

# DRAFT AIA® Document B101® – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the «20th» day of «June» in the year «2024»  
(In words, indicate day, month and year.)

**BETWEEN** the Architect’s clients identified as the “Owners” or, collectively, as the  
“Owner”:  
(Name, legal status, address and other information)

« Sandy City»« »  
«10000 Centennial Parkway»  
«Sandy City, Utah 84070»  
«  
Alta Canyon Recreation Special Service District  
9665 S. Highland Drive  
Sandy, Utah 84092  
»

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

«VCBO Architecture»« »  
«C/O Brent Tippets, Principal»  
«524 South 600 East »  
«Salt Lake City, UT 84102 »

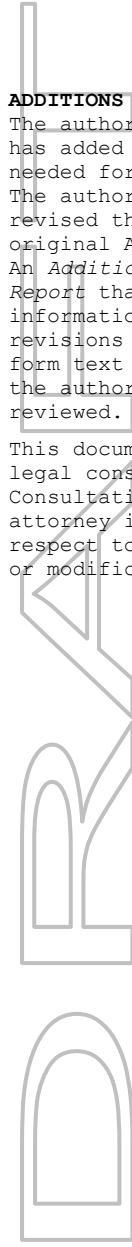
for the following Project:  
(Name, location and detailed description)

«Alta Canyon Recreation Center Phase 1 Design & Contract Administration»  
« »  
« »

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.)*

«N/A»

§ 1.1.2 The Project's physical characteristics:

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

«Design for Alta Canyon Recreation Center Phase 1, which includes replacing the existing indoor recreation center (located at 9565 S Highland Drive, Sandy, Utah) with a double-wide gymnasium, offices for recreation staff, a fitness studio, and associated amenities such as locker space, equipment rooms, and storage. While the existing pool will stay in place during Phase 1, the existing pool equipment room and pool equipment will need to be replaced in the new indoor facility to support the existing outdoor pool. In addition, Architect's scope of work for Phase 1 shall include creating a concept plan for the rest of the site north of the detention pond portion of the park.

The precise location of the new indoor recreation center has not yet been determined, and therefore, both Sandy City and Alta Canyon Recreation Special Service District are "Owners" under this Agreement.»

§ 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.)*

«Fixed limit of construction is \$15,000,000.00»

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

.1 Design phase milestone dates, if any:

« Conceptual drawings due by September 15, 2024—this date is firm. Remaining design work, e.g., Schematic Design Set, Design Development Sets, and Construction Documents, is due by February 13, 2025. Owner will engage a CMGC (defined below) in the fall of 2024, after which Architect shall work diligently with the CMGC to meet this February 13, 2025, milestone so that CMGC can engage its subcontractors, establish a Guaranteed Maximum Price, and timely commence construction by May 15, 2025. Time is of the essence. »

.2 Construction commencement date:

« Anticipated to be May 15, 2025, or upon issuance of a Notice to Proceed to the CMGC, whichever is later »

.3 Substantial Completion date or dates:

« Anticipated to be July 15, 2026, or 14-months from Notice to Proceed to CMGC, whichever is later »

.4 Other milestone dates:

« N/A »

§ 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.)*

« Owner anticipates hiring a Construction Manager/General Contractor ("CMGC") for the project during the early stages of design in order to increase efficiencies during both the design and construction phases of the Project. The terms CMGC and Contractor are used synonymously in this Agreement. »

§ 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.)*

« Building design to meet all local energy code requirements. No sustainable certification is being pursued. »

§ 1.1.7 The Owners identify the following representative in accordance with Section 5.3:

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

« Dan Medina, Director of Parks and Recreation Department »

« Sandy City »

« 801-568-2911 »

« 440 East 8680 South »

« Sandy, Utah 84070 »

« dmedina@sandy.utah.gov »

Ryan Mecham, Board Chair

Alta Canyon Recreation Special Service District

C/O Sandy City Council Office

10000 S. Centennial Parkway

Sandy, Utah 84070

rmecham@sandy.utah.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.)

