

DRAFT AIA® Document C103™ – 2015

Standard Form of Agreement Between Owner and Consultant without a Predefined Scope of Consultant's Services

AGREEMENT made as of the « » day of « » in the year « 2023 »
(In words, indicate day, month and year.)

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

« Wichita State University » « »
« 1845 Fairmount »
« Wichita, KS 67260-0047 »
« »
« »

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

« » « »
« »
« »
« »

Consultant's discipline:

« »

for the following Project:
(Name, location and detailed description. Time limits for bringing claims in Section 6.1.1 are tied to completion of the "Project." The "Project" may be limited to the scope of services to be provided by the Consultant, or the Consultant may be providing services for a "Project" involving design and construction of one or more structures. Care should be taken in describing or defining the Project.)

« »

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

« JE Dunn-Hutton, a Joint Venture »
1001 Locust Street
Kansas City, Missouri 64106 »

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

« Helix Architecture & Design, Inc. »
« 1629 Walnut St. »
« Kansas City, MO 64108-1314 »

The Owner and Consultant agree as follows.

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

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

This document does not contain a description of the Consultant's scope of Services. This document is intended to be used in conjunction with AIA Standard Form of Consultant's Services documents.

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ARTICLE 1 INITIAL INFORMATION

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

(State below Initial Information, such as details of the Project's site and program; identity of the Architect, Owner's contractors and other consultants, and Consultants' subconsultants; anticipated procurement method; and other information relevant to the Consultant's Services.)

« See **Exhibit A (Project Description)**, attached hereto. »

§ 1.2 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Owner's anticipated design and construction schedule:

- .1 Design phase milestones, if any:

« See **Exhibit**, attached hereto. »

- .2 Date for commencement of construction:

« See **Exhibit**, attached hereto. »

- .3 Substantial Completion date:

« See **Exhibit**, attached hereto. »

- .4 Other milestone dates:

« See **Exhibit**, attached hereto. »

§ 1.4 The Owner and Consultant may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, an adjustment to the schedule, the Consultant's services, and the Consultant's compensation may be appropriate.

ARTICLE 2 CONSULTANT’S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:

(Describe the scope of the Consultant’s services or identify an exhibit or scope of services document setting forth the Consultant’s services and incorporated into this document in Section 11.2.)

« See **Exhibit (Consultant’s Scope of Work)**, attached hereto. »

§ 2.2 The Consultant shall perform its services consistent with the professional skill and care provided by qualified professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances and with the level of inquiry, skill, care, judgment and diligence customarily expected of a professional of the same trade or discipline experienced in the design and construction of projects similar in size, scope and complexity to the Project (“Standard of Care”). Without breaching the Standard of Care, the Consultant shall perform its services expeditiously and in accord with the schedule established for the performance of such services.

The Consultant’s failure to meet its obligation to comply with an established schedule shall not be excused merely because the Consultant cannot meet the schedule without violating the Standard of Care; it being understood that the Consultant’s agreement to perform services in accordance with a schedule that cannot be met without breaching the Standard of Care would, in and of itself, be a breach of the Standard of Care.

§ 2.2.1 The Consultant shall be responsible for ensuring that its services are performed in accordance with all federal, State, county, city, and other jurisdictional laws, statutes, regulations, ordinances, requirements, codes, rules and regulations, standards, and lawful orders of public authorities in effect at the time that the services are rendered (collectively, the “**Legal Requirements**”).

§ 2.3 The Consultant identifies the following representative(s).

(List name, address, and other information.)

« »
« »
« »
« »
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« »

§ 2.3.1 The Consultant’s representative(s) specified above shall be responsible for and in charge of the services performed by the Consultant under this Agreement and is authorized to act on behalf of the Consultant with respect to the Project and this Agreement. Consultant’s Representative shall not be changed for the duration of the Project unless approved by the Owner in writing.

