

## RESOLUTION NO. R2022-74

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, APPROVING A CONTRACT WITH GOODWIN-LASITER-STRONG, FOR ARCHITECTURAL SERVICES RELATED TO THE DESIGN OF A NEW HILL COUNTRY CHILDREN'S ADVOCACY CENTER FACILITY; AND AUTHORIZING THE CITY MANAGER'S EXECUTION OF SAID INSTRUMENTS ON BEHALF OF THE CITY**

**Whereas**, City Council authorized the application for Client's 2022 Texas Community Development Block Grant under the CARES Act; and

**Whereas**, the grant application was made by the City on behalf of the Hill Country Children's Advocacy Center and the grant funds will be used for the funding of the construction of a new Advocacy Center facility; and

**Whereas**, the grant was awarded as Community Resiliency Program, Contract Number 70800001002; and

**Whereas**, the project administrator, Grantworks, Inc., recommends the proposal for architectural services submitted by Goodwin-Lasiter-Strong be accepted.

**BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:**

**Section one. Agreement Approved.** The Agreement attachment hereto and incorporated by reference herein for all purposes is hereby approved.

**Section two. Authorization.** The city manager is hereby authorized to execute an instrument in substantial form as the attachment hereto and take such further action as may be reasonably necessary to facilitate the purpose of this resolution.

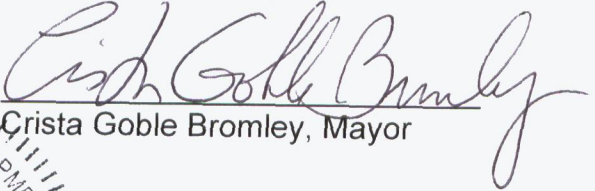
**Section three. Open Meetings.** It is hereby officially found and determined that the meeting at which this resolution was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

**Section four. Effective Date.** That this resolution shall take effect immediately upon its passage, and approval as prescribed by law.

Remainder of page intentionally blank and signature page follows.

PASSED AND APPROVED this the 11<sup>th</sup> day of October 2022.

CITY OF BURNET, TEXAS

  
Crista Goble Bromley, Mayor

ATTEST:

  
Kelly Dix, City Secretary



 **AIA**® Document B101™ – 2017

**Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the Twelfth day of October in the year Two Thousand Twenty-Two  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the City:  
*(Name, legal status, address and other information)*

City of Burnet  
1001 Buchanan Drive, Ste. 4  
Burnet, Texas 78611  
And  
Hill Country Children's Advocacy Center  
1001 N. Hill Street  
Burnet, Texas 78611

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

Goodwin-Lasiter-Strong  
1609 S. Chestnut, Ste. 202  
Lufkin, Texas 75901

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

City of Burnet  
Hill Country Children's Advocacy Ctr.  
The City 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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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 City's program for the Project:

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

Hill Country Children's Advocacy Ctr.

§ 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.)*

New two-story building located at 1000 Hill Street.

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

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

\$3,500,000

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

.1 Design phase milestone dates, if any:

October 2022

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.2 Construction commencement date:

February 2023

.3 Substantial Completion date or dates:

November 2023

.4 Other milestone dates:

§ 1.1.5 The City 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.)*

Competitive sealed bid in manner prescribed by state law for public work contracts made by a governmental entity.

§ 1.1.6 The City's anticipated Sustainable Objective for the Project:

*(Identify and describe the City's Sustainable Objective for the Project, if any.)*

None

§ 1.1.6.1 If the City identifies a Sustainable Objective, the City 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 City's Sustainable Objective. If E204-2017 is incorporated into this agreement, the City 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 City identifies the following representative in accordance with Section 5.3:

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

David Vaughn, City Manager or Mr. Vaughn's delegate

City of Burnet

1001 Buchanan Drive, Ste. 4

Burnet, Texas 78611

Mr. Vaughn may coordinate communications from Architect with Kim Winkler, of the Hill Country Children's Advocacy Center

§ 1.1.8 The persons or entities, in addition to the City's representative, who are required to review the Architect's submittals to the City are as follows:

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

Not Applicable

§ 1.1.9 The City shall retain the following consultants and contractors:

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

*(Paragraphs deleted)*

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

Courtney Kelly, Architect  
1609 S. Chestnut, Ste. 202  
Lufkin, Texas 75901

§ 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:

Goodwin-Lasiter-Strong

.2 Mechanical Engineer:

Goodwin-Lasiter-Strong

.3 Electrical Engineer:

Goodwin-Lasiter-Strong

.4 Surveyor/Civil Engineer:

Goodwin-Lasiter-Strong

Contract includes topographic design survey only. Boundary survey and/or subdivision plat is not included.