«N/A »

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

.1 Geotechnical Engineer:

« Geotechnical work has been completed. TBD whether additional geotechnical work will be required. »« »

« »  
« »  
« »  
« »

.2 Civil Engineer:

« TBD »« »

« »  
« »  
« »  
« »

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

« Survey Engineer – TBD »

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

« »  
« Brent Tippets, Principal »  
« btippets@vcbo.com »  
« 801.575.8800 »  
« VCBO Architecture »  
« 524 South 600 East  
Salt Lake City, Utah 84102»

§ 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 Basic Services:

.1 Structural Engineer:

ARW Engineers  
1594 Park Circle  
Ogden, UT 84404

.2 Mechanical Engineer:

WHW Engineering, LLC.  
8619 So. Sandy Pkwy. #101  
Sandy, UT 84070

**.3 Electrical Engineer:**

Envision Engineering, Inc.  
240 East Morris Ave. Ste. 200  
Salt Lake City, UT 84115

**.4 Landscape Architect:**

Arcsitio Design, Inc.  
1058 E. 2100 S.  
Salt Lake City, UT 84106

**§ 1.1.11.2 Consultants retained under Supplemental Services:**

« » TBD. Will be addressed through an Amendment signed by the Mayor of Sandy City a later date if the need arises.

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

«N/A »

**§ 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 may negotiate appropriate adjustments to the Architect's services, schedule for the Architect's services, and the Architect's compensation in accordance with Section 3.6.5 and Article 4. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form as may be necessary to the extent not already stated in this Agreement.

**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 with the same or similar professional license practicing in the same or similar locality under the same or similar circumstances at the same or similar time. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 2.3** The Architect has identified a representative authorized to act on behalf of the Architect with respect to the Project (see Section 1.1.10) and shall notify the Owner of any changes in writing.

**§ 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.

**§ 2.5.1** Commercial General Liability as stated in Exhibit Ae.

**§ 2.5.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect 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, as required by Exhibit A.

§ 2.5.3 The Architect may, subject to the requirements of Section 2.5.8 below, 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.

§ 2.5.4 Workers' Compensation as further provided in Exhibit A.

§ 2.5.5 Employers' Liability as provided in Exhibit A.

§ 2.5.6 Professional Liability as provided in Exhibit A.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for all policies except Professional Liability and Employers Liability to include both Owners as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions, as indicated on Exhibit A. 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 and as indicated in Exhibit A.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner and any other reasonable proof of coverage that evidence compliance with the requirements in this Section 2.5 as requested by the Sandy City Risk Manager. Architect's proof of coverage is subject to review and approval by the Sandy City Risk Manager, whose approval shall not be unreasonably withheld.

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

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

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

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

§ 3.1.3 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.

§ 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 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. This includes submitting documents through hard copy or electronic means and preparing responses to redlines from the governmental authority, as needed.

### **§ 3.2 Schematic Design Phase Services**

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

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, 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.

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

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital 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 work with the Owner and the CMGC to prepare an estimate of the Cost of the Work prepared in accordance with Section 6.3, that achieves the Owner's budget requirements.

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

### **§ 3.3 Design Development Phase Services**

**§ 3.3.1** Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and 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 work with the Owner and the CMGC to update the estimate of the Cost of the Work prepared in accordance with Section 6.3 that achieves the Owner's budget requirements.

**§ 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.

### **§ 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 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents and shall assist the Owner with the Owner's filing of any documents required to obtain government approvals needed for the Project, which work is included in the compensation.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) 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 work with the Owner and the CMGC to update the estimate for the Cost of the Work prepared in accordance with Section 6.3 that achieves the Owner's budget requirements.

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

§ 3.4.6 At the appropriate times during the design and procurement phases of the Project, Architect shall incorporate all addenda, alternates, bid clarifications, changes accepted, etc. into the "for construction" set of drawings, as approved by the Owner.