§ 2.3.2 The Consultant shall assign the Key Personnel, if any, set forth on **Exhibit** attached hereto to provide its services. Key Personnel shall not be removed from the Project unless the Owner consents in advance in writing, unless any person included in the Key Personnel is no longer employed with the Consultant. All staff used by the Consultant in the performance of its services shall be qualified with training and experience to perform their assigned tasks. Although the Consultant may assign qualified personnel of the Consultant’s choosing to the Project, the Owner may direct the Consultant to remove any of the Consultant’s personnel whom the Owner deems unsuitable in qualifications, performance, or conduct, and the Owner shall have the right to reject any proposed replacements.

§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be properly licensed to perform the services described in this Agreement or shall cause such services to be performed by appropriately licensed professionals. The Consultant shall maintain, and shall cause its consultants to maintain, such licenses, registrations and authorizations throughout the performance of their services.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Consultant’s subconsultants, the Owner and others engaged by the Owner, including, without limitation, the Architect and the Construction Manager. The Consultant shall cooperate with the Construction Manager, the Owner, and the Owner’s other consultants, architects, engineers, contractors, subcontractors, suppliers, and others involved with or impacted by the

services, and shall use its best efforts to maintain a positive working relationship with each. The Consultant may communicate with the Owner's other consultants for the purposes of performing its services on the Project; provided that the Owner shall be included in all such communications. The Consultant shall include the Owner on any such communications. Unless notified to the contrary, the Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.6 The Consultant shall keep the Owner informed of the progress of the Consultant's services.

§ 2.7 **Insurance.** The Consultant shall maintain and cause its consultants to maintain, the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Consultant normally maintains, the Owner shall reimburse the Consultant for any additional cost as set forth in Section 8.6.3.

§ 2.7.1 Commercial General Liability with policy limits of not less than «One Million Dollars» (\$« 1,000,000.00 ») for each occurrence and « Two Million Dollars » (\$« 2,000,000.00 ») in the aggregate for bodily injury and Products/Completed Operations Aggregate; \$1,000,000 Personal & Advertising Injury and including coverage for broad form property damage and independent contractors. Such insurance shall be at least as broad as Insurance Services Office ("ISO") Form CG 00 01. Self-insured retention, including costs of defense, shall not exceed Twenty-Five Thousand Dollar (\$25,000). The Commercial General Liability Policy shall provide that such insurance is primary to and non-contributory with any liability insurance carried by the Additional Insureds and provide a severability of interests clause.

§ 2.7.2 Automobile Liability covering vehicles owned by the Consultant and non-owned vehicles used by the Consultant with policy limits of not less than « One Million Dollars » (\$ « 1,000,000.00 ») per claim and « One Million Dollars » (\$ « 1,000,000.00 ») in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

§ 2.7.3 The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2.

§ 2.7.4 Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than « One Million Dollars » (\$ « 1,000,000.00 »).

§ 2.7.5 Professional Liability covering the negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « Five Million Dollars » (\$ « 5,000,000.00 ») per claim and « Five Million Dollars » (\$ « 5,000,000.00 ») in the aggregate.

§ 2.7.5.1 Valuable Papers and EDP Insurance, insuring all plans, designs, drawings, specifications and documents produced or used under this Agreement by the Consultant with limits of at least Two Hundred Thousand Dollars (\$200,000). Such insurance shall be maintained until final delivery of all Construction Documents. The benefits of all Valuable Papers and EDP Insurance shall be made to extend expressly to the Owner and, if required, to any lender providing financing in connection with the Project.

§ 2.7.6 The Owner and its members, each of their respective officers, directors and shareholders, and any other party specified by Owner at any time and from time to time, shall be additional insureds on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The limits of the coverage provided to the additional insureds shall be the greater of that set forth in this Agreement or the full limits set forth in the policy(ies). A copy of the actual additional insured endorsement as broad as Insurance Services Office (ISO) form CG2010 1185 or CG2010 0704 and CG2037 0704 must accompany the certificate.

§ 2.7.7 Prior to beginning any services and annually thereafter, the Consultant shall deliver to the Owner with insurance certificates completed by a duly authorized representative of their insurer certifying that at least the minimum insurance coverages required are in effect together with copies or originals of all required endorsements.

