

AIA[®] Document B133[™] – 2019

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

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

BETWEEN ~~the Architect's~~ [Revised May 2021]

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

Case Western Reserve University
10900 Euclid Avenue
Cleveland, Ohio 44106-7228

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

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

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

The Owner and ~~Architect~~ Engineer (the term "Engineer" means the Engineer or the Engineer's authorized representative) agree as follows.

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

This document is intended to be used in conjunction with AIA Documents A201–2017[™], General Conditions of the Contract for Construction; A133–2019[™] Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019[™] Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201[™]–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 — INITIAL INFORMATION

ARTICLE 1 INITIAL PROJECT INFORMATION

§ 1.1 This Agreement is based on the ~~Initial Information set forth in this Section 1.1.~~ following Initial Project Information. (For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

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

§ 1.1.2 The Project's physical characteristics:

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

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

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

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

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

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

§ 1.1.6 The Owner’s requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

Engineer acknowledges that the Work is to proceed on the basis of sequential bidding and that bids for some portions of the Work will be obtained before design of the overall Project is complete. Engineer represents that it has all requisite expertise in the "fast-track" method of construction and related "fast-tracking" practices and understands that said representation has served as a material inducement in Owner’s selection of Engineer. Engineer expressly recognizes that the "fast-track" method may require Engineer to prepare, issue and analyze bid packages in excess of the number ordinarily required under standard construction practices and hereby agrees to prepare, issue and analyze the same, if and as needed, in a timely manner.

§ 1.1.7 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect-Engineer shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234-2019 is incorporated into this Agreement, the Owner and Architect-Engineer shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Case Western Reserve University
10900 Euclid Avenue, Room []
Cleveland, Ohio 44106
Attn: []
Telephone Number: 216-368 – []
Mobile Number: 216 – [] - []
Email Address: []@case.edu

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s Engineer’s submittals to the Owner are as follows:
(List name, address, and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect-Engineer is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)
- .2 Land Surveyor:
- .3 Geotechnical Engineer:
- .4 Civil Engineer:
- .5 Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)

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

§ 1.1.12 The Architect-Engineer shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

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

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.12.2 Consultants retained under Supplemental Services:

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

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 — ARCHITECT'S RESPONSIBILITIES

ARTICLE 2 ENGINEER'S RESPONSIBILITIES

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

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

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

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

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

§ 2.6 **Insurance.** The ~~Architect~~ shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the ~~Architect~~ normally maintains, the Owner shall pay the ~~Architect~~ as set forth in Section 11.9. ~~Engineer~~ shall maintain the following insurance at its own cost with an A.M. Best rating of "A-VII" or better for the duration of this Agreement (or such longer period as may be required below):

§ 2.6.1 ~~Commercial General Liability with policy limits of not less than~~ (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage. Comprehensive General Liability including contractual and public liability coverage, and naming Owner, and other parties reasonably requested by Owner, as additional insured, in not less than the following amounts:

(i) Bodily injury: \$1,000,000.00 each person and \$1,000,000.00 aggregate.

(ii) Property Damage: \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate.

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

(i) Bodily injury: \$1,000,000.00 each person and \$1,000,000.00 each occurrence

(ii) Property Damage: \$1,000,000.00 each occurrence

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

§ 2.6.4 ~~Workers' Compensation at statutory limits to the full extent as required by applicable laws.~~

§ 2.6.5 Employers' Liability with policy limits not less than One Million (\$ 1,000,000.00) each accident, One Million (\$ 1,000,000.00) each employee, and One Million (\$ 1,000,000.00) policy limit.

§ 2.6.6 ~~Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than~~ (\$) per claim and (\$) in the aggregate. shall have minimum limits of \$1,000,000.00 for each claim and \$2,000,000.00 annual aggregate and shall have a deductible not in excess of \$25,000.00 and shall keep issuance in effect for at least ten years after completion of Services, provided that such coverage is reasonably available in the marketplace at commercially affordable premiums. If professional liability insurance is written

on a claims-made basis, such insurance shall have retroactive date that is no later than the date on this Agreement and shall include a supplemental extended reporting period provision.

