Request for Qualifications (RFQ)

Date of Issue: 5/16/2019

A. PURPOSE FOR RFQ

1. Professional Services for the Weaver Street and W.D. Hill Recreation Center Renovations project.

2. Through this request for qualification (RFQ), notice is hereby given that the City of Durham, North Carolina, General Services Department, is seeking a consulting firm to provide Architectural Services.

3. This RFQ provides complete information on the services being sought, the submittal requirements, and timeline. Copies of the RFQ may be downloaded directly from this site: http://durhamnc.gov/bids.aspx.

   Interested firms may submit a Statement of Qualifications, meeting the requirements defined in the RFQ to:
   John Paces-Wiles
   City of Durham, Owner
   General Service Department
   2011 Fay Street
   Durham, NC 27704
   Phone: 919-560-4197 ext. 21252
   Email: john.paces-wiles@durhamnc.gov

4. Statements of Qualifications must be received by 5:00 p.m., Tuesday, 6/18/2019. To ensure receipt of any addenda to the RFQ, please contact the person listed above to register as an interested firm. The City is not responsible for providing updated information/changes to firms not known by the City as holding a copy of this RFQ.

5. Any questions regarding this RFQ must be received in writing prior to Thursday, 6/6/2019 by 5:00 p.m. Questions received after this date may not receive response.

6. Questions must be submitted to John Paces-Wiles, at john.paces-wiles@durhamnc.gov. All written questions will be answered in an addendum posted on the City’s website: http://durhamnc.gov/bids.aspx

7. Questions received by the Department of General Services after this date will not receive a response or be the subject of addenda. Firms who are registered as interested firms will receive the addendum via email.

8. This RFQ does not obligate the City to pay any costs incurred by respondents in the preparation and submission of a response. Furthermore, the RFQ does not obligate the City to accept or contract for any expressed or implied services. The City of Durham reserves the
right to reject any and all submittals. The City of Durham is committed to a program of equal employment opportunity regardless of race, color, creed, sex, age, nationality or disability.

B. BACKGROUND AND SCOPE OF SERVICES

1. Scope to include full design services for renovations at Weaver Street and W.D. Hill recreation centers. Scope of work at Weaver Street will potentially include replacement of the roof, basketball goals, bleachers, flooring and windows. It will also include renovation of the kitchen and a new opening between the gym and the administrative office for better visibility.

2. W.D. Hill scope will potentially include replacement of the roof, bleachers and movable partitions, as well as gymnasium floor repair and HVAC replacement for the multi-purpose room. Another main objective at W.D. Hill is increased security. These improvements potentially include addition of an entrance foyer, more access control and a panic button at the front desk. Also included are changes to better protect the front facade, such as potentially adding a low masonry wall in front of the entrance, and reducing the size of the windows across the front of the building. Other options to better protect the building will be explored through the course of the design.

3. Proposed team should include architecture, civil engineering, plumbing/mechanical/electrical engineering, structural engineering and cost estimating.

4. Proposals should demonstrate experience in CPTED (Crime Prevention Through Environmental Design) principles through successful past projects. Team members with CPTED certification are encouraged.

5. Proposals should also demonstrate a good working relationship of all proposed team firms through successful past projects.

6. Selected team will develop an initial set of technical drawings for review by City departments. Prepare the design. Present the design at various stages to the stakeholders for input. Secure the necessary permits to construct the project.

7. Selected team will develop drawings and specifications to bid the construction work. Assist with pre-bid meetings. Provide updated construction cost estimates.

8. Selected team will provide Construction Administration services, reviewing pay applications and change proposals.

9. Professional services fees are typically budgeted to be 10-15% of the cost of construction. The construction budget for this project is currently estimated at $1.1M.
C. SCHEDULE

<table>
<thead>
<tr>
<th>Preliminary Project Schedule:</th>
<th>Date</th>
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<tbody>
<tr>
<td>Establish a shortlist of firms and schedule interviews</td>
<td>June 28, 2019</td>
</tr>
<tr>
<td>Complete interviews of short-listed firms (if necessary)</td>
<td>July 3, 2019</td>
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<tr>
<td>City Council award of contract</td>
<td>August 5, 2019</td>
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<tr>
<td>Notice to Proceed</td>
<td>August 2019</td>
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<tr>
<td>Project Completion</td>
<td>February 2021</td>
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D. PRE-SUBMITTAL MEETING

1. There will be a pre-submittal meeting for interested firms on **Wednesday, 5/29/2019, at 2:00pm** at the W.D. Hill Recreation Center, located at 1308 Fayetteville St. Durham, NC 27707. Parking for the facility is located off of Linwood Ave. Attendance at the pre-submittal meeting is strongly encouraged but not required. The General Services Department staff will present details about the project and submittal requirements and be available to answer questions.

E. EQUAL BUSINESS OPPORTUNITY PROGRAM-EOEA will provide UBE goal statement

1. It is the policy of the City to provide equal opportunities for City contracting for underutilized firms owned by minorities and women doing business in the City’s Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

2. The design goals for this project are **8% M/UBE and 6% W/UBE**. In accordance with the Ordinance, all proposers are required to provide information requested in the Professional Services Forms package included with this request. Proposals that do not contain the appropriate, completed Professional Services Forms may be deemed non-responsive and ineligible for consideration. The UBE Participation Documentation, the Employee Breakdown and the Letter of Intent to Perform as a Sub-consultant documents are required of all proposers. In lieu of the Employee Breakdown, contractors may submit a copy of the current EEO-1 form (corporate basis). The Request to Change UBE Participation and “UBE Goals Not Met/Documentation of Good Faith Efforts” forms are not applicable at this time.

3. The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560-4180.

F. NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

1. The City of Durham will not discriminate against qualified individuals with disabilities on the basis of disability in the City’s services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City’s programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City
programs, services, and activities. Anyone who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in the City program, service, or activity, should contact Logan Small, ADA Coordinator, voice 919-560-4197, fax 560-4196, TTY 919-560-1200, or Logan.Small@durhamnc.gov, as soon as possible but no later than 48 hours before the scheduled event.

G. E-VERIFY COMPLIANCE

1. If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor’s subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

H. STATE TREASURER’S LISTS REGARDING IRAN AND BOYCOTT OF ISRAEL

1. If the successful bidder or the City signs the contract on October 1, 2017 or afterwards, and the value of the contract is $1,000 or more, the following applies unless the bidder otherwise states in its bid: the bidder affirms (by submitting a bid) that (1) its name does not appear on the list of companies that are engaged in a boycott of Israel developed by the N. C. State Treasurer under N.C.G.S. 147-86.81(a)(1) or on a list created by the Treasurer pursuant to N.C.G.S. 147-86.58 as a company engaging in investment activities in Iran, and (2) it has no reason to expect that its name will appear on either of those lists. Take notice that a contract between a company named on either list and the City may be void.

I. SUBMITTAL RESPONSE REQUIREMENTS

1. Provide one original and five (5) copies (including one unbound copy suitable for photocopying) and one electronic copy in PDF format of your submittal. Please limit response to forty (40 single-sided or 20 double-sided) pages, excluding City required non-collusion affidavit and EOEA forms. Font size shall be no less than 10 pt. Also, in keeping with the City’s conservation effort, you are asked to please print the full submittal on recyclable, normal stock, white, office paper without a plastic binding or a plastic cover. Submittals must contain the following information:

   **Section 1 – Letter of Interest:** The Letter of Interest should include a synopsis of the prime firm and sub-consultants, the team’s qualifications, the project manager and primary contact, the project principal representing the contractual authority of the firm.

   **Section 2 – Project Organization:** Provide a project organization chart identifying the team composition. Define Key Staff members who will be working on the project and explain their roles and their expected commitment to the project as a percentage of their time and a list of projects currently assigned to key team members and their expected project completion dates.

   **Section 3 – Profile(s) of Firm or Team:** Provide information about each firm in the project team. Identify capabilities and experiences, the number of employees and location and number of years in business under its current
name. Identify the scope of services to be provided under this project. Also indicate the extent to which each of the firms on the proposed team has worked together in the past.

**Section 4 – Resumes:** Provide resumes of the Key Staff, including the project manager and task leaders. Include resumes for staff identified as having a major role in the project.

**Section 5 – Project Approach and Schedule:** Provide a description of the proposed approach to the project. Include a response to the preliminary scope but do not simply restate the scope. Identify key risks/challenges/concerns you anticipate and any mitigation steps to achieve successful delivery. Describe the team’s approach to design document quality assurance and quality control. Describe the firm and/or team’s track record delivering projects with minimal change orders. Describe the team’s level of experience with the major regulatory bodies. Describe the team’s use of technology and how it will be used to engage with the owner in each project phase. Provide a proposed project schedule, showing tasks, milestones and deliverables, including review meetings with the City project team and community groups.

**Section 6 – Reference Projects:** Please identify recent, representative projects of a similar scope, complexity and size performed by the proposed team. At least three should be completed projects. Please include relevant CPTED experience. For each project, provide project duration and completion year, whether the design was completed on schedule, references (name, email and phone number) estimated and completed project cost and the project’s errors and omissions rate as a percentage of the construction budget. Identify which of the firms in the proposed team were involved with each of the reference projects. Also identify which team members performed the work and the role each played in the reference project.

**Section 7 – Other Requirements and City Forms:** Please submit Appendix B and Appendix C.

**Section 8 – Exceptions:** It is the City’s intention to use a similar contract to the one attached in Exhibit D. If your firm objects to any element of the contract, please state the objections in the submittal.

### J. SELECTION CRITERIA (68 Points Total)

- **20 Points** Management Team, Project Team, and Experience of Key Team Members
- **16 Points** Project Approach & Schedule
- **22 Points** Reference Projects
- **10 Points** Other Factors as determined by the Selection Panel (Examples: Well Organized Submittal, Quality of Presentation Materials, Responsiveness, etc.)

### K. NON-CONTACT PROVISION

1. Interested firms shall be prohibited from contacting any City official or employee during the course of the pre-submittal, interview, negotiations, pre-contracting, or other process of this solicitation, except to participate in the pre-proposal conference and to submit questions via
the City’s designated project manager. Any such contact shall be grounds for disqualification of any firm who may have initiated such contact.

L. ATTACHMENTS

1. Appendix A: Insurance Requirements
2. Appendix B: EOEA Professional Services Forms
3. Appendix C: Non-Collusion Affidavit
4. Appendix D: City of Durham Contract
5. Appendix E: Trade Secrets and Confidentiality
Insurance Requirements

Contractor agrees to maintain, on a primary basis and at sole expense, at all times during the life of this Contract the following applicable coverage’s and limits. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

**Commercial General Liability** – Combined single limit of no less than $1,000,000 each occurrence and $2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Automobile Liability** – Limits of no less than $1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.

**Umbrella or Excess Liability** – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse City of Durham as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.

**Worker’s Compensation & Employers Liability** – Contractor agrees to maintain Worker’s Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than $1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.

**Professional Liability**- Contractor agrees to maintain Professional Liability Insurance with limits no less than $1,000,000, covering claims arising out of professional architect, engineers and surveyors services performed in connection with this contract.

**Environmental/Pollution**- Contractor agrees to maintain Environmental/Pollution Liability Insurance with limits no less than $1,000,000 per occurrence and $2,000,000 aggregate, covering claims arising out of the use or application of chemicals/herbicides as well as the negligent release of hazardous materials. Coverage may also be satisfied by endorsement to the Commercial General Liability policy with minimum limits of $1,000,000/$2,000,000.
**Additional Insured** – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.