The Consultant shall give the Owner not less than thirty (30) days' written notice prior to any cancellation or material change in coverage.

§ 2.7.8 All liability insurance policies shall provide coverage on an “occurrence” rather than a “claims made” basis. Professional Liability (Errors & Omissions) may be provided on a “claims-made” basis, so long as coverage remains in force for at least ten (10) years following the date of final completion of the Project or termination of this Agreement, whichever is greater.

§ 2.7.9 The Consultant shall cause all liability and Workers’ Compensation insurance policies to provide that the insurance company waives all rights of recovery by way of subrogation against the Additional Insureds. The Consultant shall require of its consultants, agents, employees of any of them similar waivers in favor of the parties enumerated herein.

§ 2.7.10 All policies of insurance affording coverage shall be carried by insurers which are authorized to do business in the state where the Project is located and which are rated by AM Best not lower than A-VIII.

§ 2.7.11 The Consultant shall be responsible for the services and performance of its consultants and the requirements of this Agreement shall apply to and be incorporated into any contract entered between Consultant and its consultants. Except, if the Owner has approved in writing lesser limits for specific consultants, the Consultant shall require its consultants or design professionals performing design professional services to obtain and maintain professional liability insurance in the amount of no less than \$2,000,000 per claim and annual aggregate if their contract amount is \$2,000,000 or less, and if the contract amount is higher, no less than \$5,000,000 per claim and annual aggregate. The applicable consultant or design professional shall pay all deductibles. In addition, such insurance shall provide for a retroactive date of placement prior to or coinciding with the commencement of the performance of the design professional services and if coverage is written on a claims-made basis, coverage shall survive for a period of not less than ten (10) years following the date of final completion of the Project or termination of this Agreement, whichever is greater.

§ 2.7.12 The insurance coverages required herein shall not limit the liability or obligations of the Consultant under this Agreement. The Consultant shall carry such other insurance policies (and shall cause its consultants to carry the same) as may be reasonably required by the Owner’s lender (if any).

§ 2.8 Time. The Consultant shall provide its services promptly but no later than within the time limits established in the Consultant’s Schedule, or by the Owner. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.
(Check one or both selections below.)

[<< >>] Consultant’s Schedule: As soon as practicable after the date of this Agreement, the Consultant shall submit, for the Owner’s approval, a schedule for the performance of the Consultant’s Services. If relevant to the Consultant’s Services, the schedule initially shall include anticipated dates for design phase milestones, commencement of construction, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Consultant or Owner.

[<< >>] Deliverable(s) Time Limit: The Consultant shall provide the following deliverable(s) within the time limit(s) set forth below. Unless otherwise indicated below, time shall be calculated based on calendar days from the date of this Agreement.

Deliverable(s) <i>(Describe the deliverable(s))</i>	Time Limits <i>(Insert number of calendar days and, where appropriate, if time is to be measured from a separate written authorization from the Owner)</i>

Deliverable(s) <i>(Describe the deliverable(s))</i>	Time Limits <i>(Insert number of calendar days and, where appropriate, if time is to be measured from a separate written authorization from the Owner)</i>

[<< >>] See **Exhibit** .

From time to time, the Owner may request that the Consultant provide to the Owner a detailed program and schedule of resources setting out how it intends to perform the services performed by Consultant hereunder, and the Consultant shall, within five (5) calendar days of being requested, provide such program and schedule.

§ 2.9 The Consultant shall, at no cost to the Owner, promptly and satisfactorily correct any services that are defective or not in conformity with the requirements of this Agreement. The obligation of the Consultant to correct defective or nonconforming services shall not in any way limit any other obligations of the Consultant or other rights and remedies available to the Owner under this Agreement or by law, and shall in no event be construed or interpreted as obligating the Owner to make any correction of defective or nonconforming services.

§ 2.10 The Consultant shall be and shall operate as an independent contractor in the performance of its services and shall have responsibility for all personnel performing the services. In no event shall the Consultant be authorized on behalf of the Owner to: (1) enter into any agreements; (2) waive any provisions or receive or accept notice under any contract on behalf of Owner; (3) authorize any payments or accept or approve any documents, work, services, goods, or materials that result in a change to any contract, or (4) act as or be an agent or employee of the Owner.