## § 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 Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 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 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 prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 Negotiated Proposals

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

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

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;



- 3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- 4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

## § 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 as modified by the Owner. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement so long as they are approved by the Architect in writing, which approval shall not be unreasonably withheld. Architect acknowledges that it is unclear at this time whether the Contract for Construction will be entered by Sandy City, Alta Canyon Recreation Special Service District, or both. Architect shall administer the Contract for Construction as provided herein, regardless of which party/parties contract with the CMGC/Contractor.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services and shall act as a representative of the Owner during construction under final payment to the contractor(s), provided that the Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period, not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 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, as representative of the Owner, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will coordinate with the structural engineer to review the concrete structural components prior to any structural concrete pours and attend, as the Owner's representative, all concrete pours that are contributory to the structural integrity of the building (including all concrete footings, grading beams, floor slabs, and concrete superstructure components, if applicable) and to take all reasonable care to determine general conformance with the Contract Documents and to notify both the Owner and the Contractor of any observed deficiencies. However, the Architect shall not have control over or charge of the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions but shall not have control over or charge of acts or omissions of the contractor, contractor's subcontractor(s), or their agents or employees, or of any other person or entities performing portions of the Work.

§ 3.6.2.2 The Architect has the authority and responsibility to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or

not the Work is fabricated, installed or completed. The Architect shall promptly notify the Owner in writing of any nonconforming Work and shall reject such nonconforming Work unless the Owner objects to the rejection in writing after notification. Performance of any additional inspection or testing which would result in additional costs to the Owner shall require advance notice to, and the written approval of, the Owner. 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 the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, 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 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. 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.

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

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

### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce, and distribute Drawings and Specifications to describe the Work to be added, deleted, or modified in accordance with Article 4. Preparation of Change Orders that do not substantially affect the Project shall be included in the compensation stated in Article 11 and at no additional cost to the Owner.

**§ 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 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 The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one (1) year from the date of Substantial Completion, i.e., during the warranty phase. Additionally, the Architect shall monitor the progress of the reported corrections and furnish the Owner with written notification of complete corrections. The one-year period shall be extended to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. The obligation under this subsection 3.6.6.6 shall survive the acceptance of the Work by the Owner

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

<b>Supplemental Services</b>	<b>Responsibility (Architect, Owner, or not provided)</b>
§ 4.1.1.1 Programming	Architect/Owner
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Site evaluation and planning	Architect/Owner
§ 4.1.1.4 Building Information Model management responsibilities	Architect
§ 4.1.1.5 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.6 Civil engineering	Architect
§ 4.1.1.7 Landscape design	Architect
§ 4.1.1.8 Architectural interior design	Architect/Owner
§ 4.1.1.9 Value analysis	Not Provided
§ 4.1.1.10 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.11 On-site project representation	Not Provided
§ 4.1.1.12 Conformed documents for construction	Not Provided
§ 4.1.1.13 As-designed record drawings	Architect
§ 4.1.1.14 As-constructed record drawings	Architect
§ 4.1.1.15 Post-occupancy evaluation	Not Provided
§ 4.1.1.16 Facility support services	Not Provided
§ 4.1.1.17 Tenant-related services	Not Provided
§ 4.1.1.18 Architect’s coordination of the Owner’s consultants	Architect, upon request
§ 4.1.1.19 Telecommunications/data design	Architect
§ 4.1.1.20 Security evaluation and planning	Not Provided
§ 4.1.1.21 Commissioning	Not Provided
§ 4.1.1.22 Fast-track design services	Not Provided

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.23 Multiple bid packages	Not Provided
§ 4.1.1.24 Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.25 Other services provided by specialty Consultants	TBD
§ 4.1.1.26 Other Supplemental Services	Not Provided except as stated below

**§ 4.1.2 Description of Supplemental Services**

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

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

**§ 4.1.1.1 Programming.**

The Architect will provide programming services.

**§ 4.1.1.2 Multiple Preliminary designs.**

The Architect will develop up to four (4) preliminary design concepts as deemed necessary.

**§ 4.1.1.3 Site evaluation and planning.**

The Architect will evaluate the existing site for an appropriate development of new features on the site.

**§ 4.1.1.4 Building information Model management responsibilities.**

The Architect will manage the Building Information Modeling (BIM) process.

**§ 4.1.1.6 Civil engineering.**

The Architect will provide

**§ 4.1.1.8 Architectural interior design.**

The Architect along with the Owner will provide interior design services.