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

§ 2.6.8 The ~~Architect~~ Engineer shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Comprehensive General Liability, Comprehensive Automobile Liability, and any excess policies.

ARTICLE 3 — SCOPE OF ARCHITECT'S BASIC SERVICES

ARTICLE 3 SCOPE OF ENGINEER'S BASIC SERVICES

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

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

§ 3.1.2 The ~~Architect~~ Engineer shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. ~~The Architect~~ Except to the extent Engineer knows, or in the exercise of the standard of care should know, of any inaccuracy the Engineer shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect Engineer shall provide prompt written notice to the Owner if the Architect-Engineer becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, ~~the Architect~~ but no longer than fifteen (15) days after the date hereof, the Engineer shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the ~~Architect's~~ Engineer's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Project Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the ~~Architect~~ Engineer or Owner. With the Owner's approval, the ~~Architect~~ Engineer shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The ~~Architect~~ Engineer shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the ~~Architect's~~ Engineer's services. The ~~Architect~~ Engineer shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the ~~Architect's~~ Engineer's services.

§ 3.1.5 The ~~Architect~~ Engineer shall not be responsible for damages resulting directly and solely from an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's Engineer's written approval.

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

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

~~§ 3.1.8~~ Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, ~~or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect~~ the Engineer shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the ~~Architect. The Architect-Engineer.~~ The Engineer and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

~~§ 3.1.9~~ The Engineer shall prepare all design and construction documents in accordance with Owner's Standard AutoCAD Documentation attached as Exhibit C, pages 1 - 9.

~~§ 3.1.10~~ The Engineer shall comply with all laws, codes, and regulations applicable to the Engineer's Services hereunder (including Basic Services and Additional Services) in accordance with the standard of care set forth in Section 2.2 of this Agreement.

~~§ 3.1.11~~ The Engineer shall participate in the Subcontractor bidding process as requested by Owner, including without limitation, reviewing and providing comments on construction Manager's list of possible pre-qualified subcontractors, reviewing and providing comments and consultation to Owner on Subcontractor bids, and assisting Owner with such other Subcontractor bidding issues, as requested by Owner.

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

~~§ 3.2.1~~ At a time to be mutually agreed upon by the Owner and the Construction Manager, when the Drawings and Specifications are sufficiently complete (as determined by Owner) to enable a detailed Guaranteed Maximum Price ("GMP") to be prepared for the entire project clearly itemizing the costs of each component (such as site work, demolition, concrete, masonry, metals, thermal moisture protection, roofing, doors & windows, finished with detail, plumbing, HVAC, electrical and the like), the Construction Manager shall prepare, for review by the Owner and Architect, Engineer, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. ~~The Architect proposal.~~ At such time requested by Owner, in accordance with the design schedule established by the parties as described in Section 3.1.3, Engineer shall prepare and issue the "GMP Set" of Drawings and Specifications described in this Section 3.2.2 above and, if requested by Owner, a prose statement identifying those elements of the Work not yet specified in the design documents. These documents shall meet and satisfy the level of design required by Owner in order to obtain a GMP as described herein. The Engineer shall assist the Owner in reviewing the Construction Manager's proposal or estimate. ~~The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the GMP proposal and shall meet with Owner and Construction Manger to review the GMP proposal and a written statement of its basis prepared by Construction Manager. The Engineer's review is not for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect procedures. In the event that the Engineer discovers any inconsistencies or inaccuracies in the information presented, the Architect-Engineer shall promptly notify the Owner and Construction Manager.~~

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

§ 3.3 Schematic Design Phase Services

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

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

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

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

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

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

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

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

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

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, ~~the Architect-except to the extent Engineer knows, or in the exercise of the standard of care should know, of any inaccuracy, the Engineer~~ shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

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

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the ~~Architect-Engineer~~ shall submit the Design Development Documents to the Owner and the Construction Manager. The ~~Architect-Engineer~~ shall meet with the Construction Manager to review the Design Development Documents.