**Certificate of Insurance** – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage’s, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham  
Attn: (Insert Name of Department maintaining the Contract)  
101 City Hall Plaza  
Durham, NC 27701

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham’s Risk Manager.
CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to underutilized businesses owned by minorities and women doing business in the City’s Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to minority and women business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of minority and women individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall determine participation goals based upon the availability of minority and women business enterprises (MWBEs) within the defined scope of contracting, and the goals established for the contracting category.
Equal Business Opportunity Program
UBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal may be deemed non-responsive.

**UBE Participation Documentation** must be used to document participation of an underutilized business enterprise (UBE) on Professional Services projects. All UBEs must be certified by the State of North Carolina as a historically underutilized business, the North Carolina Department of Transportation as a minority-owned or women-owned business or the U.S. Small Business Administration’s 8(a) Business Development Program prior to the submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

**Employee Breakdown** must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

**Letter of Intent to Perform as a Sub-consultant/Subcontractor** must be completed for UBEs proposed to perform on a contract. This form must be submitted with the proposal.

**Post Proposal Submission UBE Deviation**

Post proposal submission UBE deviation participation documentation must be used to report any deviation from UBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

**UBE Goals Not Met/Documentation of Good Faith Efforts**

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of minority-owned and women-owned individuals or businesses as sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase UBE participation such that the amounts subcontracted are consistent with the established goals.
SELECTION OF CONSULTANTS/CONTRACTORS
FOR ARCHITECTURAL/ENGINEERING
AND OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide underutilized business enterprises owned by minorities and women with equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall determine UBE participation goals for each contracting category to be awarded by the City. Goals for each project or contract will be based upon the availability of underutilized business enterprises (UBE’s) within the defined scope of work, delineated into percentages of the total value of the work.

The City of Durham will consider a formal certification of the State of North Carolina’s Historically Underutilized Businesses (HUB) Office, North Carolina Department of Transportation (N.C. DOT) minority and women businesses and the United States Small Business Administration (U.S. SBA) 8(a) Development Program as meeting the requirements of the Equal Business Opportunity Program, provided there is evidence that the firm is currently certified by one of the stated entities.

Underutilized Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham’s request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services Forms.

Selection Committee for Professional Services

A selection committee shall be established and may be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are involved; the Equal Opportunity/Equity Assurance Director or designee and Purchasing Manager or designee. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, UBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. UBE Participation; and
12. Documentation of Good Faith efforts should UBE participation requirements not be met.
After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

**Contract Award**

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

**Project Evaluation**

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking applicants. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.
## PARTICIPATION DOCUMENTATION
(To be completed by Prime Consultant/Contractor only)

<table>
<thead>
<tr>
<th>Names of all firms</th>
<th>Project (including prime and subconsultants/subcontractors)</th>
<th>Location</th>
<th>UBE Firm</th>
<th>Nature of Participation</th>
<th>% of Project Work</th>
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TOTAL ________________

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

__________________________

Signature - Authorized Officer of Prime Consultant/Contractor Firm

__________________________

Date
COMPLETE THIS FORM OR ATTACH COMPUTERIZE FORM
EMPLOYEE BREAKDOWN

(EEO-1 Report may be submitted in lieu of this form.)

Part A – Employee Statistics for the Primary Location

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Part B – Employee Statistics for the Consolidated Company (See instructions for this form on whether this part is required.)

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</tbody>
</table>
Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a UBE:

Minority (African American, American Indian, Asian or Hispanic) Woman

The UBE status of the undersigned is certified if identified as HUB certified by the N.C Department of Administration HUB Office, minority or women certified by the N.C. Department of Transportation and 8(a) certified by the U.S. Small Business Administration.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<table>
<thead>
<tr>
<th>ITEMS</th>
<th>PROJECTED COMMENCEMENT DATE</th>
<th>PROJECTED COMPLETION DATE</th>
</tr>
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</table>

The consultant will subcontract__________% of the dollar value of this contract to UBE sub-consultant.

The undersigned will enter into a formal agreement in the amount of $____________________ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name_________________________Title____________________
Company_________________________Telephone________________
Address__________________________
Signature__________________________
REQUEST TO CHANGE UBE PARTICIPATION

Project: ________________________________________________________________

Name of bidder or consultant: ____________________________________________

Name and title of representative of bidder or consultant: ____________________

Address: ______________________ Zip Code: ________________________________

Telephone No: __________________ Fax Number: ____________________________

Email address: _________________________________________________________

Total amount of original contract, before any change orders or amendments: ________________

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: ________________

Dollar amount of changes proposed in this form: _____________________________

The proposed change (check one) □ increases □ decreases the dollar amount of the bidder’s/consultant’s contract with the City.

Does the proposed change decrease the UBE participation? (check one) □ yes □ no

If the answer is yes, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of sub-consultant ____________________________

Goods and services to be provided before the proposed change: ____________________________________________________________________

Is it proposed to eliminate this subcontract? □ yes □ no

If the subcontract is to be increased or reduced, describe the nature of the change (such as adding $5,000 in environmental work and deleting $7,000 in architectural):

__________________________________________________________________________

Dollar amount of this subcontract before this proposed change: ____________________________

Dollar amount of this subcontract after this proposed change: ____________________________

This subcontractor is (check one):
□ 1. Minority-owned UBE
□ 2. Women-Owned UBE
□ 3. Not a UBE
**BOX B. Proposed subcontracts other than the subcontract described in Box A above (continued)**

Name of sub-consultant for the new work:________________________________________________________

Goods and Services to be provided by this proposed subcontract: ________________________________

Dollar amount proposed of this proposed subcontract: This sub-consultant is:

- 1. Minority-owned UBE
- 2. Women-Owned UBE
- 3. Not a UBE

Add additional sheets as necessary.
UBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage UBEs along with other criteria that the City Manager deems proper:

Name of Bidder: ________________________________

If you find it helpful, feel free to attach pages to explain your answers. How many pages is your firm attaching to this questionnaire? ____________

(Don’t count the 2 pages of this)

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING UBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs in the contract? □ yes □ no

In such soliciting, did your firm advertise? □ yes □ no Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? □ yes □ no

(b) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? □ yes □ no

(c) Did your firm attend the pre-bid conference? □ yes □ no

(d) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? □ yes □ no

(e) Did your firm follow up with UBEs that showed interest? □ yes □ no

(f) With reference to the UBEs that your firm notified of the type of work to be subcontracted, did your firm tell them:

   (i) the specific work your firm was considering for subcontracting? □ yes □ no
   (ii) that their interest in the contract is being solicited? □ yes □ no
   (iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? □ yes □ no
2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? □ yes □ no

(b) If yes, please describe the portions selected. ANSWER:

3. NEGOTIATION. In your answers to 3, you may omit information regarding UBEs for which you are providing a Letter of Intent.

(a) What are the names, addresses, and telephone numbers of UBEs that you contacted? ANSWER:

(b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work selected for potential subcontracting. ANSWER:

(c) Why could your firm not reach agreements with the UBEs that your firm made contact with? Be specific. ANSWER:

4. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? □ yes □ no (Note: In most projects, the City has no such requirement for subcontractors.)

(b) If the answer to (a) is yes, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? □ yes □ no If yes, describe your firm’s efforts. ANSWER:

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? □ yes □ no If yes, describe. ANSWER:

5. GOODS AND SERVICES. What efforts did your firm make to help interested UBEs to obtain goods or services relevant to the proposed subcontracting work? ANSWER:

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit UBEs for the work? □ yes □ no Please explain. ANSWER:

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors’ groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? □ yes □ no Please explain. ANSWER:
<table>
<thead>
<tr>
<th>Company Name</th>
<th>Contact Name</th>
<th>Address</th>
<th>City, State</th>
<th>Zip</th>
<th>Phone</th>
<th>Email</th>
<th>Hub Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1 Consulting Group, Inc.</td>
<td>Goel, Vinnie</td>
<td>117 International Drive</td>
<td>Morrisville, NC</td>
<td>27560</td>
<td>919-469-4800</td>
<td><a href="mailto:vgoel@a1cons.com">vgoel@a1cons.com</a></td>
<td>AA</td>
</tr>
<tr>
<td>Alicia Ravetto Architect PA</td>
<td>Ravetto, Alicia</td>
<td>1459 Redbud Rd</td>
<td>Pittsboro, NC</td>
<td>27312</td>
<td>919-933-0999</td>
<td><a href="mailto:alicia@aliciaravettoarchitect.com">alicia@aliciaravettoarchitect.com</a></td>
<td>HA</td>
</tr>
<tr>
<td>Allison Blanks, Architect, PLLC</td>
<td>Blanks, Allison</td>
<td>PO Box 593</td>
<td>Pittsboro, NC</td>
<td>27312</td>
<td>336-423-1429</td>
<td><a href="mailto:ab@allisonblanks.com">ab@allisonblanks.com</a></td>
<td>W</td>
</tr>
<tr>
<td>Andre Johnson Architect, PLLC</td>
<td>Johnson, Andre</td>
<td>3433 Griffie Mill Road</td>
<td>Raleigh, NC</td>
<td>27610</td>
<td>919-815-8753</td>
<td><a href="mailto:andre@andrejohnsonarchitect.com">andre@andrejohnsonarchitect.com</a></td>
<td>B</td>
</tr>
<tr>
<td>BBFoster Consulting, PC</td>
<td>Foster, Ph.D., PE,Bellandras</td>
<td>2618-A Battleground Avenue</td>
<td>Greensboro, NC, NC</td>
<td>27408</td>
<td>336-355-7897</td>
<td><a href="mailto:bbf@bbfosterconsulting.com">bbf@bbfosterconsulting.com</a></td>
<td>B</td>
</tr>
<tr>
<td>CH ENGINEERING, PLLC</td>
<td>Chambliss, Maha</td>
<td>3220 Glen Royal Road</td>
<td>Raleigh, NC</td>
<td>27617</td>
<td>919-788-0224</td>
<td><a href="mailto:mchambliss@ch-engr.com">mchambliss@ch-engr.com</a></td>
<td>W</td>
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<tr>
<td>CriTek Engineering Group, P.C.</td>
<td>Crite, Dawayne</td>
<td>1 Centerview Drive</td>
<td>Greensboro, NC</td>
<td>27407</td>
<td>336-348-1889</td>
<td><a href="mailto:info@critegroup.com">info@critegroup.com</a></td>
<td>W</td>
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<tr>
<td>Evoke Studio Architecture</td>
<td>Canada, Teri</td>
<td>401 Foster Street, Suite B1</td>
<td>Durham, NC</td>
<td>27701</td>
<td>919-451-6289</td>
<td><a href="mailto:teri@evokestudio.com">teri@evokestudio.com</a></td>
<td>W</td>
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<tr>
<td>Falcon Engineering</td>
<td>Robertson, Margaret</td>
<td>1210 Trinity Road</td>
<td>Cary, NC</td>
<td>27513</td>
<td>919-871-0800</td>
<td><a href="mailto:mmansfield@falconengineers.com">mmansfield@falconengineers.com</a></td>
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</tr>
<tr>
<td>Gardner &amp; McDaniel, PA</td>
<td>Easterling, Susan</td>
<td>P.O. Box 51967</td>
<td>Durham, NC</td>
<td>27717</td>
<td>919-489-0926</td>
<td><a href="mailto:susan@gmengrs.com">susan@gmengrs.com</a></td>
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<tr>
<td>HH Architecture, P.A.</td>
<td>Hess, Kristen</td>
<td>PO Box 18808</td>
<td>Raleigh, NC</td>
<td>27619-8808</td>
<td>919-828-2301</td>
<td><a href="mailto:info@hh-arch.com">info@hh-arch.com</a></td>
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<tr>
<td>Kirwan Architecture, PLLC</td>
<td>Kirwan, Alicia</td>
<td>301 Glenwood Ave., Suite 270</td>
<td>Raleigh, NC</td>
<td>27603</td>
<td>919-820-2404</td>
<td><a href="mailto:ak@kirwanarchitecture.com">ak@kirwanarchitecture.com</a></td>
<td>W</td>
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<tr>
<td>Lynch Mykins Structural Engineers, PC</td>
<td>Lynch, Anna</td>
<td>415 Hillsborough St.</td>
<td>Raleigh, NC</td>
<td>27603</td>
<td>919-782-1833</td>
<td><a href="mailto:alynch@lynchmykins.com">alynch@lynchmykins.com</a></td>
<td>W</td>
</tr>
<tr>
<td>Ross Linden Engineers PC</td>
<td>Ross, Laura</td>
<td>709 W. Jones Street</td>
<td>Raleigh, NC</td>
<td>27603</td>
<td>919-832-5680</td>
<td><a href="mailto:info@rosslinden.com">info@rosslinden.com</a></td>
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<tr>
<td>Schooler Civil &amp; Environmental Eng.</td>
<td>Schooler, Pamela</td>
<td>236 Sunnybrook Road</td>
<td>Raleigh, NC</td>
<td>27620</td>
<td>919-889-9691</td>
<td><a href="mailto:plsschooler@gmail.com">plsschooler@gmail.com</a></td>
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<tr>
<td>SEPI Engineering&amp;Construction</td>
<td>Hube, Taylor</td>
<td>1025 Wade Ave</td>
<td>Raleigh, NC</td>
<td>27605</td>
<td>919-789-9977</td>
<td><a href="mailto:thube@sepiengineering.com">thube@sepiengineering.com</a></td>
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<td>SMITH SINNETT Architecture</td>
<td>Angerio, Rhonda</td>
<td>4600 Lake Boone Trail, Suite 205</td>
<td>Raleigh, NC</td>
<td>27607</td>
<td>919-781-8582</td>
<td><a href="mailto:rangerio@smithsinnett.com">rangerio@smithsinnett.com</a></td>
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<tr>
<td>STEWART ENGINEERING INC</td>
<td>Southerland, Denise</td>
<td>223 S. West Street</td>
<td>Raleigh, NC</td>
<td>27603</td>
<td>919-380-8750</td>
<td><a href="mailto:dsoutherland@stewartinc.com">dsoutherland@stewartinc.com</a></td>
<td>HA</td>
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<tr>
<td>Sud Associates, P.A.</td>
<td>Spittler, Maria</td>
<td>1813 Chapel Hill Road</td>
<td>Durham, NC</td>
<td>27707</td>
<td>919-493-5277</td>
<td><a href="mailto:maria@sudassociates.com">maria@sudassociates.com</a></td>
<td>AA</td>
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<tr>
<td>Swanson+Stewart Architects PA</td>
<td>Stewart, Leigh</td>
<td>1612 Mason Road</td>
<td>Durham, NC</td>
<td>27712-9136</td>
<td>919-908-6930</td>
<td><a href="mailto:LeighS@SandSArchitects.com">LeighS@SandSArchitects.com</a></td>
<td>W</td>
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<tr>
<td>Wetherill Engineering, Inc</td>
<td>Wetherill, Eddie</td>
<td>1223 Jones Franklin Road</td>
<td>Raleigh, NC</td>
<td>27606-3312</td>
<td>919-851-8077</td>
<td><a href="mailto:ewetherill@wetherilleng.com">ewetherill@wetherilleng.com</a></td>
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</table>
NON-COLLUSION AFFIDAVIT