.5 Geotechnical Engineer:

TBD

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

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

None

§ 1.2 The City and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the City and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The City shall adjust the City's budget for the Cost of the Work and the City'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. The parties will use AIA Document E203™-2013, Building

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User Notes: (1448162356)

Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.4 Except with the City'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 City shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000.00 ) for each occurrence and one million dollars (\$ 1,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the Cityship, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 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.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000.00 ) each accident, one million dollars (\$ 1,000,000.00 ) each employee, and one million dollars (\$ 1,000,000.00 ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million dollars (\$ 1,000,000.00 ) per claim and two million dollars (\$ 2,000,000.00 ) in the aggregate.

§ 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 Commercial General Liability and Automobile Liability to include the City as an

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additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the City's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the City that evidence compliance with the requirements in this Section 2.5.

### 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 City.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the City and the City'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 City and the City's consultants. The Architect shall provide prompt written notice to the City 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 City'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 City's review, for the performance of the City's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the City, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or City. With the City'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 City's directive or substitution, or for the City'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 City in connection with the City'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 City, 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 City'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 City 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 City and shall discuss with the City alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the City regarding the requirements of the Project.

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

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§ 3.2.5 Based on the City's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the City'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 City's program, schedule and budget for the Cost of the Work. The City 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 City's program, schedule, and budget for the Cost of the Work. Should bids for the Project exceed a total cost of Three Million Four Hundred Sixty-Nine Thousand Four Hundred Twenty-Five and 00/000 Dollars then Architect agrees to value engineer and/or amend the plans and specifications and assist with rebidding the Project at no costs to the City.

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

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

**§ 3.3 Design Development Phase Services**

§ 3.3.1 Based on the City's approval of the Schematic Design Documents, and on the City'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 City'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 update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

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

**§ 3.4 Construction Documents Phase Services**

§ 3.4.1 Based on the City's approval of the Design Development Documents, and on the City'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 City'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 City 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.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the City 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 City and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project

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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.

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

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

Following City's approval of the Construction Documents, Architect shall assist City in (1) preparation of request for bids or proposal, (3) publication of bids or proposals, (4) responding to bid or proposal questions, (5) confirming responsiveness of bids or proposals, (6) determining the successful bidder or proposals, if any, and (7) preparation of contracts for construction and award of contract to successful bidder or proposer.

#### § 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 City 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 City.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the City'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

*(Paragraphs deleted)*

### § 3.6 Construction Phase Services

#### § 3.6.1 General

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

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

§ 3.6.1.3 Subject to Section 4.2 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 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

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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 City reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the City (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.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not 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 City 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 City 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 City and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the City 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 City, 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 City 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

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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 City'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 City, for the City'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 City 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 City 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 City 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,

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receipts, releases and waivers of liens, or bonds indemnifying the City against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the City, 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 City to review the facility operations and performance.

**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 City shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the City 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 City's Supplemental Services required for the Project by indicating whether the Architect or City shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility (Architect, City, or not provided)
§ 4.1.1.1 Programming	City
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	City
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	N/A
§ 4.1.1.7 Development of Building Information Models for post construction use	N/A
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	N/A
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	N/A
§ 4.1.1.13 On-site project representation	N/A
§ 4.1.1.14 Conformed documents for construction	N/A
§ 4.1.1.15 As-designed record drawings	N/A
§ 4.1.1.16 As-constructed record drawings	Architect Though Contractor
§ 4.1.1.17 Post-occupancy evaluation	N/A
§ 4.1.1.18 Facility support services	N/A
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect's coordination of the City's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	City
§ 4.1.1.22 Security evaluation and planning	City
§ 4.1.1.23 Commissioning	N/A
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	N/A

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Supplemental Services	Responsibility <i>(Architect, City, or not provided)</i>
§ 4.1.1.26 Multiple bid packages	N/A
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	City
§ 4.1.1.29 Other services provided by specialty Consultants	N/A
§ 4.1.1.30 Other Supplemental Services	N/A

**§ 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.)*

N/A

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

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

N/A

§ 4.1.3 If the City 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 City 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 City 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 City's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the City, or a material change in the Project including size, quality, complexity, the City'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 City not rendered in a timely manner or any other failure of performance on the part of the City or the City's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the City's consultants and contractors, or to other City-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the City;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;

Init.