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

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the ~~Architect-Engineer~~ shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents

shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and ~~Architect-Engineer~~ acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the ~~Architect-Engineer~~ shall review in accordance with Section 3.6.4.

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

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the ~~Architect-Engineer~~ shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

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

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

as modified by Owner and attached hereto as Exhibit A. Engineer shall perform (as Basic Services) such services as are required of Engineer under the General Conditions and shall comply with all obligations imposed on Engineer as set forth in the General Conditions.

§ 3.6.1.2 Subject to Section 4.2, the ~~Architect's-Engineer's~~ responsibility to provide Construction Phase Services commences upon ~~the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval.~~ commencement of the Construction Phase, which shall commence upon Owner's and Construction Manager's mutual execution of the Guaranteed Maximum Price Amendment. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the ~~Architect's-Engineer's~~ responsibility to provide Construction Phase Services terminates on the date the ~~Architect issues Owner approves~~ the final Certificate for Payment.

§ 3.6.1.3 The ~~Architect-Engineer~~ shall be a representative of and shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The ~~Architect-Engineer~~ shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The ~~Architect-Engineer~~ 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-Engineer~~ be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect-Engineer~~ shall be responsible for the ~~Architect's-Engineer's~~ negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The ~~Architect shall~~ Engineer, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become ~~generally familiar with~~ familiar with, and keep the Owner informed about, the progress and quality of the portion of the Work completed, ~~and to determine, in general, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.~~ However, the ~~Architect-Engineer~~ shall not be required to make ~~exhaustive or~~ continuous on-site inspections

to check the quality or quantity of the Work. On the basis of the site visits, the ~~Architect~~ Engineer shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

~~§ 3.6.2.2 The Architect has the authority to~~ Engineer and the Owner will reject Work that does not conform to the Contract Documents. Whenever the ~~Architect~~ Engineer considers it necessary or advisable, ~~the Architect~~ the Engineer and the Owner shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of ~~the Architect~~ the Engineer and the Owner 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~~ the Engineer or the Owner to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

~~§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under,~~ Engineer shall initially interpret matters concerning and requirements of, the Contract Documents on written request of ~~either both~~ the Owner ~~or and~~ Construction Manager. The ~~Architect's~~ Engineer's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Engineer shall be furnished in compliance with this Section 3.6.2.3, then delay shall not be recognized on account of failure by the Engineer to furnish such interpretations until 15 days after written request is made for them.

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

~~§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect~~ Engineer shall render initial decisions on Claims between the Owner and Construction Manager ~~as provided in the Contract Documents if requested such the parties as provided in the Contract Documents (see Section 15.2 of the General Conditions).~~

§ 3.6.3 Certificates for Payment to Construction Manager

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

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

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

§ 3.6.4 Submittals

§ 3.6.4.1 The ~~Architect-Engineer~~ shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The ~~Architect's-Engineer'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.~~ Engineer's professional judgment, to permit adequate review without causing delay in the Work or in the activities of the Owner, Contractor or separate contractors.

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

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

§ 3.6.4.4 Subject to Section 4.2, the ~~Architect-Engineer~~ shall review and respond to requests for information about the Contract Documents. The ~~Architect-Engineer~~ 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~~ Engineer'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~~ Engineer shall prepare, replace, reproduce and redistribute and issue supplemental Drawings and Specifications in response to the requests for information.

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

§ 3.6.5 Changes in the Work

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

§ 3.6.5.2 The ~~Architect-Engineer~~ shall maintain records relative to changes in the Work.

§ 3.6.5.3 The Engineer shall review reasonable requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Engineer to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Engineer determines that the requested changes in the Work are not materially different from the requirements of the Contract Documents, the Engineer may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Engineer determines that implementation of the requested changes would result in material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Engineer 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 Engineer shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Engineer.