By executing this proposal, I certify that this proposal is submitted to the City of Durham competitively and without collusion. I am authorized to represent the candidate or bidder named below both in submitting this proposal and in making this Non-collusion Affidavit. To the best of my knowledge and belief, (1) the candidate or bidder has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate or bidder has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal, and (3) the candidate or bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding or making a proposal for the benefit of another contractor. The neuter includes the masculine and the feminine. The candidate or bidder to which this Non-Collusion Affidavit refers is:

____________________________________________________.

(insert name of candidate or bidder)

________________________________________

(signature of individual)

ACKNOWLEDGMENT

Type or print name of the individual who signed the affidavit:

________________________________________

Type or print the name of Notary Public signing this acknowledgment:

________________________________________

Place where acknowledgment occurred: County of ________________, State of __________

Notary’s residence: County of ________________, State of __________

I, the Notary Public named above, certify (1) the individual named above personally appeared before me this day, (2) I have personal knowledge, or satisfactory evidence, of the individual’s identity; and (3) the individual acknowledged signing the foregoing affidavit.

This the ______ day of __________________, 20____.          _________________________________

Notary Public

My commission expires:

________________________________________
AGREEMENT made as of the « » day of « June » in the year « 2019 »
(In words, indicate day, month and year.)

BETWEEN the Architect’s client identified as the Owner:
(Name, legal status, address and other information)
« City of Durham »
« 101 City Hall Plaza »
« Durham, NC 27701 »
« »

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

for the following Project:
(Name, location and detailed description)
« Weaver Street and W.D. Hill Recreation Center Renovations »
« W.D. Hill Recreation Center, located at 1308 Fayetteville St. Durham, NC 27707 
Weaver Street Recreation Center  
3000 Weaver St. Durham, NC 27707 »
« Scope to include full design services for renovations at Weaver Street and W.D. Hill recreation centers. Scope of work at Weaver Street will potentially include replacement of the roof, basketball goals, bleachers, flooring and windows. It will also include renovation of the kitchen and a new opening between the gym and the administrative office for better visibility. »

The Owner and Architect agree as follows.

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

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

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ARTICLE 1 INITIAL INFORMATION
§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as “not applicable” or “unknown at time of execution.”)

§ 1.1.1 The Owner’s program for the Project:
- (Insert the Owner’s program, identify documentation that establishes the Owner’s program, or state the manner in which the program will be developed.)

§ 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.)

« The initial Stated Limitation on Cost of the Work (SLCW) is $_______________. The SLCW may be adjusted during the course of design and construction by means established herein. »
§ 1.1.4 The Subject to change by the Owner and as provided herein, 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 the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

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

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

«John Paces-Wiles »
«City of Durham »
«General Services Department »
«101 City Hall Plaza
Durham, NC 27701 »
«Telephone Number: (919) 560-4197 »
«Email Address: john.paces-wiles@durhamnc.gov »

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

«To be decided by Owner »

§ 1.1.9 The Owner shall retain the following consultants and contractors: will retain the following consultants and
contractors, which may be modified during the course of the Project:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:
(If retained separately and not by Architect as a subconsultant.)

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

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

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under The following Consultants are among those retained by the Architect to perform
Basic Services:

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:
§ 1.1.11.2 Consultants retained under Supplemental Services: Additional Services pursuant to Section 4.1:

§ 1.1.11.3 Project Team. The following persons are designated by the Architect as key members of the Project Team:

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

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect’s services, schedule for, when appropriate, adjust the terms of this Agreement by amendment with a written and duly executed instrument.

the Architect’s services, and the Architect’s compensation. The Owner shall adjust § 1.2.1 The services performed by the Architect pursuant to this Agreement (“Services”) are subject to the Owner-approved Stated Limitation on Cost of the Work (SLCW) as specified in Section 1.1.3. In the absence of an express provision to the contrary in this Agreement, the Architect shall perform the required Services in a manner that will render a Cost of the Work (as that term is defined in Article 6 herein) that does not exceed the most current Owner-approved SLCW. Unless the context indicates otherwise, any reference to the Owner’s budget for the Cost of the Work shall be the SLCW.

and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.2.2 Architect represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the Services and perform its obligations under this Agreement and under the Contract Documents. Architect further represents, warrants, and acknowledges that: (a) it is a business entity that possesses a high level of experience and expertise in professional design services and contract administration of projects of similar or like size, complexity, and nature as the above-noted Project; (b) the Owner is relying on Architect’s representations herein that it possess sufficient skill, knowledge, expertise, and ability to fully perform the Services and its obligations under this Agreement; (c) the Architect will assign to this Project similarly qualified individual professional architects, managing those professionals as needed to deliver that quality of
§ 1.3 The parties shall agree upon use appropriate protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will may 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.[Intentionally omitted].

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES
§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances, meet a standard of professional skill and care used by architects on similar projects, whether such similar projects can be found locally, regionally or nationally. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care.

and the orderly progress of the Project. § 2.2.1 The Architect hereby warrants that it (and the individual architects and engineers it employs on this Project) are registered, licensed and authorized to practice Architecture (or Engineering, as the case may be) as required by law of the State of North Carolina. The Architect warrants that its designs, Construction Documents, and Services shall conform to all applicable federal, state, and local statutes and regulations governing its Services, the Project, and the Work. The Architect agrees and acknowledges that his duty is non-delegable—and that the Architect, by signing drawings or preparing Construction Documents to submit for purpose of obtaining building and other governmental permits, shall be deemed to certify that it has taken every reasonable measures to ascertain what codes apply to the Project and has applied them accordingly. Nothing in this Agreement shall be construed to eliminate or diminish the Architect’s responsibility for compliance of its design, its Construction Documents, and its Services provided with applicable local, state, and federal statutes and regulations.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. This designation shall be submitted in writing for the Owner’s prior approval. Once approved, the designated representative shall not be changed without the Owner’s written authorization.

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

§ 2.5 The Architect shall maintain the following insurance 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. insurance requirements of Exhibit B, “Insurance Requirements” until termination of this Agreement.

§ 2.5.1 Commercial General Liability with policy limits of not less than ($ ) for each occurrence and ($ ) in the aggregate for bodily injury and property damage.[Intentionally omitted]«»«».

§ 2.5.2 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.[Intentionally omitted]«»«».
§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, 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. [Intentionally omitted].

§ 2.5.4 Workers’ Compensation at statutory limits. [Intentionally omitted].

§ 2.5.5 Employers’ Liability with policy limits not less than ($ ) each accident, ($ ) each employee, and ($ ) policy limits. [Intentionally omitted].

§ 2.5.6 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. [Intentionally omitted].

§ 2.5.7 Additional Insured Obligations. To. [Intentionally omitted].

§ 2.5.8 [Intentionally omitted].

the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect’s negligent acts or omissions. § 2.6 (Conflicts of interest) The Architect hereby certifies that it has not entered into and, during the lifetime of the Agreement, will not enter into any agreement with a third-party affording the Architect, or any subconsultant that it may hire, with any direct or indirect financial interest in the outcome of the Project, except with regard to the project development, human and natural environmental and/or design services associated with this Agreement. Pursuant to N.C.G.S. § 133-1, the Architect shall not knowingly specify building materials, equipment, or other items that are manufactured, sold or distributed by any person or entity in which the Architect has a financial interest. Pursuant to N.C.G.S. § 133-2, the Architect shall not employ or allow manufacturers or their representatives or agents to write, plan, draw, or make specifications for such public works.

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. § 2.7 (Approvals) The Owner’s approvals of documents and other items, e.g., in Sections 3.3, 3.4 and 3.5, shall not constitute waivers or releases of the Architect’s duty to provide the documents and other items in accordance with this Agreement and in accordance with applicable professional standards.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.2.8 The Architect shall prepare designs and Construction Documents so that the Project can be built within the Stated Limitation of the Cost of the Work (SLCW) specified in Section 1.1.3.

ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES

§ 3.1 The Architect’s Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services. Architect shall provide all the usual and customary professional services necessary for the complete design and construction documentation of the Project. The Architect agrees that the Basic Services Fee, as stated in Article 11, represents adequate and sufficient compensation for its timely provision of all professional Basic Services (including those of its consulting structural, mechanical, electrical, plumbing, and civil, and other consulting engineers) necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (1) the cost of those services that are provided by third parties and that are expressly designated herein as being “the Owner’s responsibility” or “Owner-provided”; and (2) the cost of those engineering or consulting Services that become necessary as a result of an Owner-directed change in Project scope affecting the Architect (and that are a subject of a written agreement for Additional Services between the Owner and the Architect).
§ 3.1.1 The Architect shall manage the Architect’s services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner’s consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, on the accuracy, completeness of services and information furnished by the Owner and the Owner’s consultants; consultants when that information is transmitted by the Owner to the Architect and is expressly designated in writing by the Owner to be reliable. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner’s approval a schedule for the performance of the Architect’s services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner’s approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner’s directive or substitution, or for the Owner’s acceptance of non-conforming Work, made or given without the Architect’s written approval. [Intentionally omitted].

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to prepare designs and documents in accordance with applicable design requirements imposed by those authorities and entities.

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

§ 3.2 Schematic Design Phase Services
§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect’s services and prepare designs and documents accordingly. As part of this review, the Architect shall attend a series of meetings with the Owner’s project team and the Owner’s consultants.

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

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project, including the feasibility of incorporating environmentally responsible or sustainable design approaches. One purpose of the review is to contain costs within the budget limits.

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

§ 3.2.5 Based on the Owner’s approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner’s approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include, if requested by Owner, 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.
§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner’s program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work. Architect shall provide for the Owner’s approval a written itemized estimate of the Cost of the Work prepared in accordance with Section 6.3 based upon the Schematic Design package produced by the Architect and at a level of detail satisfactory to the Owner, estimates of Cost of the Work, including the cost of each category of work involved, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on Cost of the Work (SLCW), as set forth in Section 1.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner’s approval in writing.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner’s approval of the Schematic Design Documents, and on the Owner’s authorization of any adjustments in the Project requirements and/or the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner’s approval in writing. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, landscape architectural, civil engineering, interior designs, 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.

§ 3.3.2 The Architect shall update the Design Development Documents for the Owner’s approval a written itemized estimate of the Cost of the Work prepared in accordance with Section 6.3 based upon the Design Development package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on Cost of the Work (SLCW), as set forth in Section 1.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner’s approval. If requested by the Owner, the Architect shall assist the Owner in securing at least one independent estimate of Cost of the Work from qualified construction estimators. The services shall include providing detailed estimates of Cost of the Work. This requirement may be moved to the end of the Schematic Design Phase if in the opinion of the Architect and the Owner enough information has been produced in that phase to generate a reliable budget projection.

§ 3.3.4 (Advise on Tests) To the extent appropriate during this phase, the Architect shall advise the Owner of the advisability of the Owner’s arranging for the tests, inspections, and reports referred to in Section 5.9.

§ 3.3.5 (Review for Code Compliance) The Architect shall submit the Design Development Documents for approval by the applicable City/County planning governing body for its review for compliance with applicable code requirements before proceeding to the Construction Documents Phase. If appropriate, this requirement may likewise be moved to the end of the Schematic Design Phase.
§ 3.3.6 (Revise Documents) To the extent the Owner reasonably requests, the Architect shall revise the Design Development Documents to the extent that the revisions are not inconsistent with the program referred to in Section 3.2.5 and the Schematic Design approval referred to in Section 3.2.7.

§ 3.4 Construction Documents Phase Services
§ 3.4.1 Based on the Owner’s approval of the Design Development Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.1. AIA Document B101™

§ 3.4.2 The Architect shall incorporate the design prepare Construction Documents that conform with applicable laws, codes, ordinances, regulations, and other requirements of governmental authorities having jurisdiction over the project into the Construction Documents. Project.

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

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. Upon completion of the Construction Documents Phase of Services, the Architect shall provide for the Owner’s approval a written, itemized estimate of the Cost of the Work—with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the Initial Owner-provided Stated Limitation on Cost of the Work (SLCW), as set forth in Section 1.1.3 herein, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

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

§ 3.4.5 (Advise on Need for Information) To the extent appropriate during this phase, the Architect shall advise the Owner of the advisability of the Owner’s arranging for the tests, inspections, and reports referred to in Section 5.9.

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

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

§ 3.5.2.2 The Unless otherwise directed by the Owner, the Architect shall assist the Owner, in bidding the Project by:

1. facilitating the distribution of Bidding Documents; procuring the reproduction of Bidding Documents for distribution to prospective bidders;
§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor 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.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents, including AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended and supplemented by the City of Durham. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6 Construction Phase Services

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

.3 organizing and conducting a pre-bid conference for prospective bidders;

.3—4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,

.4—5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

§ 3.5 Negotiated Proposals

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

§ 3.5.3.2 If the Proposal Documents permit substitutions, upon the Owner’s written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner’s written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.4 The bidding may include two or more rounds of soliciting, receiving, and processing bids. The number of rounds will be set in the Owner’s discretion. As part of Basic Services, the Architect shall attend up to two pre-bid conferences with prospective bidders. The services shall include modification of the drawings, specifications, and other documents. To the extent required by law or requested by the Owner, the bidding may provide for multiprime and single prime bids.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor 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.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents, including AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended and supplemented by the City of Durham. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.
§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with construction to determine the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be determined if the Work is proceeding in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect shall visit the Project site at least once every week, unless the Owner’s representative agrees that fewer visits are appropriate.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. If the Architect does not reject non-conforming work, the Architect shall demand in writing that the Contractor bring the non-conforming Work into compliance with the Contract Documents; and, if the Contractor’s efforts to do so are not begun and completed expeditiously, the Architect shall report that failure to the Owner in writing, stating (a) the problem; (b) the reasons for the actions taken by the Architect; (c) what, if any, response has been forthcoming from the Contractor; and (d) what actions by the Owner and/or Contractor are needed or expected. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with requirements indicated in or reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. To the extent the Contract Documents do not permit the Owner to make final decisions on aesthetic matters, then this Section shall be deemed modified by requiring the Architect to consult the Owner before making a decision on matters relating to aesthetic effect. To the extent that the Contract Documents permit the Owner to make final decisions on aesthetic matters, this Section shall be of no effect. This Section shall control over Section 4.2.13 in the General Conditions.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, A201–2017 (as amended and supplemented by the City of Durham), the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and after consultation with the Owner shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.
§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 Submittals

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

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor’s submittals such as including 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 Contractor’s responsibility, etc. as necessary to ascertain their conformance with the requirements for the Work as indicated in the Contract Documents. The Architect shall determine what aspects of the Work shall be the subject of submittals. If work proceeds without appropriate submittals or approvals, the Architect shall notify the Contractor and the Owner that such work will not be approved or accepted and will not be certified for payment. The Architect’s review shall not be conducted for the purposes of confirming dimensions or quantities in those submittals except to the extent that the Contractor has requested the assistance of the Architect to determine certain dimensions because those indicated in the Construction Documents conflict with existing field conditions or because the dimensions in the Construction Documents contain erroneous, inconsistent, or incomplete information or dimensions for which clarifications are needed and can be supplied by the Architect. The Architect’s review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor’s design professional, provided the submittals bear such professional’s seal and signature when submitted to the Architect. The Architect’s review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Nothing in this Agreement shall be construed as an Owner’s authorization to the Architect to delegate design responsibility otherwise required of Architect by the terms of this Agreement. Except for delegation to consulting engineers who are responsible to, and in privity with, the Architect, any delegation of design responsibility by the Architect must be specifically authorized in writing, in advance, by the Owner, which authorization can be withheld by the Owner for any reason.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect’s response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. Architect shall acknowledge the receipt of each Contractor-generated Request for Information (RFI) within seven (7) days after receiving it. The Architect shall issue a written answer for each RFI simultaneously to the Contractor and the Owner (along with necessary descriptive drawings, specifications, or other documents) with the promptness necessary to avoid unnecessary delay or cost to the Project, but in no case more than ten (10) days after
the RFI is received by the Architect. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 Subject to approval of the Owner, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the all authorization for minor change in the Work shall be in writing, or confirmed by the Architect in writing within 24 hours of authorization of the change. The Architect shall, immediately upon authorizing a minor change in the Work, provide written notice to the Owner thereof, describing the change, and confirming that the change will not affect Contract Time or Contract Sum. The Architect shall prepare Change Orders and Construction Change Directives for the Owner’s approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

.2 issue Certificates of Substantial Completion;

.3 forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect’s knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

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

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one ten (10) months year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 (Record Documents) The Architect shall provide a reproducible copy of all drawings, specifications, and other documents to describe fully the finally constructed Work.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Listed Additional Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental If a reasonable reading of this Agreement is that a service is to be provided as a Basic Service, the listing of that service or a similar service under Article 4 is not intended to limit the performance of
that service as a Basic Service. Without limiting the Owner’s other rights and remedies, it is agreed that Services that are needed because of the failure of the Architect to comply with this Agreement or its duties to the Owner shall be performed or provided by the Architect without charge.

Service is not being provided for the Project. (Unless a known Additional Service (outside the negotiated Basic Services) is needed for the project, the Architect may provide the Service at an additional charge.)

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services for the project and identified by both the Architect and Owner, leave the following table in strikethrough form). If an Additional Services is needed and identified by both the Architect and Owner, list the Additional Service in the table below and identify the party who will be responsible for delivering the service. If the Additional Service is to be provided by the Architect, the parties should have a negotiated scope of work for the listed Additional Services as well as a negotiated not-to-exceed fee or lump sum. Insert a description of the listed Additional Service(s) in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

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<tr>
<th>Listed Additional Services</th>
<th>Responsibility (Architect or Owner)</th>
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### Supplemental Services

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<tr>
<th>Supplemental Services</th>
<th>Responsibility</th>
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<tr>
<td>§ 4.1.1.1 Programming</td>
<td>Architect, Owner, or not provided</td>
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<td>§ 4.1.1.2 Multiple preliminary designs</td>
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<td>§ 4.1.1.3 Measured drawings</td>
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<td>§ 4.1.1.4 Existing facilities surveys</td>
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<td>§ 4.1.1.5 Site evaluation and planning</td>
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<td>§ 4.1.1.6 Building Information Model management responsibilities</td>
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<td>§ 4.1.1.7 Development of Building Information Models for post construction use</td>
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<td>§ 4.1.1.8 Civil engineering</td>
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<td>§ 4.1.1.9 Landscape design</td>
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<td>§ 4.1.1.10 Architectural interior design</td>
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<td>§ 4.1.1.11 Value analysis</td>
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<td>§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3</td>
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<td>§ 4.1.1.13 On-site project representation</td>
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<td>§ 4.1.1.14 Conformed documents for construction</td>
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<td>§ 4.1.1.15 As-designed record drawings</td>
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<td>§ 4.1.1.16 As-constructed record drawings</td>
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<td>§ 4.1.1.17 Post-occupancy evaluation</td>
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<td>§ 4.1.1.18 Facility support services</td>
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<td>§ 4.1.1.19 Tenant related services</td>
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<td>§ 4.1.1.20 Architect’s coordination of the Owner’s consultants</td>
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<td>§ 4.1.1.21 Telecommunications/data design</td>
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<td>§ 4.1.1.22 Security evaluation and planning</td>
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<td>§ 4.1.1.23 Commissioning</td>
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<td>§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3</td>
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<td>§ 4.1.1.25 Fast-track design services</td>
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<td>§ 4.1.1.26 Multiple bid packages</td>
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<td>§ 4.1.1.27 Historic preservation</td>
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<td>§ 4.1.1.28 Furniture, furnishings, and equipment design</td>
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<td>§ 4.1.1.29 Other services provided by specialty Consultants</td>
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<td>§ 4.1.1.30 Other Supplemental Services</td>
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### § 4.1.2 Description of Supplemental Listed Additional Services

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

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

« »

**§ 4.1.2.2** A description of each Supplemental Additional Service identified in Section 4.1.1 as the Owner’s responsibility is provided below.
(Describe in detail the Owner’s Supplemental Additional Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 If the Owner [Intentionally omitted].