**§ 4.1.1.13 As-designed record drawings.**

The Architect will provide as-designed record drawings for the project.

**§ 4.1.1.14 As-constructed record drawings.**

The Architect will provide as-constructed record drawings for the project.

**§ 4.1.1.18 Architect's coordination of the Owner's consultants.**

Upon request, the architect will provide coordination of the Owner's consultants.

**§ 4.1.1.19 Telecommunications/data design.**

The Architect will provide telecommunication and data design.

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

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

**§ 4.1.1.1 Programming.**

The Owner will provide programming services.

**§ 4.1.1.3 Site evaluation and planning.**

The Owner will provide the multiple preliminary designs to the architect.

**§ 4.1.1.8 Architectural interior design.**

The Owner along with Architect will provide interior design services.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

#### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall 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 [Omitted];
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 [Omitted]; or,
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;

§ 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 at the rates attached to this Agreement in Exhibit D, provided they were reasonably justified.

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

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services, unless the work is required in order for Architect to perform its obligations under Agreement, including

but not limited to, mitigating or preventing an actual or potential breach of this Agreement or breach of the Architect's professional duty of care. When the limits below are reached, the Architect shall notify the Owner:

- .1 «Two» («2») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 «Weekly» 48 visits to the site by the Architect during construction
- .3 «Two» («2») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «Two» («2») inspections for any portion of the Work to determine final completion.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within «twenty four» (« 24 ») months of the date the time services are commenced,, through no fault of the Architect,, then the Architect will be entitled to request negotiation of the Basic Services Compensation shown in Article 11 and adjustment of the dates required for completion of the remaining Work.

## 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.

§ 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. These changes must be made in writing and signed by both parties.

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

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

§ 5.5 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.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 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.

§ 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.

§ 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.

§ 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 Service.

§ 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.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect with 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.

## 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. Evaluations of 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, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates 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 requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental 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 Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect 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. All right, title and interest, including all rights under federal state copyright and intellectual property laws in the Drawings, Specifications and other documents prepared by the Architect for this Project (collectively, "Instruments of Service") and the electronic methods of reproducing such documents are hereby conveyed, assigned and transferred by Architect and its consultants to Owner. Owner shall retain legal title to such Instruments of Service, whether or not the Project for which they may be made is completed, provided that the Architect has been paid for all compensation due under this Agreement for the services completed by the Architect.

§ 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. If Architect will be preparing, drafting, displaying, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then Architect must: Obtain all necessary licenses, authorization, and approvals related to its use; include the Owner in any approval, authorization, or license related to its use; and indemnify and hold harmless the Owner related to Architect's alleged infringing or otherwise improper or unauthorized use. Accordingly, the Architect must protect, indemnify, and hold harmless the Owner from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions, and attorneys' fees and the costs of the defense of the Owner, in any suit, including appeals based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the Architect of any of its activities or obligations under this contract.

§ 7.3. 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.. The terms of this Section 7.3. shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1. Any claims by the Owner shall be deemed to accrue only when the Owner has obtained actual knowledge of such claims, not before.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages covered by such insurance, 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 (as requested). 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 waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation; provided that mediation is not a precondition to either party's right to seek emergency injunctive relief. 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 litigation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, and the parties shall attempt in good faith to mutually agree upon a date for the mediation and a mediator. In the event that the parties are unable to agree upon a date or mediator, then either party may petition the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement for mediation. The mediation, however determined, shall take place in Salt Lake County. A request for mediation shall be made in writing, delivered to the other party to this Agreement.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

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

*(Check the appropriate box.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