§ 3.6.6 Project Completion

§ 3.6.6.1 The ~~Architect-Engineer~~ shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The ~~Architect-Engineer~~ shall provide the listed Supplemental Services only if specifically designated in the table below as the ~~Architect's-Engineer's~~ responsibility, and the Owner shall compensate the ~~Architect-Engineer~~ as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the ~~Architect-Engineer~~ is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.
(Designate the ~~Architect's-Engineer's~~ Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the ~~Architect-Engineer~~ or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect , Engineer , Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple Preliminary Designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural-Engineer ur interior design	
§ 4.1.1.12 Value analysis	
§ 4.1.1.13 Cost estimating	
§ 4.1.1.14 On-site project representation	
§ 4.1.1.15 Conformed documents for construction	
§ 4.1.1.16 As-designed record drawings	
§ 4.1.1.17 As-constructed record drawings	
§ 4.1.1.18 Post-occupancy evaluation	
§ 4.1.1.19 Facility support services	
§ 4.1.1.20 Tenant-related services	
§ 4.1.1.21 Architect's-Engineer's coordination of the Owner's consultants	
§ 4.1.1.22 Telecommunications/data design	
§ 4.1.1.23 Security evaluation and planning	
§ 4.1.1.24 Commissioning	
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.26 Historic preservation	
§ 4.1.1.27 Furniture, furnishings, and equipment design	
§ 4.1.1.28 Other services provided by specialty Consultants	
§ 4.1.1.29 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

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

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

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

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

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

§ 4.2 Architect's Additional Services

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

§ 4.2 Engineer's Additional Services

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

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

- .1 Services provided after the updates made to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment as described in Section 3.2.3 necessitated by a change in the Initial Project Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7); when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment; ~~Omitted;~~
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the ~~Architect-Engineer~~ is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect; ~~Omitted;~~
- .12 Services necessitated by replacement of the Construction Manager after the execution of the Guaranteed Maximum Price Amendment or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method; ~~method prior to the execution of the Guaranteed Maximum Price Amendment;~~
- .13 Services necessitated by the Owner's excessive delay in engaging the Construction Manager;

- .14 ~~Making revisions to the Drawings, Specifications, and other documents resulting from agreed upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and Omitted;~~
- .15 ~~Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate. Omitted.~~

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

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

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

- .1 ~~Two (2)~~ reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 ~~(1)~~ visits-Visits to the site by the ~~Architect during construction~~ ~~Engineer during construction~~, as required to support the Project
- .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 ~~(1)~~ ~~Two (2)~~ inspections for any portion of the Work to determine final completion

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

§ 4.2.5 ~~If the services covered by this Agreement have not been completed within (1) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services. Intentionally Omitted.~~

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, ~~including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements. Project.~~

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

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all

of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the ~~Architect-Engineer~~ and Construction Manager. The Owner and the ~~Architect-Engineer~~, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

~~§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs. Engineer acknowledges that the Project may be divided into multiple bid packages and some bid packages may be bid and awarded on a "fast track" basis prior to the completion of later packages or the drawings and specifications relating to same. Engineer agrees that the preparation of all such multiple bid packages, other services required to comply with Owner's requirements for accelerated or fast-track scheduling or phased construction as set forth in Section 1.1.6, and all other services normally and customarily required during a "fast-track" process are part of Basic Services.~~

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

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

~~§ 5.6 The~~ Unless otherwise provided in this Agreement, or when such services are reasonably requested, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

~~§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect-Engineer. Upon the Architect's-Engineer's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect-Engineer in this Agreement, or authorize the Architect-Engineer to furnish them as an Additional Service, when the Architect-Engineer requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.~~

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

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

~~§ 5.12~~ The Owner shall provide prompt written notice to the ~~Architect-Engineer~~ and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the ~~Architect's Instruments of Service-Engineer's Instruments of Service~~; provided, however, that Owner's failure to comply with this Section 5.11 shall not be deemed a waiver of or otherwise negatively impact, any claim that Owner may have.