§ 4.2 Architect’s Additional Services
identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™ – 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2. In addition to any listed Additional Service identified above in Section 4.1.1, the Owner may request other Additional Services of the Architect. Additional Services will be requested by the Owner and confirmed in writing and approved by duly authorized representatives. Should the Owner request services that the Architect believes to be outside the scope of Basic Services, the Architect shall, before performing those services, inform the Owner in

§ 4.2 Architect’s Additional Services writing of the Architect’s belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the services requested. 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.

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

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;

2. Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

3. 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;

4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner’s consultants or contractors;

5. Preparing digital models or other design documentation for transmission to the Owner’s consultants and contractors, or to other Owner authorized recipients;

6. Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

7. Preparation for, and attendance at, a public presentation, meeting or hearing;

8. Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

9. Evaluation of the qualifications of entities providing bids or proposals;

10. Consultation concerning replacement of Work resulting from fire or other cause during construction;

11. Assistance to the Initial Decision Maker, if other than the Architect.

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

1. Reviewing a Contractor’s submittal out of sequence from the submittal schedule approved by the Architect;
§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:
1. «(«)» reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
2. «(«)» visits to the site by the Architect during construction
3. «(«)» 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. «(«)» inspections for any portion of the Work to determine final completion. «» [Intentionally omitted]

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

§ 4.2.5 If the services covered by this Agreement have not been completed within «» (« ») 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—commensurate with the additional cost incurred by the Architect for providing extended basic services.

ARTICLE 5 OWNER’S RESPONSIBILITIES
§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner’s objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements. Architect and Owner acknowledge that the information provided is subject to change, but that the Basic Services Fees indicated herein take that change into account.

§ 5.2 The Owner shall establish the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner’s other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner’s budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project’s scope and quality. Architect shall prepare designs and Construction Documents so that the Project can be built within the Stated Limitation on the Cost of the Work (SLCW) specified in Section 1.1.3.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner’s behalf with respect to the Project. Owner may change the designated representatives upon written notice to the Architect; and Owner may modify the scope of authority of the designated representative in like manner. The Owner shall render decisions and approve the Architect’s submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s services in manner.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and...
§ 5.5 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.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner’s responsibility in Section 4.1.1. [Intentionally omitted].

§ 5.7 If the Owner identified a Sustainable Objective in Article I, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. [Intentionally omitted].

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

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, but only after the Architect has advised the Owner what test, inspections, and reports are required, and where needed for performance of the Work and where the need is not the result of the Architect’s negligence or failure to perform.

§ 5.10 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, where needed for performance of the Work. However, without limiting any other provisions of this Agreement, nothing herein is intended to require the Owner to provide such services to the Architect with respect to any matters which are subject to a dispute between the Owner and the Architect or to the extent that the request or need for such services results from the fault, breach of contract, or negligence of the Architect. Nothing in the foregoing provisions will allow the Owner to refuse to provide the Architect information in the Owner’s possession which is needed by the Architect in order to address the matters of dispute so long as such information is not confidential or privileged information.

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

§ 5.12 The Owner shall include the Architect in all communications with the Contractor 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 Contractor otherwise relating to the Project. Communications by and with the Architect’s consultants shall be through the Architect’s Service, provided nothing in this Agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect’s Services.

§ 5.13 Before executing the Contract for Construction, the Owner and The Architect shall coordinate the Architect’s duties and responsibilities set forth in the Contract for Construction with the Architect’s services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement and in the Contract for Construction and the General Conditions of the Contract for Construction (as amended and
supplemented with Owner made modifications). The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights. (Owner’s Approvals) The Owner’s approval of plans, specifications or other documents shall not relieve the Architect of the responsibility to provide professional services in compliance with this Agreement.

ARTICLE 6  COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors’ general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the 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 Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. The Owner’s budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, Architect as part of Basic Services, represent the Architect’s judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor’s methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the professional familiar with the construction industry, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner’s budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternatives as may be necessary to adjust the estimated Cost of the Work to meet the Owner’s budget. The Architect’s estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, identified as the Architect’s responsibility in Section 4.1.1, as a Supplemental estimate as an Additional Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner’s budget for The Architect’s Estimate of the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market-projected to the scheduled date for completion of the Bidding and Negotiation Phase of Services.

§ 6.5 If at any time the Architect’s estimate of the Cost of the Work exceeds the Owner’s budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project’s size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments. Stated Limitation on the Cost of the Work (SLCW), the Architect shall analyze its design and inform the Owner of more cost-effective ways to build and of any related compromises to quality of construction. However, when those conditions occur at the end of the Construction Documents Phase of Services either as a result of some other fault or negligence of the Architect the Owner may elect to compel one or more of the following measures (or some combination thereof): (1) approve an increased SLCW, in which case the basis of the Architect’s compensation shall be fixed at the previously approved SLCW or the Architect’s most recent Estimate of the Cost of the Work, whichever is less; (2) reject the design and/or Construction Documents, in which case the Owner’s reproduction and delivery costs and other costs related to the rejected bidding or negotiation shall be deducted from Architect’s compensation; (3) direct the Architect to revise the design and/or the Construction Documents in a manner that is agreeable to the Owner and that conforms to the SLCW, in which case these Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents shall be borne solely by the Architect; (4) revise the program or the...
Scope of Work, in which case the Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents (and damages suffered by the Owner as a result) shall be borne solely by the Architect; or (5) terminate this Agreement, in which case the Architect shall be compensated as otherwise provided herein for Services properly performed through the date of termination and reimbursable expenses less the Owner’s reproduction and delivery costs and other costs related to the Architect’s failure to design in accordance with the SLCW. If amounts remaining within fees due the Architect are insufficient to cover the Owner’s costs and damages due the Architect’s negligent provision of Services or other failure to perform, the Architect shall immediately compensate the Owner for the difference.

§ 6.6 If the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall, proposal for reasons not related to the fault of the Architect, the Owner shall at the Owner’s sole discretion

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
.5 instruct the Architect to modify its design and the Construction Documents so the Cost of the Work will fall within the Stated Limitation of the Cost of the Work;
.6 implement any other mutually acceptable alternative.

§ 6.7 If the owner chooses to proceed under Section 6.6.4, the Architect without additional compensation shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner’s budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect’s services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect’s consultants. The Architect hereby assigns to the Owner, without reservation, all copyrights in all Project-related documents, models, photographs, and other expression created by the Architect. Among those documents are certain “Instruments of Service,” including the design drawings and the Construction Documents. The Owner’s obligation to pay the Architect is expressly conditioned upon the Architect’s obtaining a valid written comprehensive assignment of copyrights from its Consultants in terms identical to those that obligate the Architect to the Owner as expressed in this subsection, which copyrights the Architect, in turn, hereby assigns to the

§ 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 Contractor, 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 13.1, solely and exclusively for use in performing services or for 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...
Owner. The Owner, in return, hereby grants the Architect and its Consultants a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Architect’s performance of its obligations under this Agreement for the Architect’s archival records, and for the Architect’s reproduction of drawings and photographs in the Architect’s marketing materials, provided that the Project-related contents of those materials are approved as requested in Section 7.3 of this Agreement. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Architect or the accused commission by the Architect of a tort or a crime affecting the Owner or the Project or upon termination of this Agreement. This nonexclusive license is granted to the Architect alone and shall not be assigned by the Architect to any other person or entity, except that the non-exclusive license granted in this Agreement to the Architect for purposes of the Architect’s performance hereunder may be sublicensed to the Architect’s Consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an Architect’s assignment of this nonexclusive license to another or its attempt to do so.

§ 7.3 shall terminate. The Architect shall obtain similar nonexclusive licenses from the Architect’s consultants consistent with this Agreement.

§ 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. To the extent that liability arises from misuse of the Instruments of Service by the Owner or another architect or engineer, the Architect shall not be responsible for that misuse. If the Owner uses the Instruments of Services for purposes including additions to and modifications of the Project, and for other projects, the Owner shall indemnify the Architect for losses, including reasonable attorneys’ fees, suffered by the Architect as a result of the use of the design and these documents for such other purposes. If these documents are used for other purposes, the Owner shall see that they are modified (a) to indicate that the Architect did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes and (b) to delete the Architect’s name and seal from the documents (where permitted or required by law).

§ 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 No other Project-related data, expression, or documents may be reproduced by the Architect or its Consultants for any other purposes without the express written permission of the Owner.

The Instruments of Service shall be at the Owner’s sole risk and without liability to the Architect and the Architect’s consultants. § 7.5 If the Owner subsequently reproduces Project-related documents or creates a derivative work based upon Project-related documents created by the Architect, the Owner shall (where permitted or required by law) remove or completely obliterate the original professional’s seals, logos, and other indications on the documents of the identity of the Architect and its Consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement. The Architect shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project-related documents, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written authorization of the Owner or as required by law or to defend any claim asserted against the Architect.

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 event 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. Causes of action between the Owner
and Architect pertaining to acts or failures to act under this Agreement shall be deemed to have accrued, and the applicable, if any, statutes of limitations shall commence to run (i) for both Owner and Architect upon the date of Substantial Completion for acts or failures to act occurring before Substantial Completion of which the complaining party was aware, or (ii) if after the Date of Substantial Completion for causes of action against the Architect when the Owner should have reasonably discovered the acts, omissions, events, or circumstances giving rise to delay or damages to the Owner or the Project, whichever occurs later; but in no case shall an action be brought more than twelve years after the Date of Substantial Completion.

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

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

§ 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of 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 according to the process adopted by the State Building Commission pursuant to N.C.G.S. § 143-135.26(11).

§ 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, Owner is located as indicated in page one of this Agreement, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following: parties shall refer to Section 10.1 below. (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.

