even if such inspections occur after the time period set forth in the preceding sentence have expired.

§ 3.6.6.8 In addition to the other post-construction services set forth in this Agreement, the Architect shall, as part of its Basic Services, participate in three MEP Systems, which inspections will be scheduled by and performed in conjunction with the Contractor as follows: (i) an inspection to be conducted at the end of the first full heating season following Substantial Completion of the Project, (ii) an inspection to be conducted at the end of the first full air conditioning season following Substantial Completion of the Project, and (iii) a warranty inspection of the entire Project to be conducted approximately eleven (11) months following Substantial Completion of the entire Project, with a written report to be delivered to the Owner at least fifteen (15) days before the first anniversary date of Substantial Completion of the entire Project.

ARTICLE 4 BASIC SERVICES AND ADDITIONAL SERVICES

§ 4.1 The Services listed in Exhibit A (Scope of Services) are included in Basic Services and are required for the Project.

§ 4.2 Not used.

§ 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. If Additional Services are required due to the fault of the Architect, the Architect shall not be entitled to additional compensation or an adjustment in the Architect's schedule for such services.

§ 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;
- .11 Detailed cost estimating (which shall not be deemed to include the services described in Sections 3.2.2, 3.2.5.2, 3.2.7, 3.3.2 through 3.3.6, 3.4.4, or 3.5 of this Agreement);
- .12 Extensive environmentally responsible design (which shall not be deemed to include the services described in Sections 3.2.3 and 3.2.5.1 of this Agreement, but which shall include the services described in Section 4.3.1.2 above); or
- .13 Fast Track Design Services (defined as additional services required of the Architect for the Project to allow the Contractor to commence physical construction of the Work at the Project site prior to completion of the Design Development phase and establishment of the GMP).

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this Section 4.3.1, or for other services requested by the Owner, the Architect shall notify the Owner in writing with reasonable promptness and (a) explain the basis of the Architect's belief that such services are outside the scope of the Basic Services and Additional Services, and (b) provide an estimate of the probable cost of such services and probable impact, if any, on the schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) deny that the Architect is entitled to additional compensation and direct the Architect to proceed with the services, in which case the Architect may pursue a claim for additional compensation under Article 8. The Owner's determination that the Architect is not entitled to additional compensation for such services shall not relieve the Architect of its responsibilities under this Agreement.

§ 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, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Responding to any unreasonable or repetitive requests for information from the Contractor 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; or
- .2 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after the date of Substantial Completion of the Work, except as provided in Section 3.6.6.5.

If the Architect believes it is entitled to additional compensation for services the Architect believes are needed under this Section 4.3.2 or for other services requested by the Owner, the Architect shall notify the Owner in writing with reasonable promptness and (a) explain the basis of the Architect's belief that such services are outside the scope of the Basic Services and Additional Services, and (b) provide an estimate of the probable cost of such services and

probable impact, if any, on the Architect's and Contractor's schedules. The Architect shall not provide any services for which the Architect believes it is entitled to additional compensation until the Architect receives the Owner's written authorization, which authorization shall either (i) acknowledge that the Architect is entitled to additional compensation under Section 11.3, or (ii) deny that the Architect is entitled to additional compensation and direct the Architect to proceed with the services, in which case the Architect may pursue a claim for additional compensation under Article 8. The Owner's determination that the Architect is not entitled to additional compensation for such services shall not relieve the Architect of its responsibilities under this Agreement.

§ 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 Weekly visits to the site by the Architect over the duration of the Project during construction; however, if during the construction phase any changes or corrections to the Work are required due to an error or omission of the Architect, its consultants or any party in contract with the same, Architect will visit the site as many times as needed until such correction is completed to Owner's satisfaction and at no additional cost to the Owner.
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement (except for the services provided in Section 3.6.6.5) have not been completed by October 31, 2021, 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 or agreed by the parties, the Owner shall provide reasonable information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria.