- .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; or,
- .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 City with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the City determines that all or parts of the services are not required, the City shall give prompt written notice to the Architect of the City's determination. The City shall compensate the Architect for the services provided prior to the Architect's receipt of the City's notice.

- .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 City-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 City 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. When the limits below are reached, the Architect shall notify the City:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Forty ( 40 ) 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 City 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 Thirty-Six ( 36 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 CITY'S RESPONSIBILITIES

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

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

Init.  


§ 5.3 The City shall identify a representative authorized to act on the City's behalf with respect to the Project. The City 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 City 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 City 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 City shall provide the Supplemental Services designated as the City's responsibility in Section 4.1.1.

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

§ 5.8 The City shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the City shall furnish copies of the scope of services in the contracts between the City and the City's consultants. The City 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 City shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The City 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 City 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 City's needs and interests.

§ 5.11 The City shall provide prompt written notice to the Architect if the City 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 City shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The City shall promptly notify the Architect of the substance of any direct communications between the City 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 City 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 City shall provide the Architect a copy of the executed agreement between the City and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The City 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 City 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 City 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 City. 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 City.

§ 6.2 The City'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 City'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 City 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 City'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 City'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 City 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 City, the City'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 City's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the City to adjust the Project's size, quality, or budget for the Cost of the Work, and the City shall cooperate with the Architect in making such adjustments.

§ 6.6 If the City'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, the City 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 City chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the City'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 City requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the City's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the City 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 City warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright City of such information or has permission from the copyright City 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 City of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the City 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 City 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 City to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the City's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the City uses the Instruments of Service without retaining the authors of the Instruments of Service, the City releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The City, 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 City'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 City 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 City 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 City's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, 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 City and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The City and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the City 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 City 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 City waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 Mediation

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

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§ 8.2.2 The City 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.

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

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

If the City 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 City 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 City 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 City 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 City before suspending services. In the event of a suspension of services, the Architect shall have no liability to the City for delay or damage caused the City because of such suspension of services. Before resuming services, the City 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 City suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.6 If the City terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the City 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.

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

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

.1 Termination Fee:

None

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

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

§ 9.9 The City's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 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. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

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

§ 10.4 If the City 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 City 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 City 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 City's confidential or proprietary information if the City has previously advised the Architect in writing of the specific information considered by the City to be confidential or proprietary. The City shall provide professional credit for the Architect in the City's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the City terminates this Agreement for cause pursuant to Section 9.4.

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

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

§ 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 City shall compensate the Architect as follows:

- .1 Stipulated Sum  
*(Insert amount)*  
  
Lump Sum Fee of \$635,842.38
- .2 Percentage Basis  
*(Insert percentage value)*  
  
( ) % of the City's budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3 Other  
*(Describe the method of compensation)*

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the City 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 City shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

On an hourly basis according to the attached rate schedule

§ 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 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	percent (	40	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

§ 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 City'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 City'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. 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.)*

Rate schedule attached.

**Employee or Category**

**Rate (\$0.00)**

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional 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 Permitting and other fees required by authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, and standard form documents;
- .4 Postage, handling, and delivery;

*(Paragraph deleted)*

- .5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the City or required for the Project;
- .6 If required by the City, and with the City'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;

*(Paragraphs deleted)*

- .7 Other similar Project-related expenditures.

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

§ 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 City 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 City shall reimburse the Architect.)*

Not Applicable

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

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

*(Paragraph deleted)*

**§ 11.10.2 Progress Payments**

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

§ 11.10.2.2 The City 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.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the City 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 The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as Architects in Texas. The Texas Board of Architectural Examiners can be reached at: P.O. Box 12337, Austin, Texas 78711-2337 or 333 Guadalupe, Suite 2-350 Austin, Texas 78701-3942, by telephone at (512) 305-9000, by fax at (512) 305-8900 or on the web at www.tbae.state.tx.us.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the City 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 City and Architect.

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

.1 AIA Document B101™-2017, Standard Form Agreement Between City and Architect

.2

(Paragraphs deleted)

Exhibits:

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

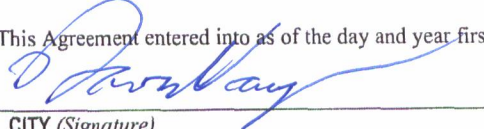
[ ] Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.3 Other documents:

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

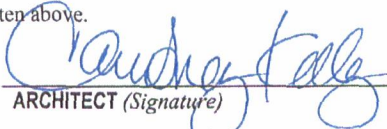
(Paragraph deleted)

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

  
CITY (Signature)

David Vaughn City Manager

(Printed name and title)

  
ARCHITECT (Signature)

Courtney Kelly Architect

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

Init.