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted that are otherwise due hereunder and not subject to a good faith dispute, the Architect shall be entitled give the Owner twenty-one (21) days' advance written notice of the Architect's intention to terminate or suspend its Services. This notice shall detail the Architect's specific reason(s) for its intended termination or suspension and shall state with specificity the means by which the Owner may cure the alleged reason and the reasons why the Owner is not justified in withholding payment to the Architect. Thereafter, if the Owner fails either to pay or justify its lack of payment in accordance with the terms of this Agreement, Architect
may give notice of its intention to suspend the Services five days thereafter. Services shall otherwise be performed continually and expeditiously during the pendency of disputes. The suspension shall cease when payment in full of undisputed amounts is made.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, § 9.3 Unless otherwise noted in this Agreement or indicated in the Project Schedule most recently approved by the Owner, or unless caused in whole or in part by the Architect, if the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect’s services. The Architect’s fees for the remaining services and the time schedules shall be equitably adjusted. Services that were fully and satisfactorily performed prior to suspension and shall

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days’ written notice to the Owner. When the Project is resumed, § 9.4 Either party may terminate this Agreement upon not less than seven days’ written notice if the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. (Termination for Convenience) This Agreement may be terminated by the Owner, with or without cause, for the

§ 9.5 The Owner may terminate this Agreement upon not less than seven days’ written notice to the Architect for the Owner’s convenience and without cause. Owner’s convenience upon not less than seven (7) days’ written notice to the Architect referring to this Section. The TFC shall be effective at the

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination. Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect’s termination of consultant agreements, shall be deemed one of convenience upon payment when Services are recommenced by request of the Owner. The Architect shall not be entitled to any payment because of TFC except as stated in this Section, whether on the basis of

§ 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: overhead, profit, damages, other economic loss, or otherwise. Should the Owner terminate this Agreement for cause, but that cause be subsequently found to be insufficient to support termination, the termination shall be deemed one of convenience upon payment by the Owner of the TFC fee.

§ 9.5 [Intentionally omitted].

(See above the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

§ 9.6 [Intentionally omitted].

§ 9.7 [Intentionally omitted]

1 Termination Fee:

§ 9.7 [Intentionally omitted]
§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion. (Termination Expenses) Any references to Termination Expenses elsewhere in this Agreement shall be of no effect.

§ 9.9 The Owner’s rights: (Cooperation after Termination) In case of any termination, the Architect shall:

1. Cooperate with the Owner in completing the Project;

2. Provide information requested by the Owner in connection with completion of the Project;

3. Provide a reproducible copy of all Drawings, Specifications and other documents, even if incomplete, prepared by the Architect up to the date of termination; and

the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.4. If requested by the Owner, provide a reproducible copy of all Drawings, Specifications and other documents to describe the constructed Work as of the date of termination. Services provided after termination shall be compensated as Additional Services.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 (Place of Project; Choice of Law and Forum). This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction’s choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3 and construed in accordance with the law of North Carolina. The exclusive form and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This Section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Section.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, as amended and supplemented with Owner made modifications, to the extent that said conditions and modifications do not conflict with this Agreement. However, except to the extent the context otherwise requires, the “Project” is described on page 1 of this Agreement.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign The Architect may not assign its interests or obligations under this Agreement without the written consent of the other, except that the Owner may assign Owner, which consent may be withheld by the Owner for any reason.

this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.3.1 The Services provided by the Architect are deemed to be personal in nature. The Architect shall appoint to Project leadership positions those persons listed in Section 1.1.1.3 (Project Team). The Architect shall not make substantial changes to this appointed Project Team without the written approval of the Owner. Should circumstances beyond the control of the Architect compel changes to this Project Team, the Architect shall submit the credentials of the Architect’s proposed replacement Project Team member(s) for the Owner’s approval, which approval shall not be unreasonably withheld. However, nothing in this clause shall be construed to limit the Owner’s rights to terminate this Agreement, as provided for herein, due to a change in Project Team composition. Termination by the Owner as a result of a change in the Project Team shall be deemed a justifiable termination for cause.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution review. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, consents, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.
§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.5.1 The Owner shall enjoy the same benefits and rights as to the Architect’s Consultants as the Architect enjoys with respect to its Consultants. The Architect shall enter written contracts with its Consultants that impose upon its Consultants the same duties and obligations to the Owner as the Consultant has to the Architect. Should the Owner terminate this Agreement with the Architect, the Owner shall, upon Owner’s request, obtain assignment of the Consultant’s agreement(s) with the Architect. That assignment does not change the fact that the Owner has no obligation to pay Consultants any amounts whatsoever on this Project, except prospective fees expressly agreed to by the Owner after Owner’s acceptance of assignment of the Consultant’s agreement(s). At the request of Owner, the Architect shall supply the Owner with copies of the Architect’s agreements with its Consultants.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, unless the hazardous materials or toxic substances were brought to the Project by the Architect pursuant to the terms of the Contract Documents. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project site, it shall immediately report that presence to the Owner in writing.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The may include in its portfolio or promotional materials exterior photographs and site plans of the Project; provided, however, images used may not include any proprietary or confidential information. Exterior photographs of the completed Project may be displayed by the Architect in its promotional materials, but the display cannot include floor plans, area and cost information, or other program-specific information without the advance written consent of the Owner.

The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project. 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 Architect shall consider all Project-specific information, except Project name and location, to be confidential and proprietary to the Owner. All designs, drawings, Instruments of Service, specifications, models, computer models, and other products of the Architect’s Services shall be deemed to be the Owner’s confidential and proprietary information. No confidential and proprietary information of the Owner shall be disclosed to others by the Architect except to: (i) the Architect’s Consultants and employees as necessary to perform their portion of the services; (ii) those who have an official need to know the content of the information in order to perform services or construction solely and exclusively for this Project; (iii) building and government officials who need to.

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

(iv) comply with court order or other 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 and (v) other consultants and Contractors whose contracts include similar restrictions on the use of information as needed to preserve for the Owner the confidentiality of proprietary or Project-related information. This Section 10.8 shall survive the termination of this Agreement.
§ 10.8.1 [Intentionally omitted].

§ 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 Basic Services described under Article 3, Services, the Owner shall compensate the Architect as follows as its Basic Services Fee:

.1 Stipulated Sum
   (Insert amount)

« »

.2 Percentage Basis [Intentionally omitted]
   (Insert percentage value)

« »

.3 Other
   (Describe the method of compensation)

« »

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, Additional Services designated in Section 4.1.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

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

« »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « zero » percent ( « 0 » %), or as follows:

(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

« »

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

<table>
<thead>
<tr>
<th>Services</th>
<th>Percent</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schematic Design Phase</td>
<td>« »</td>
<td>« »</td>
</tr>
<tr>
<td>Design Development Phase</td>
<td>« »</td>
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<tr>
<td>Construction Documents Phase</td>
<td>« »</td>
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</tr>
<tr>
<td>Bidding or Negotiation Phase</td>
<td>« »</td>
<td>« »</td>
</tr>
<tr>
<td>Construction Phase</td>
<td>« »</td>
<td>« »</td>
</tr>
</tbody>
</table>
§ 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.\[Intentionally omitted\].

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

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

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

§ 11.8 Compensation for Reimbursable Expenses

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

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Postage, handling, and delivery;
.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
.7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project, not prepared “in-house” by the Architect and requested by the Owner;
.8 If required by the Owner, and with the Owner’s prior written approval, the Architect’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect’s consultants;
.9 All taxes levied on professional services and on reimbursable expenses; Site office expenses; and
.10 Site office expenses;
.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective;
.12 Other similar Project related expenditures.
§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus «zero» percent («0»%) of the expenses incurred.

§ 11.9 Architect’s Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:[Intentionally omitted] (Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

«»

§ 11.10 Payments to the Architect
§ 11.10.1 Initial Payments
§ 11.10.1.1 An initial payment of «zero» ($«0») 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 first invoice. If full credit applied to the initial invoiced amount exceeds the amount due, then the credit shall be applied to each subsequent invoice until the full credit has been exhausted; or, in the alternative, the Owner may request a refund by the Architect of the Initial payment should progress of the Services be inadequate to fully apply the credit for the initial payment to the first and immediately subsequent invoices.

§ 11.10.1.2 If[Intentionally omitted]«»».

§ 11.10.2 Progress Payments
§ 11.10.2.1 Payments not subject to a good faith dispute are due and payable «45»(«45») days from the Owner’s receipt of the Architect’s invoice providing adequate documentation. The invoice is rebuttably presumed received on the first weekday that is not a legal holiday 3 days after mailing. The interest rate shall be

«4»% «» per year, simple interest.

§ 11.10.2.2 [Intentionally omitted].

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner when payment is requested. The records shall be kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent the Owner’s representative and the Architect’s representative concur otherwise in writing. Said concurrence is valid without an amendment to this Agreement. The Architect shall maintain all such records and provide the Owner access to them, and the right to copy them, until at least four years after Architect’s last request for payment under this Agreement.

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 Meetings
§ 12.1.1 (Governing Body Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at one City Council meeting, one Council committee meeting, and one meeting of the Board of County Commissioners.
§ 12.1.2 (City/County Planning Governing Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at all required meetings.
§ 12.1.3 (Other Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at all required meetings as requested by Owner.

§ 12.2 Liquidated Damages
(Check one of the following)
[ ] This Section 12.2 applies to this Agreement. The schedule referred to in this Section 12.2 is contained in »

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.)

[3B9ADA3F]


[__X__] This Section 12.2 does not apply to this Agreement. If this box is checked, then none of Section 12.2 or its Subsections is part of this Agreement.

References to the schedule in this Section are intended to refer to the schedule as amended from time to time with the consent of the Owner.

§ 12.2.1 (Design Development Phase) If due solely to the fault of the Architect, the Design Development Phase is not completed by the schedule’s deadline, the Owner shall withhold percent of the total compensation for that phase. If the Construction Documents Phase is completed by the schedule’s deadline, the Owner shall release said withholding.

(§ 12.2.2) shall be made upon execution

§ 12.2.2 (Construction Document Phase) If due solely to the fault of the Architect, the Construction Documents Phase is not completed by the schedule’s deadline, the Owner shall retain the amount withheld pursuant to Subsection 12.2.1 as liquidated damages. If due solely to the fault of the Architect, the Construction Documents Phase is not completed by the schedule’s deadline, the Owner shall retain as liquidated damages dollars (§ ) per day for each day after the deadline that the phase is incomplete for the first 7 days and dollars (§ ) per day for each day thereafter. If any part of those delays is caused in whole or in part by the Owner, liquidated damages shall not be charged for that portion of the delay time.

§ 12.2.3 (Liquidated nature) The parties recognize that the Owner will suffer financial loss if the services of the Architect are not completed on schedule. They also recognize the delays, expense, and difficulty to both parties involved in proving or contesting the amounts of those losses. Instead of requiring proof of this Agreement those amounts, it is agreed that the Architect shall be liable for the sums specified in this Section 12.2 as liquidated damages, and not as penalties. The amounts stated as liquidated damages are agreed to be reasonable estimates of the Owner’s losses and expenses for delays, including inspections, architectural and engineering services, and administrative costs.

§ 12.3 Notice

for registration fees and

§ 12.3.1 (In General). This subsection 12.3.1 pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices must be in writing and made by personal delivery, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested; in addition, subsection 12.3.2 must also be complied with.

other fees payable to § 12.3.2 (Additional Notice by Fax or Email). In addition to complying with subsection 12.3.1, the party giving notice or other communication shall also send it by fax or email if the other party has provided a valid, working fax number or email address.

the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect’s payments § 12.3.3

(When Notice Period Is Less than 9 Days). If a required notice period is less than 9 days, the party shall also make reasonable attempts, before or promptly after giving written notice under subsections 12.3.1 and 12.3.2, to use a telephone to orally communicate the substance of the contents of the written notice. Communicating the substance of the contents by an in-person conversation will satisfy the preceding sentence.

to the Certifying Authority shall § 12.3.4 (Change of Address; Discovery of Invalid Fax Number or Email Address). A change of address, fax number, email address, telephone number, or person to receive notice may be made by either party by notice given to the other party. At any time that a party discovers that the other party has provided it a fax number or email address that is not valid, the discovering party shall provide notice of the discovery to the other party, so that it can substitute a valid fax number or email address.