« Subject to the requirements of Section 8.2, all claims, disputes, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, or the service performed pursuant thereto, shall be decided in such dispute resolution proceedings as the Owner and the Architect shall agree upon in writing, after the dispute arises or, in the absence of such mutual written agreement, by litigation filed in the Third Judicial District Court of Salt Lake County, State of Utah. The parties to this Agreement hereby consent to the personal jurisdiction and to venue of such court to adjudicate such claims, disputes, and other matters in question. Notwithstanding the initiation of any dispute resolution proceedings by either party to this Agreement, the parties shall proceed with the performance of the remaining obligations of this Agreement, unless this Agreement is terminated in accordance with the requirements of this Agreement. If either party to this Agreement commences a dispute resolution proceeding, whether litigation, or otherwise, respecting any dispute or claim between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof or the services performed by Architect pursuant thereto, the prevailing party or parties in such dispute resolution proceeding shall be entitled to recover from the non-prevailing party or parties in such dispute resolution proceeding reasonable attorneys' fees and other reasonably incurred costs and expenses of the successful prosecution or defense of such proceeding. The term "dispute resolution proceeding" as used herein shall be deemed to include, but not be limited to, any appeal from a lower court judgment or order and any proceeding in the United States Bankruptcy Court, whether or not such proceedings involve adversary or contested matters. »

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

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, 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.

§ 9.2 If the Owner suspends the Project or terminates it for convenience under Section 9.5, then the Architect shall be compensated for services performed prior to notice of such suspension. However, the Owner shall not be liable for consequential damages, such as lost profits, associated with a suspension or termination for convenience. If the project is resumed, the Architect's fees for the remaining services and the time schedules shall be adjusted upon submission of a written request to the Owner, assuming it is supported by adequate proof that such an adjustment would be equitable.

§ 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 thirty days' advance written notice.

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

§ 9.5 The Owner may terminate this Agreement upon not less than fifteen days' written notice to the Architect for the Owner's convenience and without cause. In the event that Owner chooses to terminate this project without cause, any notification provided for this type of termination will be referenced "cancellation for convenience".

§ 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 unavoidable costs attributable to termination. Architect shall include a provision in all consultant and subconsultant agreements providing that Owner has the right to terminate for convenience with fifteen days' notice.

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

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

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 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 may be modified by the Owner therein.

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

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

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

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

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

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

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

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

**ARTICLE 11 COMPENSATION**

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

- .1 Stipulated Sum  
(Insert amount)

« N/A »

- .2 Percentage Basis  
(Insert percentage value)

« six and a half percent » (6.5) % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6, for a total of \$975,000.00.

- .3 Other  
(Describe the method of compensation)

«N/A »

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

To be approved in writing by the Owner prior to proceeding with Supplemental Services, which fees shall be calculated based on an estimated the time to perform the work and using the rates set forth in Exhibit D»

§ 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.)

To be approved in writing by the Owner prior to proceeding with Additional Services, which fees shall be calculated based on an estimated the time to perform the work and using the rates set forth in Exhibit D. »

§ 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 ten percent (10%), 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:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty-five	percent (	45	%)
Construction Phase/Administration	Twenty	percent (	20	%)
<b>Total Basic Compensation</b>	<b>One hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

The dollar amounts corresponding to the above percentages for these phases are as follows:  
 Schematic Design – One hundred forty-six thousand two hundred fifty dollars (\$146,250.00),  
 Design Development Phase – One hundred ninety-five thousand dollars (\$195,000.00),  
 Construction Documents Phase – Four hundred thirty-eight thousand seven hundred fifty dollars (\$438,750.00), and  
 Construction/Administration Phase - One hundred ninety-five thousand dollars (\$195,000.00).

The total Basic Compensation also includes the forgoing services as well as post-construction revaluation and reporting under §3.6.6.6 above.

One bid package for the entire scope is included in the Basic Compensation. Owner may, in the interest of time, and in its sole discretion, require that the Architect provide one bid package or two bid packages, i.e., a bid package for preliminary site work and a second bid package for final construction documents. Architect may seek an equitable adjustment to the Basic Compensation if Owner elects to break the scope into two bid packages, which shall not be unreasonably withheld.

Sandy City shall be responsible for paying Architect's compensation, but Architect acknowledges that the services provided hereunder are for the benefit of both Sandy City and Alta Canyon Recreation Special Service District. Architect further acknowledges that both entities are clients/Owners, that each is contracting with Architect, and that each has the right to enforce this Agreement, jointly or severally.