**RATE SCHEDULE**  
**City of Burnet**  
**Hill Country Children's Advocacy Center**  
**August, 2022**

<b>TITLE</b>	<b>RATE</b>
PRINCIPAL	200.00
ENGINEER VII	185.00
ENGINEER VI	165.00
ENGINEER V	145.00
ENGINEER IV	135.00
ENGINEER III	115.00
DESIGNER VI	125.00
DESIGNER V	105.00
DESIGNER IV	95.00
DRAFTER III	85.00
DRAFTER I	50.00
SR. ARCHITECT	170.00
ARCHITECT III	145.00
INTERIOR DESIGNER III	130.00
INTERIOR DESIGNER I	90.00
LANDSCAPE ARCHITECT	125.00
ARCHITECTURAL STAFF III	125.00
ARCHITECTURAL STAFF II	110.00
ARCHITECTURAL STAFF I	95.00
CONSTRUCTION INSPECTOR	125.00
SR. BUSINESS ADMINISTRATIVE MANAGER	130.00
BUSINESS ADMINISTRATIVE MANAGER	115.00
ADMINISTRATIVE ASSISTANT III	70.00
ADMINISTRATIVE ASSISTANT II	55.00
SR. LAND SURVEY MANAGER	175.00
LAND SURVEY MANAGER I	130.00
SURVEYOR IN TRAINING II	100.00
SURVEY CHIEF OF PARTIES	105.00
SURVEY PARTY CHIEF	75.00
SURVEY TECHNICIAN III	80.00
SURVEY TECHNICIAN II	65.00
SURVEY TECHNICIAN I	55.00
SURVEY RODMAN	45.00

**Reimbursable Expenses**

Mileage	Std. IRS Rate
Postage/Shipping	Cost + 10%
Paper Plot (B & W)	\$1.10/sf
Paper Plot (Color)	\$3.00/sf
Photo Copy/Laser Print (8.5"x11") (B & W)	\$0.18/Sheet
Photo Copy/Laser Print (8.5"x11") (Color)	\$0.72/Sheet
Photo Copy/Laser Print (8.5"x14") (B&W)	\$0.35/Sheet
Photo Copy/Laser Print (8.5"x14") (Color)	\$1.30/Sheet
Photo Copy/Laser Print (11"x17") (B&W)	\$0.75/Sheet
Photo Copy/Laser Print (11"x17") (Color)	\$3.00/Sheet
Subconsultants	Cost + 10%



**I. Terms and General Conditions**

1. **\*\* [For Contracts greater than \$10,000] Termination of Agreement for Cause.** If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm pursuant to this Agreement shall, at the option of the City, be turned over to the City / County and become the property of the City / County. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.
  - a. Notwithstanding the above, the Firm shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Firm, and the City may set-off the damages it incurred as a result of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.
  
2. **\*\* [For Contracts greater than \$10,000] Termination for Convenience of the City.** City may at any time and for any reason terminate Firm's services and work at City's convenience upon providing written notice to the Firm specifying the extent of termination and the effective date. Upon receipt of such notice, Firm shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.
  - a. [Parties should insert here the manner by which such termination will be effected and the basis for settlement or any other terms and conditions concerning payment upon such termination.]
  - b. Upon such termination, Firm shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement plus (2) such other costs actually incurred by Firm as are permitted by the prime contract and approved by City. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Firm prior to the date of the termination of this Agreement. Firm shall not be entitled to any claim or claim of lien against City for any additional compensation or damages in the event of such termination and payment.
  
3. **\*\* Changes.** The City may, from time to time, request changes in the services the Firm will perform under this Agreement. Such changes, including any increase or decrease in



the amount of the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.

4. \*\* Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or CDBG-CV program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. [This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.] If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit. Mediation to be conducted in Burnet County.
5. Personnel.
  - a. The Firm represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.
  - b. All of the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
  - c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
6. Assignability. The Firm shall not assign any interest on this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; Provided, however, that claims for money by the Firm from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.