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

~~§ 5.14~~ The Owner shall endeavor to coordinate the Architect's-Engineer's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the ~~Architect's-Engineer's~~ services set forth in this Agreement. ~~The Upon reasonable request of Engineer, the Owner shall provide the Architect-Engineer a copy of the executed relative portions of the agreement between the Owner and Construction Manager, including Manager (redacted as necessary, as determined by Owner in Owner's sole discretion) and the General Conditions of the Contract for Construction-Construction (if further modified from the version provided to Engineer in connection with this Agreement).~~

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

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

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-Engineer~~ and shall include the Construction Manager's general conditions costs, overhead, ~~and profit, and profit based on current market rates of labor and materials and as defined in the AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by Owner attached as Exhibit A or as defined in the agreement between the Owner and Construction Manager (as applicable).~~ The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the ~~Architect, Engineer;~~ the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

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

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

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

~~§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall~~ engage one or more of the following options:

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

~~§ 7.1 The Architect-Engineer and the Owner warrant that in transmitting and/or assigning 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 Engineer 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 which protocols shall be subject to Owner's approval.~~

~~§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Engineer hereby assigns to the Owner all of the Engineer's right, title, and interest in and to the plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by the Engineer, including any and all electronic versions of the foregoing (collectively, the "Instruments of Service"), and all such Instruments of Service shall be the exclusive property of the Owner, including, without limitation, the right to use same or any part of them on any other project of the Owner's without additional compensation to the Engineer. The Engineer shall cause each of its consultants to execute any separate instrument necessary to effect such assignment completely. Without limiting the generality of the foregoing, the parties acknowledge and agree that the Instruments of Service include the Schematic Design Documents, the Design Documents and the Construction Documents. The Engineer shall maintain file copies of those documents, drawings and/or other products as required by law or the standards of professional practice. In the case of future reuse of the Construction Documents by the Owner, the Engineer's name and seal shall be removed, and the Engineer shall not be liable to the Owner, or third parties in connection with their reuse. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's Engineer and the Engineer's consultants.~~

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

Upon execution of this Agreement, the Owner hereby grants to the Engineer a royalty-free, non-exclusive, worldwide license to use standards, conventions, and details of the design in the Construction Documents, provided that use of the standards, conventions, and details in any other single project shall not in the aggregate result in the use of the entire design in the Construction Documents or a major part of the design in the Construction Documents.

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

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

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

§ 8.1.3 The Architect shall indemnify Engineer shall indemnify, defend and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, Engineer, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

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

§ 8.2 Mediation

§ 8.1.5 Indemnification/Limitation of Liability. In addition to any liability or obligation of the Engineer to the Owner that may exist under any other provision of this Agreement or by statute or otherwise, the Engineer shall be liable to and will hold harmless, indemnify and defend the Owner from and against any and all damages, costs, claims (including attorney's fees) or liabilities which the Owner may sustain as a result of:

(a) any infringement of any copyright, patent or other property right resulting from the use or adoption of any designs, plans, drawings or specifications furnished by the Engineer;

(b) any negligent or wrongful act of the Engineer, its agents, servants, employees, officers or contractors;

or

(c) any claim made by employees of the Engineer.

§ 8.2 Dispute Mediation - Waived

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall Notwithstanding anything to the contrary contained in this Agreement, claims shall not 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 formal 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 this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Intentionally Omitted.

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

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

(Check the appropriate box.)

— Arbitration pursuant to Section 8.3 of this Agreement

— Litigation in a court of competent jurisdiction

— Other: *(Specify)*

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

§ 8.3 Arbitration

§ 8.2.5 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be determined in accordance with the provisions of this Article 4.