§ 12.3.5 (Date Notice Deemed Given). If a notice is sent by United States mail, it is deemed complete upon actual delivery or on the third day following the day on which it is deposited with the United States Postal Service, whichever occurs first. Notice is deemed given when both subsection 12.3.1 and subsection 12.3.2 have been complied with.

be credited to the Owner’s account at the time § 12.3.5 (When Undeliverable Notice Is Deemed Sent). If a notice is undeliverable because the address or other information provided to the sender by the other party is incorrect, incomplete, or out of date, the notice will be deemed sent on the date that the sender attempts to deliver by fax or email, or the date it places the notice in the custody of UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or the U. S. Postal Service for certified United States mail, return receipt requested.
If a fax is not received because the recipient’s fax number is busy on three attempts to fax that are at least ten minutes apart during a 4-hour period, the fax will be deemed undeliverable.

§ 12.3.6 Addresses. Subject to change pursuant to subsection 12.3.4, the addresses for these notices, are:

To the City:

John Paces-Wiles
General Services Department __
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701

The fax number is (919) 560-4970__
The email address is john.paces-wiles@durhamnc.gov

the expense To the Architect:

The Architect’s fax number is __
is incurred. The Architect’s email address is __

§ 11.10.2 Progress Payments. 12.4 Indemnification.

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion

12.4.1 (Indemnification for Charges Arising from Professional Services). Solely with respect to Charges which arise out of Architect’s performance of professional services hereunder, to the Architect’s compensation maximum extent allowed by law, the Architect shall defend, indemnify, and save harmless Indemnitees from and against all such Charges that arise in any manner from, in connection with, or out of Architect’s performance of professional services under this Agreement, but only to the extent such Charges are caused by the professional negligence of the Architect or its subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. For purposes of this Section 12.4.1 “professional negligence” shall mean any failure on the part of the professional to comply with the professional standard of skill and care used by architects on similar projects, whether such similar projects can be found locally, regionally or nationally legally required or reasonably expected under the circumstances in the performance or non-performance of professional services hereunder.

§ 12.4.2 (Indemnification for Charges Not Arising from Professional Services). With respect to services performed.

Payments all Charges other than those which arise out of Architect’s performance of professional services hereunder, to the maximum extent allowed by law, the Architect shall defend, indemnify, and save harmless Indemnitees from and against all such Charges that arise in any manner from, in connection with, or out of this Agreement as a result of acts or omissions of the Architect or subconsultants or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this Section 12.4.2 the Architect shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

shall bear interest at the rate entered below, or in $12.4.4 (Other Provisions Separate). Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this Agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

AIA Document B101™ – 2017. Copyright © 1974, 1978, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 08:13:11 ET on 05/13/2019 under Order No. 3357103196 which expires on 03/13/2020, and is not for resale.

User Notes:
the absence thereof at § 12.4.5 (Survival). This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of the Architect under this Agreement.

§ 12.4.6 (Limitations of the Architect’s Obligation). Sections 12.4.1 and 12.4.2 above shall not require the Architect to indemnify or hold harmless Indemnities against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnities.

§ 12.5 Equal Business Opportunity Program

the legal rate prevailing from time to time at the principal place of business of The Architect shall comply with all applicable provisions of Article III of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Architect to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this Agreement, and State law. The Participation Plan submitted in accordance with that article is binding on the Architect.

(Insert rate of monthly or annual interest agreed upon.) Section 18-59(f) of that article provides, in part, “If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Architect’s alleged violations of its obligations under Article III of Chapter 18 and not to the Architect’s alleged violations of other obligations.

§ 12.6 Compensation for Architect’s Errors

§ 12.6.1 If (i) the Architect creates plans or specifications containing an error that causes actual construction of a portion of the work that needs to be changed solely because of the Architect’s error, and, (ii) the Owner elects to apply this Section 12.6, the Architect shall pay the Owner all costs of correcting the error, including an amount to compensate the Owner for time spent by Owner’s employees because of the error without regard to what other services those employees might have done for the Owner had the error not occurred.

§ 12.6.2 (Unforeseen Conditions) An error shall not be grounds for payment under this Section 12.6 if the error occurred because of physical conditions were:
   not in fact known to the Architect,
   not in fact known to the Architect’s consultants,
   not readily apparent to the Architect,

   and

   not readily apparent to the Architect’s consultants.

§ 14.10.2.2 The Owner 12.6.3 (Cost of Employees’ Time) The cost of the employees’ time will be calculated as follows: the time spent by any salaried employee of the Owner because of the error shall be compensated at an hourly rate equal to the employee’s gross salary (using standards to determine gross salary for federal income tax purposes) during the applicable fiscal year of the Owner divided by the number of hours worked by that employee for the Owner during that fiscal year.

shall not withhold amounts from the Architect’s compensation to impose a penalty or liquidated damages § 12.6.4 (Limits on Double Payments) If this Section 12.6 is applied to compensate the Owner for an error, the Architect shall not owe the Owner any other compensation to remove the erroneously built work and replace it with correct work. However, the payment of such compensation or the application of this Section 12.6 shall not affect liability to the Architect for personal injury or damage to property. (In the preceding sentence, “damage to property” excludes the damage suffered by the Owner for the cost of replacing the erroneously installed work for which this paragraph provides compensation, but it includes all other general, special, consequential, or other kinds of damage resulting from the error.)

on the Architect, or to offset sums requested § 12.6.5 (Limit on Use of Payment against Architect) A payment by the Architect pursuant to this Section 12.6 shall be considered a compromise, and the City shall not introduce the fact of the payment in any legal action or proceeding except to the extent that compromises are admissible.
by or paid to contractors for the cost of changes in the Work, unless § 12.6 (Nonpayment Hereunder Not to Prevent Other Claims). If this Section 12.6 is not applied by the Owner so as to compensate the Owner for an error, this Section 12.6 shall not be used to construe this Agreement so as to reduce any remedy that is available to the Owner because of that error. For example, to the extent an error is not compensated for because the amount exceeds the insurance deductible, the Owner will not be deemed to have waived a claim for any damages arising from the error.

§ 12.7 Waiver
The Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right, or remedy under this Agreement, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party against whom the waiver is asserted."

§ 14.10.2.3 Records

Reimbursable Expenses, expenses pertaining § 12.9 Reimbursable Expenses to Supplemental and Additional Services, and services performed on the basis § 12.9 (If no Reimbursable Expenses are to be paid, check the first box 12.9.1). If some Reimbursable Expenses are to be paid but not in accordance with 12.9.2, check the first box and the third box (12.9.3), and then in the blank for the third box, set out the agreement with respect to Reimbursable Expenses.) of hourly rates shall be available

[ ] § 12.9.1 Delete Section 11.8 of this Agreement, including all Subsections and Subsubsections in Section 11.8. Any references to Reimbursable Expenses in this Agreement shall be of no effect, except as may be provided in Subsection 12.11.3.

[ ] § 12.9.2 In Subsubsection 11.8.1 delete these four Subsections: 11.8.1.4, 11.8.1.5, 11.8.1.6, 11.8.1.7, 11.8.1.8, 11.8.1.9 and 11.8.1.10.

[ ] § 12.9.3 .

§ 12.10 Certificates (Check either 12.10.1 or 12.10.2)

[ ] § 12.10.1 (Certificates) The Owner’s representative and the Architect’s representative have discussed Section 10.4 of this Agreement.

[ ] § 12.10.2 (Certificates) The Owner’s representative and the Architect’s representative have not discussed Section 10.4 of this Agreement because:

Owner at mutually convenient times § 12.13 Notice to Owner of Defects and Errors
The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any defect or omission in the design of the Project or in the Construction Documents, including but not limited to errors, omissions, or inconsistencies in the Architect’s Instruments of Service.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows: § 12.14.1 E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor’s subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(i); and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.
ARTICLE 13  SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and _Architect, as modified.

.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)

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

[ ☑ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

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

[ ☑ ] Exhibit A- Schedule of Deliverables and Requirements
[ ☑ ] Exhibit B-Insurance Requirements
[ ☑ ] Exhibit C-Examples of Certificates

.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)  ARCHITECT  (Signature)
(Printed name and title)  (Printed name, title, and license number, if required)
CITY OF DURHAM

ATTEST:

____________________________

By:______________________________

Preaudit Certificate:

Signature section and notarization section for Architect:

__
Exhibit A: “Schedule of Deliverables and Requirements”

The deliverables and requirements provided in Exhibit A shall be included in the Architect’s Basic Services.

**SCHEDULE**

Within one week of notice to proceed, the architect shall submit a project schedule, with the due dates of the deliverables identified. Scheduled due dates will be based upon reasonable timeframes for Owner review, which have been mutually agreed upon with the Architect. The schedule shall be updated monthly to reflect contract progress over the previous pay period. If completion of a task on the schedule is extended or delayed, the updated schedule shall reflect those changes. If the extended task is on the critical path, then a recovery schedule shall be provided for the Owner’s acceptance. The updated schedule shall be submitted monthly with invoices (invoices may not be paid unless updated project schedule is included). The City of Durham Subcontractor Monthly Record of Payment report shall also be submitted monthly with invoices. 

*Please delete milestones if not applicable to your project.*

Based on a Notice to Proceed of [enter anticipated date here], the architect’s scope of work and duration times are:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date</th>
</tr>
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<tbody>
<tr>
<td>Notice to Proceed</td>
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<tr>
<td>Pre-Design Investigations</td>
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<tr>
<td>Schematic Design Phase</td>
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<tr>
<td>Design Development Phase</td>
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<td>Construction Document Phase</td>
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<tr>
<td>Bidding Phase</td>
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<td>Construction Administration Phase</td>
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<tr>
<td>Substantial Completion</td>
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<tr>
<td>Close Out Phase</td>
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</tr>
</tbody>
</table>

**DELIVERABLES**

Please provide all deliverables in printed and digital form—digital drawing files shall be submitted in PDF and AutoCAD LT 2010 compatible format. Each deliverable submittal shall consist of 24x36 drawing sets, 8.5x11 specifications and 8.5x11 prints of other deliverables. At all submittal stages, Architect shall submit (7) complete sets of printed deliverables – including one (1) full-size drawing set and six (3) half-size drawing sets and one (1) electronic submittal unless otherwise specified by the Owner. Each deliverable submittal shall include quality assurance correspondence, indicating that submittals have been checked and all comments have been resolved. The requirement for 24x36 size drawing sets can be modified to larger scale drawing sets with acceptance of the City Project Manager.
PROJECT SCOPE OF WORK

SCHEMATIC DESIGN (SD) PHASE
Schematic Design Phase shall include, at a minimum: *insert scope of work*

DESIGN DEVELOPMENT (DD) PHASE
100% Design Development Phase Deliverables shall include at a minimum: *insert scope of work*

PERMITTING, REVIEWS AND APPROVALS
- Submit complete plans and applications to City of Durham Planning Department, Public Works Department for site plan submission and approvals, North Carolina Department of Insurance, and other regulatory agencies having jurisdiction as required for approvals and permits.
- Consultant shall be responsible to obtain all required Federal, State, County and City approvals.
- Coordinate the construction or relocation of privately owned utilities if necessary.
- Provide presentations to Owner, as necessary to obtain owner and jurisdictional or governmental approvals.
- Attend meetings as necessary for all approvals. Provide responses and modifications to regulatory comments.