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

§ 5.5 The Owner shall furnish services of geotechnical engineers, when such services are reasonably requested by the Architect and necessary for the Project. Such services 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 require that its consultants maintain professional liability insurance as appropriate to the services provided and as reasonably approved by the Architect.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, but only to the extent not otherwise required of the Architect or Contractor.

§ 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 reasonable notice to the Architect if the Owner becomes aware of any significant fault or defect in the Project, or significant errors or omissions in the Contract Documents, provided that the Owner shall not become responsible for and the Architect shall not be released from liability for such faults or defects by reason of any failure of the Owner to discover or report any such faults or defects.

§ 5.10 The Architect shall promptly provide the Owner with copies of any direct communications with the Contractor regarding any performance by the Contractor under the Construction Documents, including but not limited to requests for information and Change Order proposals that may affect the design or cost of the Project or may require approval or other actions by the Owner.

§ 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. At Owner's sole option and discretion, and if necessary for performance of Architect's Services, 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 to the extent necessary for the Architect to perform its services.

§ 5.13 Whenever this Agreement, the General Construction Contract Conditions, or any other Construction Document refer to the knowledge of the Owner, facts known to the Owner, or documents or information in the possession of this Owner, such references shall be limited to matters actually known by or items actually in the possession of the Owner.

§ 5.14 Excepting only to the extent of errors or omissions of which the Architect becomes aware as part of its good faith review of any and all documents, graphics, information, or data provided by the Owner or by the agents or representatives of the Owner (which the Architect shall be charged with knowledge of and a duty to inform the Owner of the existence of), and except as otherwise stated by the Owner or stated in such documents, graphics, information, or data, the Architect, to the extent consistent with the standard of care described in Section 2.2 of this Agreement, may reasonably rely to the same extent the Owner or its agents or representatives, as applicable, are entitled to do so upon the accuracy and sufficiency of any such documents, graphics, information, and data, as well as upon the implied representation that the Architect may incorporate such documents, graphics, information, and data (in whole or in part) into the Instruments of Service for this Project without infringing upon the intellectual property rights of any third party.

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 Contractor's general conditions costs, overhead and profit and contingencies for changes in the Work as defined in Article 12. The Cost of the Work does not include the compensation of the Architect, the compensation of the Contractor for Pre-construction Phase Services, 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 Exhibit A (Scope of Services). The Owner's budget for the Cost of the Work 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, if any, 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 The Owner shall require the Contractor to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services.

§ 6.4 Not used.

§ 6.5 If at any time the Contractor'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 Design Development Phase Services is exceeded by the Contractor's 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 GMP, 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 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 Any Instruments of Service in electronic form shall be in the format required by the Owner and reasonably acceptable to the Architect. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Owner.

§ 7.3 All designs, drawings, specifications, documents, models, electronic data and other work products of the Architect are Instruments of Service for this Project, whether or not the Project is completed, and are the property of the Owner along with all copyrights therein. The Architect shall make all necessary arrangements with its sub-consultants to ensure that the Owner is the owner of the Instruments of Service consistent with this Agreement. The Owner is entitled to possession of such work products upon completion, termination of this Agreement, or Owner's request, whichever occurs first and upon payment in full of all amounts due to the Architect hereunder. The Architect shall be entitled to retain copies of all of its work product and to reuse individual details that are not unique to the Project (and are commonly included in buildings and structures of a nature similar to structures and buildings that are part of the Project) in subsequent work. Reuse by the Owner of any of the Instruments of Service of the Architect on extensions of this Project or on any other Project without the written permission of the Architect shall be at the Owner's sole risk and without liability or legal expense to the Architect. The Owner agrees to defend, indemnify, and hold harmless the Architect from all claims, damages, losses, and expenses arising out of such unauthorized reuse. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service.