§ 2.11 The Consultant may designate and subcontract with subconsultants upon the Owner’s prior written consent that shall be given, delayed, or conditioned in Owner’s sole and absolute discretion. The Consultant shall incorporate the provisions of this Agreement and a scope of services consistent with its services into its subcontracts, if any. Any subcontracting of any of the Consultant’s services shall not relieve the Consultant from its responsibilities under this Agreement. If any subconsultant does not comply with its obligations under its agreement with the Consultant, the Consultant must at the written request of the Owner: (1) assign to the Owner its rights against that third party under any such agreement; or (2) enforce its rights against that third party under any such agreement for the benefit and at the direction of the Owner.

§ 2.12 The Consultant hereby assigns all of its rights under any subcontract it enters into as part of performing services hereunder; provided, however, that such assignment shall not be effective until the Owner provides Consultant with written notice of acceptance, in whole or in part, of such assignment.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement. Additional Services shall be performed, for appropriate compensation, at Owner’s written direction that shall be given, delayed, or conditioned in Owner’s sole and absolute discretion.

§ 3.2 The Consultant shall promptly notify the Owner and the Construction Manager upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner’s written authorization. If the Owner determines that all or a part of such requested Additional Services are not required, the Owner shall give prompt written notice to the Consultant, and the Consultant shall have no obligation to provide such Additional Services, and the Owner shall have no obligation to compensate Consultant for such Additional Services. If requested or approved by the Owner in writing, the Consultant shall proceed with such Additional Services even if the parties have not yet agreed to a change in the Consultant’s compensation. Except for services due to the fault, error, omission, malfeasance, or negligence of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall entitle the Consultant to compensation pursuant to Section 8.2. the Consultant shall notify the Owner in writing prior to providing any Additional Services requiring an adjustment in the Consultant’s compensation. Failure to provide such timely

written notice and receive the Owner's written approval before providing such Additional Services shall be a waiver of any right of the Consultant to payment for Additional Services.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Unless otherwise provided for under this Agreement, the Owner (or the Construction Manager) shall provide information in a timely manner regarding requirements for and limitations on the Project. Within 15 business days after receipt of a written request from the Consultant, the Owner shall furnish the requested information as reasonably necessary and relevant for the Consultant to evaluate, give notice of, or enforce lien rights.

§ 4.2 The Owner identifies the following representative who is authorized to act on the Owner's behalf with respect to the Project.

(List name, address, and other information.)

Emily Patterson »
«Executive Director of Facilities Planning »
«Wichita State University »
«1845 N. Fairmount, Box 23 »
«Wichita, KS 67260-023 »
«316-841-3444 »

§ 4.2.1 The Owner may change the Owner's representative(s) at any time in its sole discretion by providing written notice to the Consultant of such change or addition.

§ 4.3 At the Owner's direction, the Construction Manager may render decisions and approve the Consultant's submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

§ 4.4 At the Owner's direction, the Architect may coordinate its services with those services provided by the Consultant. The Owner shall provide the Consultant with a list of other consultants on the Project whose services relate to the Consultant's services. The Owner shall also, upon written request, furnish the Consultant with copies of the scope of services in contracts between the Owner and such other consultants. The Owner shall require that its other consultants maintain professional liability insurance as appropriate to the services provided.

§ 4.5 Omitted.

§ 4.6 The Owner shall provide prompt written notice to the Consultant if the Owner has actual knowledge of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's services; provided, however, that nothing contained in this Section 4.6 or done (or not done) in response to this Section 4.6 shall excuse or relieve the Consultant or any of its subconsultants of any of their obligations or responsibilities under this Agreement.

ARTICLE 5 COPYRIGHTS AND LICENSES

§ 5.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and the Consultant's subconsultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials in digital or physical form.

§ 5.2 The Consultant and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions or comply with protocols established for the Project, if any.