7. Reports and Information. The Firm, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
8. \*\* Records and Audits. The Firm shall insure that the City maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Firm and the City shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.
9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City.
10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm. The Work Product was specially commissioned by the City and are "work made for hire" for the City and the City shall own all right, title, and interest therein. The City shall be considered the author of the Work Product for purposes of copyright and shall own all the rights in and to the copyright of the Work Product and only the City shall have the right to obtain a copyright registration on the same which the City may do in its name, its trade name or the name of its nominee(s). Accordingly, among other things, the City is the author and owner of the Work Product and shall have the sole and exclusive rights to do and authorize any and all of the acts set forth in Section 106 of the Copyright Act with respect to the Work Product and any derivatives thereof, and to secure any and all renewals and extensions of such copyrights. Work Product shall be assigned, transferred, released and conveyed to the City including all rights, title and interest to such Work Product, including but not limited to all other patent rights, copyrights, and trade secret rights.
11. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. \*\* Conflicts of Interest.
  - a. \*\* Governing Body. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or



implementation of CDBG-CV award between TDA and the City / County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.

- b. \*\* Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the CDBG-CV award between TDA and the City, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
- c. \*\* The Firm and Employees. The Firm warrants and represents that it has no conflict of interest associated with the CDBG-CV award between TDA and the City or this Agreement. The Firm further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the CDBG-CV award between TDA and the City or in any business, entity, organization or person that may benefit from the award. The Firm further agrees that it will not employ an individual with a conflict of interest as described herein.
- d. \*\* Conflicts Disclosure Statement. (Sec. 176.003 in Chapter 176 of the Local Government Code)
  - i. A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
  - ii. the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and the vendor:
  - iii. has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that: (i) a contract between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into a contract with the vendor;
  - iv. has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that: (i) a contract between the local governmental entity and vendor has been executed; or (ii) the local governmental entity is considering entering into a contract with the vendor; or has a family relationship with the local government officer.
  - v. (a-1). A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is: (1) a political contribution as defined by Title 15, Election Code; or (2) food accepted as a guest.

- vi. (a-2). A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.
- vii. A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

13. **\*\* Debarment and Suspension (Executive Orders 12549 and 12689)** The Firm certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Firm. The Firm understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

14. **\*\* Equal Opportunity Clause** (applicable to **federally assisted construction** contracts and subcontracts over \$10,000). During the performance of this contract, the Firm agrees as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The Firm will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information



of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- d. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - e. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - f. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - g. In the event of the Firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - h. The Firm will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.
15. \*\* Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any



program or activity receiving Federal financial assistance.

16. \*\* Section 109 of the Housing and Community Development Act of 1974. The Firm shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
17. \*\* Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
18. \*\* Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
  - a.
19. \*\* [If this Contract is greater than \$100,000] Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) The Firm certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract. The Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
20. \*\* Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.
  - a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - b. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
  - c. The Firm agrees to send to each labor organization or representative of workers with which the Firm has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Firm's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both



employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The Firm agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Firm will not subcontract with any subcontractor where the Firm has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- e. The Firm will certify that any vacant employment positions, including training positions, that are filled (1) after the Firm is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Firm's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

21. Patent Rights and Inventions -The Firm shall comply with the requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract. (2 CFR 200 Appendix II (f) and Rights to Inventions in 37 CFR Part 401).

- a. Rights to Inventions Made Under a Contract or Agreement - If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative



Agreements,” and any implementing regulations issued by the awarding agency. (2 CFR 200 Appendix II (f), Rights to Inventions).

22. Energy Efficiency - The Firm shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871). (24 CFR 85.36 (i) (13)).
23. \*\* Verification No Boycott Israel. As required by Chapter 2271, Government Code, the Firm hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
24. \*\* Foreign Terrorist Organizations. Pursuant to Chapter 2252, Texas Government Code, the Firm represents and certifies that, at the time of execution of this Agreement neither the Firm, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

## II. Subcontracts

1. No work under this Agreement shall be subcontracted by the Firm without prior approval, in writing, from the City.
2. The Firm shall, prior to proceeding with the work, notify the City in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the City determines that any subcontractor is incompetent or undesirable, the City will notify the Firm who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.
4. The Firm will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of



violations to TDA and to the Regional Office of the Environmental Protection Agency (EPA).

5. The Firm will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Firm will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement.
7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
  - a. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
  - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
  - c. The inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
  - d. The inclusion of the Economic Opportunities for Section 3 Residents and Section 3 Business Concerns of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3).
  - e. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - f. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
  - g. For procurement of recovered materials where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000, compliance with 2 CFR 200.322 and section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, which requires procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.
8. The Firm will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under



Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.

9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the City, TDA, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Housing and Urban Development (HUD), or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

The Firm will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the City has made final payment to the contractor and all other pending matters are closed.

A handwritten signature in blue ink, consisting of a stylized, cursive 'M' or similar character, enclosed within a circular scribble.