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. 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, and this waiver of subrogation is permitted by the terms of the applicable insurance policies, the Owner and Architect waive all rights against each other and against the Contractor, 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 Contractor, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. The Architect's obligations under this Section 8.1.2 shall survive completion of Architect's services under this Agreement or termination of this Agreement.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement 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. 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.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Rapid City, SD, 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: Litigation in a court of competent jurisdiction in Rapid City, SD.

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, if any. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted if the suspension exceeded 60 consecutive days.

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

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

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Failure of the Architect to perform in a timely manner or to maintain required insurance shall be deemed to be a failure by the Architect to substantially perform which justifies termination by the Owner.

§ 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. Under such circumstances, this Agreement shall terminate on the date set forth in such written notice. If the Owner incorrectly terminates for default, it shall be deemed a termination for convenience under this paragraph.

§ 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, including Reimbursable Expenses incurred in termination.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 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, as modified for this Project consistent with this Agreement. All references to AIA Document A201-2007, General Conditions of the Contractor for Construction, contained in this Agreement shall mean such document as modified for this Project.

§ 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. Any assignment by the Architect without the written consent of the Owner shall be invalid and not binding upon the Owner. The Architect shall execute all consents and other documents reasonably required to facilitate such assignment.

§ 10.4 The Architect agrees to cooperate at all times with the Owner, the Contractor, and any lender or other party selected by the Owner and their respective agents and representatives in connection with the performance of the Architect's services hereunder. The Architect shall sign, acknowledge, certify, and notarize any documents reasonably required by the Owner in order to satisfy any construction lender or title company.

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials, provided the Architect receives written permission from Owner. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. If commercially reasonable and convenient, 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, solely and exclusively for the Project.

§ 10.9 The failure of one party to insist upon or enforce, in any instance, strict performance by the other party of any of the terms of this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or right on any future occasion.

§ 10.10 The Architect uses building information modeling software (“BIM”) as its primary production tool for design, coordination, and documentation, and the Architect’s Basic Services include preparing and distributing BIM models for the Owner’s, the Contractor’s, and other parties’ use for this Project (which may include, but is not limited to, quantity takeoffs, cost estimation, construction sequencing or phasing, clash detection, preparation and submission of shop drawings, prefabrication and fabrication of materials and equipment for incorporation into the work, preparation of “as-built” records of the Work, and Owner’s operations and maintenance and asset management). The protocols for the transmission, use, and management of the BIM models (including without limitation expected Level of Development for Model Elements at various milestones of the Project and the associated Authorized Uses thereof) shall be mutually acceptable to the Owner, Architect and Contractor and set forth in the BIM Execution Plan for the Project (which shall be attached as an Exhibit to this Agreement and incorporated into the Contract Documents).

§ 10.11 The parties agree that the terms of this Agreement shall be construed neutrally and not against the Owner as drafter of this Agreement.

§ 10.12 The Architect shall design the Project in a manner that it will comply with applicable federal and state law, including but not limited to HIPAA, GLBA, state law, SEC, FTC, OSHA, EPA, the Americans with Disabilities Act of 1990 and the ADA Amendments Act of 2008, the NIST Cybersecurity Framework, and the FFIEC IT Examiner Handbook for Data Center Security.

§ 10.13 The Architect represents and agrees that any individual that performs any work under this Agreement, either as the Architect, a direct employee of the Architect, or under a contract with the Architect, will possess all licensures required by South Dakota law and any other necessary licensures for the performance of such work.

§ 10.14 The Architect may not issue a press release, advertisement, publicity material, or similar matter concerning the Project or this Agreement without the prior written consent of the Owner with respect to the exact content and timing of news releases, articles, advertisements or other information releases concerning the Project or this Agreement. The Owner’s consent may be provided at its sole discretion. Participation in media (whether print or broadcast) interviews is strictly forbidden unless the Owner’s prior written consent is obtained in each instance. The Architect must assure that its consultants abide by the terms of this Section 10.14 and shall insert these provisions in its agreements with its consultants.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, Section 4.1, and Exhibit A (Scope of Services), the Owner shall compensate the Architect as follows: Lump Sum Fee of \$6,772,000. If a percentage fee is utilized, the percentage fee shall be converted to a fixed fee at the time of the GMP and shall be subject to Section to 3.3.6.