CONSTRUCTION DOCUMENTS (CD) PHASE
100% Design Development Phase Deliverables shall include at a minimum: *insert scope of work*

BIDDING ASSISTANCE
- Issue Project Manuals and Construction Documents (plans and specifications) for bidding as required, and issue clarifications as required during estimating and bidding.
- Provide document clarifications to bidders as required.
- Issue addenda as required.
- Attend Pre-bid Meeting(s) and Bid Openings.
- Review bids received with Owner, prepare or review bid tabs, review all estimates and/or bids with the City representatives, and make recommendations to the City for award;
- Assist the City in negotiations with selected bidder(s).

CONSTRUCTION ADMINISTRATION
- Provide ongoing construction administration throughout the project as required in order to clarify design, answer questions, respond to RFIs, update the BIM model, and perform other Construction Phase duties in a professional and timely manner.
- Collaborate and/or Conduct any the preconstruction conferences.
- Make weekly site inspections of the ongoing work; Provide City with Site Visit Report for each such visit; Site visit report shall include photographs documenting all ongoing work, issues, questions and resolutions.
- Process and certify the Contractor’s Applications for Payment.
• Provide interpretations of the Contract Documents with prepared drawings and specifications as needed. Issue drawing and specification clarifications as necessary to keep the construction project compliant with the approved schedule.
• Review and act upon all shop drawings and other submittals in a timely manner.
• Prepare Change Orders and Construction Change Directives for the Contractor's and Owner's signature.
• Perform Substantial Completion and Final Inspection Punch lists, administering same, and verifying that all such punch list work is completed as required by the Contract for Construction.
• Prepare Substantial Completion and Final Completion certificates for the Contractor's and Owner's signatures. Provide certification that the project fully complies with approved and/or modified plans and specifications
• Provide Certificate of Accessibility as required by City Inspections.

**POST CONSTRUCTION PHASE/DELIVERABLES**
• Prepare as-built documents for record based on information received from the contractor in AutoCAD format and BIM or in such or in other format as the owner requires, including owner-approved drawing layer structure.
• Assist in project closeout and assistance in establishment of warranties and guarantees.
• Certify final application for payment
Insurance Requirements

Contractor agrees to maintain, on a primary basis and at is sole expense, at all times during the life of this Contract the following applicable coverage’s and limits. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

**Commercial General Liability** – Combined single limit of no less than $1,000,000 each occurrence and $2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Automobile Liability** – Limits of no less than $1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Contract and/or are brought on a City of Durham site.

**Umbrella or Excess Liability** – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse City of Durham as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.

**Worker’s Compensation & Employers Liability** – Contractor agrees to maintain Worker’s Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than $1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.

**Professional Liability** - Contractor agrees to maintain Professional Liability Insurance with limits no less than $1,000,000, covering claims arising out of professional architect, engineers and surveyors services performed in connection with this contract.

**Environmental/Pollution** - Contractor agrees to maintain Environmental/Pollution Liability Insurance with limits no less than $1,000,000 per occurrence and $2,000,000 aggregate, covering claims arising out of the use or application of chemicals/herbicides as well as the negligent release of hazardous materials. Coverage may also be satisfied by endorsement to the Commercial General Liability policy with minimum limits of $1,000,000/$2,000,000.
**Additional Insured** – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.

**Certificate of Insurance** – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage’s, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham  
Attn: (Insert Name of Department maintaining the Contract)  
101 City Hall Plaza  
Durham, NC 27701

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham’s Risk Manager.
Exhibit C – Examples of Certificates

CERTIFICATE OF COMPLIANCE;

| PROJECT: | |
| LOCATION: | |
| BUDGET CODE | ITEM: |
| SCO ID#: | |
| OWNER: | |
| TYPE OF CONTRACT | FINAL AMOUNT: |
| DATE OF FINAL ACCEPTANCE | |
| CONTRACTOR: | |

I (we) certify that the work on the above-referenced project has been inspected in accordance with Chapter 133, Article 1, of the General Statutes, and that:

1. The inspections of the construction, repairs or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of my (our) profession; and

2. to the best of my (our) knowledge, and in my (our) professional opinion as an architect or engineer, the contractor has fulfilled the obligations of such plans, specifications and contract.

Signed this _______________ day of ________________________________

(SEAL)

Designer

______________________________

Title

______________________________

State of North Carolina, County of ________________________________

Subscribed and sworn to before me this _____________ day of __________ 20__.

Notary Public: ________________________________ (SEAL)

My Commission Expires: ________________________________
CERTIFICATE OF COMPLETION;

PROJECT __________________________________________________________
LOCATION __________________________________________________________
SCO ID NUMBER ______________ Item ______________ Date ________________
BUDGET CODE ____________

OWNER ____________________________________________________________
DESIGNER _________________________________________________________
PRIME CONTRACTOR _________________________________________________

I (we) certify that all work on the above referenced project has been completed according to the plans, specifications, addenda and approved change orders and that the project is ready for owner occupancy.

The final inspection was made on ________________, 20__. The guarantee period begins on ________________, 20__.

The contractors report that final payments have been made to all material suppliers, employees and subcontractors, and copies of their lien waivers are attached.

Builder's risk insurance was cancelled as of ________________, 20__, and a copy of the cancellation notice is attached hereto.

The total time for completion as allowed in the contract plus granted time extensions is _______ days. The actual time required for completion was _______ days, and the contractor(s) is/is not (are/are not) liable for liquidated damages. The contractor(s) has (have) been notified of any proposed assessments of liquidated damages. Copies of each notification and my (our) letter of recommendations as to the amount of liquidated damages are attached.

Copies of the following items are attached as indicated below:

Written guarantees:

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
Affidavits:


Consent of surety company to final payment: 

Manuals of operation instructions:


Final report 

As-built drawings 

Other required closing papers of the contractor:


There are/are not (strike through inapplicable) unsettled disputes between the owner and contractor, owner and designer, or the designer and contractor at this time.

Signed this _________________ day of _________________ 20___.

(SEAL)

Designer

Title
OUTDOOR LIGHTING CERTIFICATION

Outdoor Lighting Certification Example – Original Form available at City/County Planning

This document shall be verified by a professional who has measured the light level and fixture height. The outdoor lighting standards can be found in Section 7.4, Outdoor Lighting, in the Unified Development Ordinance.

Project Name: ____________________________________________________________
Location/Address: __________________________________________________________
Site Plan Case Number: ___________________ Pin Number: ___________________

<table>
<thead>
<tr>
<th>Type of Lighting</th>
<th>Light Level (in foot-candles)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minimum at any Point</td>
</tr>
<tr>
<td>Architectural Lighting, Landscape or Decorative Lighting, Walkways (except for those listed below)</td>
<td></td>
</tr>
<tr>
<td>Canopy Area Lighting</td>
<td></td>
</tr>
<tr>
<td>Multifamily Parking Lot</td>
<td></td>
</tr>
<tr>
<td>Nonresidential and Multifamily Entrances</td>
<td></td>
</tr>
<tr>
<td>Nonresidential Parking Lot</td>
<td></td>
</tr>
<tr>
<td>Storage Area (security lighting)</td>
<td></td>
</tr>
<tr>
<td>Vehicle Sales and Display</td>
<td></td>
</tr>
<tr>
<td>Walkways, (between buildings or parking and entrances)</td>
<td></td>
</tr>
<tr>
<td>Exterior Pedestrian Passages (Sec. 6.12.3E.1.e)</td>
<td></td>
</tr>
</tbody>
</table>

Maximum illumination permitted at the edge of a property line. Where a development is unified with shared parking or other measures shown on the site plan, the maximum illumination levels shall apply only to the exterior lot lines of the project (any interior lot lines shall be exempt from this paragraph).

<table>
<thead>
<tr>
<th>Maximum Illumination at Edge of Property Line</th>
<th>Light Level</th>
<th>Seal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjacent to a residential zone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjacent to a nonresidential zone</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjacent to a street</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Maximum Fixture Height: ________________________________________________

Certification by: ___________________________________________ Date: __________
Accessibility Letter of Compliance

Chapter 11, NC State Building Code, 2012
ICC/ANSI A117.1-2009

January 1, 2012

The Durham City-County Inspections Department requires independent verification of all accessible site elements and requirements, per the above referenced codes, for all projects which include site plans, within the city and county of Durham, North Carolina.

Chapter 2, section 201 of the 2009 ICC/ANSI A117.1 Standard and Commentary also states that . . . "compliance with the ADA should be verified independently."
This is important as the North Carolina Accessibility Code is NOT deemed compliant with the ADA standards.

To meet these requirements, each project must have an professional architect, surveyor, or engineer make an on site evaluation of the project when completed, and verify compliance with the approved plans and the above codes, or simply, the North Carolina Accessibility Codes, then provide a sealed letter to this department confirming such.

Any discrepancies noted during the professional's evaluation would need to be addressed to the contractor/owner/builder, and corrected, prior to a return visit by that professional to confirm corrections have been adequately made to achieve full compliance.

This on site evaluation should include, but not be limited too, slope and cross slope on accessible routes and accessible parking areas, ramps, travel distance, intermediate landings where appropriate, and access to required entrance(s) and other site elements.

A detailed analysis or description of the evaluation process is not necessary. A simple statement reflecting that the site evaluation has found the “as placed” or “as built” components to be in compliance with the applicable codes and the approved site plan. Please avoid terms such as “I think”, “I believe” or “I feel”. The evaluation should reveal to project to be in compliance or not.

Thank you for your assistance in this matter.

David Coward,
Chief Building Inspector
Appendix E: Trade Secrets and Confidentiality

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep Trade Secrets confidential.

(a) Designation of Confidential Records. The terms “Trade Secrets” and “record” are defined in (a)(1) (Definitions). To the extent that the candidate wishes to maintain the confidentiality of Trade Secrets contained in materials provided to the City that will or may become a record, the candidate shall prominently designate the material as “Trade Secrets” at the time of its initial disclosure to the City. The candidate shall not designate any material provided to the City as Trade Secrets unless the candidate has a reasonable and good-faith belief that the material contains a Trade Secret. When requested by the City, the candidate shall promptly disclose to the City the candidate’s reasoning for designating material as Trade Secrets. In providing materials to the City, the candidate shall make reasonable efforts to separate those designated as Trade Secrets from those not so designated, both to facilitate the City’s use of records and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a Trade Secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only Trade Secret information on a page and nothing else on that page. To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “Trade Secrets” in accordance with this section. Whenever the candidate ceases to have a good-faith belief that a particular record contains a Trade Secret, it shall promptly notify the City.

(1) Definitions.

“Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

“Record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the candidate’s proposal.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as Trade Secrets in accordance with subsection (a), the City may

(1) decline the request for access,

(2) notify the candidate of the request and that the City intends to provide the person access to the record because applicable law requires that the access be granted, or

(3) notify the candidate of the request and that the City intends to decline the request.

Before declining the request, the City may require the candidate to give further assurances so that the City can be certain that the candidate will comply with subsection (c) (Defense of City).

(c) Defense of City. If the City declines the request for access to a record designated as Trade Secrets in accordance with subsection (a), the candidate shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City's non-disclosure of the records. In providing that defense, the candidate shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions. As used in this subsection (c), “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys’ fees, and interest.
Indemnitees” means the City, and officers, officials, independent contractors, agents, and employees, of the City. “Indemnitees” does not include the candidate. The City may require the candidate to provide proof of the candidate’s ability to pay the amounts that may reasonably be expected to become monetary obligations of the candidate pursuant to this section. If the candidate fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any natural person to be imprisoned or placed in substantial risk of imprisonment, being found by a court to be in contempt, or being in violation of a court order as a result of alleged nondisclosure of records or for alleged noncompliance with a court order respecting disclosure of records. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the candidate.