**§ 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, but only if the budget has been confirmed in writing by the Owner and the Owner Representative authorizes an increase in the compensation based on the new budget in writing signed by the Owner Representative. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

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

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«See Exhibit D. Because the compensation for Basic Services and Supplemental Services is based on a percentage of the Owner's budget, Exhibit D only applies where Architect is authorized by Owner to charge an hourly billing rate for an Additional Services or other work expressly authorized by the Owner in writing and signed by the Owner Representative. »

## **§ 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 Authorized out-of-town travel and subsistence; Project web sites, and extranets if authorized by Owner;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project but only if so directed by Owner (Owner typically pay these costs directly);
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery; and
- .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 (provided that participation in public hearings/meetings may be required and, if so, is included in the compensation without additional charge);

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

**§ 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:

*(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 Omitted.**

#### **§ 11.10.1 Progress Payments**

**§ 11.10.1.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. For example, if Architect has performed 1/8<sup>th</sup> of the Basic Services, then Architect may invoice the City for 1/8<sup>th</sup> of the total fee for the Basic Services. Architect may not submit more than one invoice per month and may not invoice the City for a greater percentage of the services than it has actually completed. Architect shall submit the invoice to the two following emails: [Accountspayable@sandy.utah.gov](mailto:Accountspayable@sandy.utah.gov) and [dmedina@sandy.utah.gov](mailto:dmedina@sandy.utah.gov) or as otherwise directed by the Owner Representative in writing. Payments are due and payable within thirty (30) days of the Architect's invoice. Amounts unpaid ~~forty-five~~ (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

Prime rate set by the Wallstreet Journal

**§ 11.10.1.2** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

## **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 Indemnification**

Architect shall indemnify and hold harmless Sandy City, the Alta Canyon Recreation Special Service District, and their respective officers, officials, board members, and employees (hereafter, "Indemnified Parties") for liability for damages to the extent caused by or resulting from Architect's breach of contract, negligence, recklessness, or intentional misconduct or caused by or resulting from Architect's subconsultant's negligence (hereafter, "Indemnification Obligation") and shall reimburse Indemnified Parties for attorney's fees and costs incurred due to acts or omissions giving rise to an Indemnity Obligation. These Indemnification Obligations shall survive the termination of this Agreement, subject to the applicable statute of limitations. Architect agrees that this provision is enforceable and not void under Utah Code Section 13-8-7(2).

### **§ 12.2 Anti-Boycott Certification**

By executing this Agreement, Architect makes the certification contained in Exhibit C.

### **§ 12.3 Conflicts**

In the event of a conflict or inconsistency in the documents making up this Agreement, the documents shall govern in the following order: (1) this Agreement, (2) Exhibit A, (3) Exhibit C (4) Exhibit B, (5) any other documents incorporated by reference by not attached as an exhibit.

### **§ 12.4 Force Majeure**

Neither Party will be liable to the other for any failure or delay in the performance of its obligations to the extent such failure or delay is caused by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil

disorders, rebellions or revolutions, disease, epidemics, quarantines, pandemics, acts of government, a declared state of emergency, delays in visas, changes in laws and governmental policies, or other conditions beyond its reasonable control following execution of this Agreement. If the performance by either Party of any of its obligations under this Agreement (including making a payment) is prevented by any such circumstances, then such Party shall communicate the situation to the other as soon as possible, and the Parties shall endeavor to limit the impact to the Projects. The Parties agree to mitigate risks to the Projects and personnel, and to amend the Projects period of performance and milestones if possible.

»

**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 revised.

«N/A »

- .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.)

« N/A »

[  ] 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 – Insurance Requirements
- Exhibit B – Architect’s Proposals dated June 22, 2023, as revised April 30, 2024
- Exhibit C – Anti-Boycott Certification
- Exhibit D – Architect’s rate sheet for Additional Services »

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

« Sandy City Invitation for Bid, including all attachments and amendments thereto. »

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

**SANDY CITY**

**VCBO Architecture**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

By: Monica Zoltanski  
Its: Mayor

By: Brent Tippets  
Its: Principal

**ALTA CANYON RECREATION SPECIAL SERVICE DISTRICT**



(Signature)

By: Ryan Mecham  
Its: Chair of the Administrative Control Board

AIA  
BOARD