§ 8.2.6 **Controversies and Claims Subject to Arbitration.** Subject to the rights reserved by the Owner in Section 8.2.14 below, any controversy, dispute or claim arising out of or related to this Agreement, or the breach hereof (a "Claim"), shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (as modified by this Section 4.2) and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof. In any arbitration in which the amount stated in the demand is \$100,000 or less, the American Arbitration Association shall appoint a single arbitrator in accordance with such rules, who shall be a lawyer in a private law firm with ten or more partners. In any such arbitration in which the amount stated in the demand is in excess of \$100,000, or in which the controversy or dispute in question does not involve a liquidated claim, the demand shall include the name of an arbitrator appointed by the claimant. The respondent shall appoint a second arbitrator, and shall notify the claimant in writing of such appointment, within thirty days of receipt of the demand, failing which the matter shall be decided by the arbitrator named in the claimant's demand. Within thirty days after the claimant's receipt of notice of the appointment of the second arbitrator, the two arbitrators shall appoint a neutral arbitrator and shall notify the parties in writing of such appointment, failing which either party may apply to the American

Arbitration Association to appoint such neutral arbitrator. If such neutral arbitrator is appointed by the American Arbitration Association he or she shall be a lawyer in a private law firm with ten or more partners.

§ 8.2.7 Rules for Arbitration. If the neutral arbitrator is appointed by the American Arbitration Association, the said Association shall administer the arbitration and its Construction Industry Arbitration Rules shall govern all aspects of the proceeding including the enforcement of any award. If the neutral arbitrator is not appointed by the American Arbitration Association then the panel of arbitrators shall act as the administrator of the arbitration but the Construction Industry Arbitration rules of the Association shall nonetheless govern all aspects of the proceeding, including the enforcement of any award, provided however that the arbitration panel shall have all of the powers and duties conferred on the Association pursuant to said rules. In addition, the following rules shall govern the selection of arbitrators and the proceedings:

§ 8.2.8 Avoidance of Conflicts of Interest. Neither party may appoint as an arbitrator an employee, officer or an owner of that party, nor the parent, spouse or child of an employee, officer or owner of that party.

§ 8.2.9 Ex Parte Communications Prohibited. After the neutral arbitrator has been appointed, neither party may engage in ex parte communication with the arbitrator appointed by that party.

§ 8.2.10 Contract Performance During Arbitration. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, the parties shall proceed diligently with the performance of their respective obligations under this Agreement.

§ 8.2.11 When Arbitration May be Demanded. Demand for arbitration shall be filed in writing with the other party or parties to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the Claim has arisen. In no event shall the demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

§ 8.2.12 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

§ 8.2.13 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.2.14 Rights Reserved by the Owner. Notwithstanding any provision contained in this Section or elsewhere in this Agreement, the Owner reserves the following rights in connection with Claims and disputes between the Owner and the Engineer or any other party or parties:

§ 8.2.14.1 The right to institute legal action against the Engineer (or such other party or parties) in any court of competent jurisdiction in lieu of demanding arbitration pursuant to this Section 4.2 in which case the dispute or disputes which are the subject of such action shall be decided by such court, and not by arbitration.

§ 8.2.14.2 The right to obtain from any court of competent jurisdiction a stay of any arbitration instituted by the Engineer (or such other party or parties), provided that the application for such stay is made before the appointment of the neutral arbitrator in such arbitration, in which case the dispute or disputes which are the subject of such arbitration shall be decided by such court, and not by arbitration.

§ 8.2.14.3 The right to require any other party to join as a party in any arbitration relating to the Project, in which case the party so joined agrees to be bound by the decision of the arbitrator or arbitrators in such arbitration.

§ 8.2.14.4 In case the Owner elects to proceed in accordance with Section 8.2.14.1 or 8.2.14.2 above, the word "litigation" shall be deemed to replace the word "arbitration" wherever the latter word appears in this Agreement.

§ 8.2.14.5 Except where such condition is expressly prohibited by law, an award or judgment against the Owner in accordance with the procedure described in this Section 4.2 shall be a condition precedent to the filing by the Engineer or any consultant or agent of any attachment or lien of any nature against the real estate on which the Work is situated or against the Owner's property.