§ 11.2 Not used

§ 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 on an hourly basis at the rates set forth in Section 11.7.

§ 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.

§ 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	\$1,015,800	percent (15	%)
Design Development Phase	\$1,896,160	percent (28	%)
Construction Documents Phase	\$2,370,200	percent (35	%)
Bidding or Negotiation Phase	\$135,440	percent (2	%)
Construction Phase	\$1,354,400	percent (20	%)

§ 11.10.3 The Owner shall not be deemed in default nor shall payment be deemed due to the extent that the Owner in good faith believes the Architect has not satisfied its obligations under this Agreement or defaulted in any way under this Agreement. If the Architect believes that the Owner has improperly withheld payment, the Architect may avail itself to the dispute resolution procedures of this Agreement. The Architect shall continue performance under this Agreement while such dispute is being resolved.

§ 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. The Architect shall maintain, and require all of its consultants to maintain, complete and correct books and records relating to all of its fees, expenses, and compensation and records relating to this Project. The Architect shall make all such records available to the Owner and its representatives for review, copying, and audit at all such reasonable times as the Owner may, from time to time, direct.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§12.1 STANDARD OF CARE: Nothing contained in this Agreement shall require the Architect to exercise professional skill and judgment greater than that set forth in Section 2.2 hereof (the “Standard of Care”). This limitation shall not be modified by any certification or representation made by Architect as an accommodation upon request of Owner. Architect shall not be responsible for any failure to follow or apply any knowledge or techniques which were not generally known, acknowledged, or accepted as of the time during which the Architect is performing its services under this Agreement.

§12.2 INDEMNITY: To the fullest extent permitted by law, the Architect shall indemnify and hold the Owner and the Owner’s officers, agents and employees harmless from and against damages, losses, penalties, costs, liabilities, and judgments, including reasonable attorneys’ fees, disbursements, and expenses recoverable under applicable law, but only to the extent the same are caused by the material breach of contract or the negligent acts or omissions (including professional errors and omissions) of the Architect, its employees and its consultants in the performance of this Agreement. The Architect’s duty to indemnify shall not include a duty to provide a defense against claims arising out of the subject matter of this indemnification clause; any duty to defend shall be understood to be limited to a duty to reimburse costs to the extent the same are caused by the Architect’s negligence as determined by a court of competent jurisdiction or duly appointed arbitrator.

To the fullest extent permitted by law, the Architect also shall indemnify and hold the Owner and the Owner’s officers, agents and employees harmless from and against any and all claims made against any of the foregoing for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings, or specifications furnished by the Architect in the performance of this Agreement, unless the Owner shall have given its written approval of the use of the system, method, or equipment in connection therewith after explicit warning that there may be an infringement.

To the fullest extent permitted by law, and to the extent not resulting from the failure of the Owner to make payment within the time required by this Agreement, the Architect also shall defend, indemnify and hold the Owner and the Owner’s officers, agents and employees harmless from and against any liens filed or threatened by the Architect or any consultant or subcontractors under the Architect and from any related costs, liabilities, judgments, executions, attorneys’ fees and disbursements.

The Owner shall be entitled to recover from the Architect all costs and expenses incurred in enforcing this Agreement, including attorneys’ fees.

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, as revised herein.

.2 Other documents:

Exhibit A, Scope of Services

Exhibit B, Architect's Team and Hourly Rates

BIM Execution Plan for the Project (when mutually accepted by the Owner, Architect and Contractor in accordance with Section 10.10 of this Agreement)

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

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

Michael Harvey, AIA Principal

(Printed name and title)