§ 5.3 Upon payment by the Owner of all undisputed amounts due to the Consultant under this Agreement, any Instruments of Service developed by the Consultant (the “**Work Product**”) are for the sole and exclusive use of the Owner and that the Owner shall be deemed to be the sole and exclusive owner of all the intellectual property rights thereto. Upon the delivery of each Work Product for a particular phase of the Services, ownership of such Work Product shall vest in the Owner upon the payment of all undisputed amounts owing to the Consultant for the applicable phase of Services. Upon (i) payment by the Owner of all undisputed amounts due to the Consultant under this Agreement, or (ii) within seven (7) calendar days after receiving a request from the Owner in writing, all Work Product (not previously delivered to the Owner), shall be delivered to the Owner. Upon payment by the Owner of all undisputed amounts due Consultant under this Agreement, intellectual property rights to the Work Product prepared by the Consultant, including the copyrights thereto is automatically assigned to and shall be the sole property of the Owner. The Consultant represents that it is the sole owner of the copyright in the Work Product prepared by the Consultant and that the individual signing this Agreement on behalf of the Consultant is authorized to transfer exclusive copyright ownership therein to Owner consistent with this Section 5.3. the Consultant further represents that the Work Product prepared by the Consultant is an original creation for the Owner. Any modification to the Work Product by anyone other than the Consultant, or any use of the Work Product other than for the construction, maintenance, and use of the Project, by the Owner without the written consent of the Consultant shall be at the sole risk of the Owner, and the Owner shall indemnify and defend the Consultant for any third-party actions that may result therefrom.

§ 5.4 In the course of the Consultant providing its services, the Owner may furnish to the Consultant or its subconsultants plans, materials, drawings, research, prototypes, surveys, reports, recommendations, opinions, cost estimates, or other Project information or design materials belonging to the Owner or prepared by the Owner’s other consultants (“**Owner’s Works**”). Owner’s Works and all copyright interests thereto are now, and regardless of any work performed on Owner’s Works by the Consultant or its subconsultants, shall remain the sole property of the Owner. The Consultant has no legal or copyright interest in all or any portion of Owner’s Works, and any interest in them that the Consultant may acquire is hereby assigned to the Owner. The Consultant and its subconsultants shall be entitled to rely upon the adequacy, accuracy, and completeness of all Owner’s Works.

§ 5.5 Neither the Consultant nor representatives of the Consultant nor their employees or agents will use, copy, alter, or modify any of the Work Product or Owner’s Works for any purpose other than the services provided under this Agreement without the Owner’s express written consent, including after any termination of this Agreement. The Consultant and its subconsultants will promptly deliver all originals and copies of the Work Product and Owner’s Works in its possession (including any CAD or other electronic files or mylars) at the termination of this Agreement or upon the Owner’s written request; provided, however, that the Consultant and the Consultant’s representatives may retain record copies thereof in their files. As to both the Work Product and Owner’s Works, the Owner shall have the right to copy, distribute and utilize such works on an unlimited basis to its divisions and affiliates, in any location, without the payment of any additional fee.

§ 5.6 Upon written notice from the Owner at any time before or after the termination of this Agreement, the Consultant, at its sole cost, shall make all corrections to the Consultant’s Work Product that are required, to the extent caused by the Consultant’s or its subconsultants’ negligent errors, omissions, deviations, conflicts, lack of design coordination, or violations of any Legal Requirements. Such corrections shall not constitute grounds for adjustments to the Consultant’s compensation. All such corrections shall be incorporated into the Consultant’s Work Product and highlighted by notation or clouding. The Consultant shall commence any such corrections with reasonable promptness consistent with the Standard of Care.

§ 5.7 The Consultant shall require that each subconsultant agree to comply with the requirements of this Article 5, with the modification that such obligations be from the subconsultant.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

§ 6.1.1 The Owner and Consultant shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date the Project is sufficiently complete so that the Owner can utilize it for

its intended use. The Owner and Consultant waive all claims and causes of action not commenced in accordance with this Section 6.1.1.