§ 8.2.15 Certification of Applications for Payment and Inspections. Notwithstanding anything in the Contract Documents to the contrary, the Owner reserves the right to handle review and certification of Applications for Payment and inspections (including, without limitation, for purposes of establishing Substantial Completion and final completion) directly, rather than through Engineer.

§ 8.3 Intentionally Omitted.

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the ~~Project, the Architect-Project~~ for more than 30 consecutive days, the ~~Engineer~~ shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the ~~Architect~~

Engineer shall be compensated for expenses incurred in the interruption and resumption of the Architect's Engineer's services. The Architect's Engineer'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-Engineer, the Engineer may terminate this Agreement by giving not less than seven days' written notice.

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

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

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

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

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

.1 — Termination Fee:

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

Intentionally Omitted.

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, State of Ohio, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, Construction as modified by Owner and attached hereto as Exhibit A, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

§ 10.4 If the Owner requests the Architect-Engineer to execute certificates, the proposed language of such certificates shall be submitted to the Architect-Engineer for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect

shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. ~~The Architect~~ The Engineer shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

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

.3 Other
(Describe the method of compensation)

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

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

§ 11.4 Compensation for Supplemental and Additional Services of the ~~Architect's-Engineer's~~ consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the ~~Architect-Engineer~~ plus percent (%), or as follows:
(Insert amount of, or basis for computing, ~~Architect's-Engineer's~~ consultants' compensation for Supplemental or Additional Services.)

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

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

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

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

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

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

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

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

- ~~.1 Transportation and authorized out-of-town travel and subsistence; subsistence that has been approved in advance in writing by the Owner including airfare, hotel, taxis, rental cars, parking and mileage;~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- ~~.3 Permitting and other fees required by authorities having jurisdiction over the Project;~~
- ~~.4 Printing, reproductions, plots, and standard form documents;~~
- ~~.5 Postage, handling, and delivery;~~
- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; Intentionally Omitted.~~
- ~~.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;~~
- ~~.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants; Intentionally Omitted.~~
- ~~.9 All taxes levied on professional services and on reimbursable expenses; Intentionally Omitted.~~
- ~~.10 Site office expenses; Intentionally Omitted.~~
- ~~.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; Objective (if any); and~~
- ~~.12 Other similar Project-related expenditures; expenditures as mutually agreed upon in advance in writing.~~

<u>CWRU Reimbursable Guidelines</u>	
<u>Category</u>	<u>Sample Charges</u>
<u>Communications – Postage/Delivery</u>	<u>USPS, FedEx, Courier Services</u>
<u>Communications – Telephone</u>	<u>long-distance charges</u>
<u>Consultant Fees</u>	<u>Consultants' fees and reimbursables (travel expenses, copies, etc.) other than those listed in the AIA Document B102-2007, Standard Form of Engineers Services</u>
<u>In-house Reproduction & Printing</u>	<u>xerox copies, in-house drawing copies</u>
<u>Travel & Lodging</u>	<u>airfare, hotel, taxis, rental cars, parking, mileage (Travel Agent fees excluded)</u>
<u>Vendor Reproduction & Printing</u>	<u>ARC / eBlueprints, copy services</u>

PLEASE NOTE

- ~~.1 Reimbursable expenses shall be reasonable and standard rates for expenses. Travel Agent fees excluded. The Owner will not pay for premium travel, lodging or meals. For example lowest available or coach fare not first class, cab fare not limousine, lodging base room rate not to exceed \$150/night.~~
- ~~.2 Reimbursable mileage shall be expensed in accordance with the current IRS Standard Business Mileage Rate.~~
- ~~.3 Reimbursable meals shall not include alcoholic beverages. Reimbursement for meals shall be expensed in accordance with the current USGSA per diem rate for Cleveland, Cuyahoga County, Ohio. All original detailed **itemized** receipts must be included.~~

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the ~~Architect and the Architect's consultants plus~~ percent (%) of the expenses incurred. ~~Engineer and the Engineer's consultants plus an administrative fee of Zero~~ percent (%) of the expenses incurred.

§ 11.8.3 Owner does not pay for additional mark-ups on services. Charges listed on the invoice should match precisely with supporting documentation. Supporting documentation for all reimbursable costs is required for reimbursement, including all original detailed **itemized** receipts. Reimbursable Expenses must comply with the guidelines contained in this Agreement to be eligible for reimbursement by Owner.

§ 11.9 Architect's Insurance-Engineer's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the ~~Architect-Engineer~~ normally maintains, the Owner shall pay the ~~Architect-Engineer~~ for the additional costs incurred by the ~~Architect-Engineer~~ for the additional coverages as set forth below:
(Insert the additional coverages the ~~Architect-Engineer~~ is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the ~~Architect-Engineer~~.)

\$0.00

§ 11.10 Payments to the Architect

§ 11.10 Payments to the Engineer

§ 11.10.1 Initial Payments

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

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

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made ~~monthly in proportion to services performed.~~ Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ~~()~~ within 45 days of presentation of the Engineer's invoice in proper format with all required backup and information. Each request for payment shall comply with the following:

1. ~~invoices shall be in the Owner's standard format~~
2. ~~every invoice shall contain the Owner's Purchase Order Number~~
3. ~~fees for services rendered and reimbursable expenses shall be invoiced within 90 days of being incurred. The Owner shall have no obligation to pay fees for services rendered or reimbursable expenses invoiced past 90 days from the close of the month in which services were performed.~~

Amounts unpaid Forty-Five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the ~~Architect-Engineer~~.
(Insert rate of monthly or annual interest agreed upon.)

% Per annum Prime Rate at Key Bank, NA

§ 11.10.2.2 The Owner shall not withhold amounts from the ~~Architect's-Engineer's~~ compensation to impose a penalty or liquidated damages on the ~~Architect-Engineer~~, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the ~~Architect-Engineer~~ agrees or has been found liable for the amounts in a binding dispute resolution proceeding. Notwithstanding the foregoing, nothing in this provision or anything else in this Agreement shall restrict or prohibit the Owner from withholding payments on amounts due to Engineer due to Engineer's failure to perform its Services in accordance with this Agreement.

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

§ 11.10.2.4 Within ten (10) days of the Engineer's receipt of any payment from the Owner, the Engineer shall pay all amounts due and payable to the Engineer's consultants relative to such payment received from the Owner. The Engineer shall require each consultant to pay its respective sub-consultants in a similar manner. Upon the Owner's request, the Engineer shall provide the Owner with evidence satisfactory to the Owner.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§ 12.1 Engineer shall comply with the terms and conditions of this Agreement, including all relevant Exhibits, and require Engineer's consultants to comply as well.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents identified below, each of which is incorporated by reference herein:

- .1 AIA Document B133™-2019, Standard Form Agreement Between Owner and Architect, Engineer, Construction Manager as Constructor Edition
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:

 (Insert the date of the E203-2013 incorporated into this agreement.)
 Omitted.

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

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

Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

- (i) **Exhibit A – AIA Document A201-2017, General Conditions as modified by the Owner pages 1 thru 52**
- (ii) **Exhibit B – Proposal, dated _____, pages 1 thru _____. Such attachment is only for the purpose of describing the scope of services and no other terms or conditions of such Proposal are incorporated by such reference. In the event of any conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall control.**
- (iii) **Exhibit C – CWRU Standard Auto CAD Documentation, dated January 2014, pages 1 thru 9**
- (iv) **Exhibit D – CWRU Tobacco-Free Policy, dated 7/7/17, page 1 of 1**

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

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

OWNER (Signature)

Peter M. Poulos, Vice President & General Counsel
Office of General Counsel

(Printed name and title)

ARCHITECT-ENGINEER (Signature)

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

And by:

John F. Sideras, Executive Vice President & CFO
Office of Finance