§ 6.1.2 To the extent damages are covered by property insurance, the Owner and Consultant 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. The Owner or the Consultant, 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.

§ 6.1.3 The Consultant shall indemnify and hold the Owner, the Owner's lender (if any), and each of their officers and employees, directors, members, affiliates, agents and consultants harmless from and against damages, losses and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, to the extent they are caused by (1) any breach of this Agreement; (2) any infringement of any patent, trademark or copyright or the violation of any trade secret or other proprietary right that arises in connection with the Instruments of Services or the services under this Agreement; (3) any act, omission or error of Consultant, its consultants or any person or entity directly or indirectly engaged by any of them; (4) any claims made by or through a consultant or any person working for, or through, Consultant, including any liens filed by any such persons on or in connection with the Project; and (5) any negligent acts or omissions of the Consultant, its employees and its consultants in the performance of the services under this Agreement (including, without limitation, the construction of the Designed Work). Notwithstanding the foregoing, any indemnification obligation of Consultant set forth in this Agreement shall not include the duty to defend. The Consultant agrees, however, to reimburse the Owner's reasonable defense costs in defending an indemnified claim (including, without limitation, reasonable attorneys' fees) upon a final determination of Consultant's liability for same, but only to the extent of the Consultant's finally determined percentage of liability based upon the comparative fault of the Consultant. It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the indemnification obligation under this Article 8 such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring this section into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. This provision shall survive the completion of the services, final payment, or earlier termination of this Agreement. The Consultant shall require each of its consultants to include these same indemnification provisions in their agreement for consulting services. This Section 6.1.3 shall survive termination of this Agreement.

§ 6.1.4 The Consultant and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement. Notwithstanding the foregoing, this Section 6.1.4 shall not apply to (1) consequential damages covered by the Consultant's insurance applicable to the Project (which shall be the greater of the insurance that the Consultant carries or the insurance that the Consultant is required to carry under this Agreement); or (2) claims for which the Consultant is obligated to indemnify the Owner under Section 6.1.4. A claim is "covered by insurance" even if a self-insured retention or deductible applies.

§ 6.2 Mediation

§ 6.2.1 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 Consultant's services, the Consultant 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.

§ 6.2.2 The Owner and Consultant shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. 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.

§ 6.2.3 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.

§ 6.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 6.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Consultant do not select a method of binding dispute resolution below, 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.)

Arbitration pursuant to Section 6.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

§ 6.3 Arbitration

§ 6.3.1 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. The parties to the arbitration shall have all rights of discovery.

§ 6.3.1.1 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.

§ 6.3.2 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.

§ 6.3.3 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. The arbitrator shall determine which is the prevailing party and shall include in the award that party's reasonable attorneys' fees and expenses and the costs and fees of arbitration.

§ 6.3.4 Unless otherwise agreed in writing, the parties shall continue to carry on the Services and perform their obligations under this Agreement during any arbitration proceeding.

§ 6.3.4 Consolidation or Joinder

§ 6.3.4.1 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).

§ 6.3.4.2 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.

§ 6.3.4.3 The Owner and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Consultant under this Agreement.

§ 6.3.4.4 The Owner and the Consultant hereby expressly consent to joinder in any dispute resolutions proceedings under the Contract Documents between the Owner and the Contractor.

§ 6.3.4.5 The Consultant hereby agrees to include an arbitration provision as set forth in Section 6.3 in all agreements with its consultants for the Project.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 If the Owner fails to make payments of undisputed amounts properly due to the Consultant in accordance with this Agreement and such failure continues for a period of ninety (90) days after written notice from the Consultant, then such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement, unless the amount of such fees is being contested in good faith by the Owner in accordance with Section 6.2. If the Consultant elects to suspend services, the Consultant shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any reasonable expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted to the extent required because of the delay. If the Consultant elects to terminate services, it may do so only if Owner fails to pay the Consultant undisputed amounts properly due to the Consultant within thirty (30) days after the Owner receives written notice from the Consultant that payment is overdue and its intent to terminate this Agreement.

§ 7.2 The Owner reserves the right to suspend performance of the Consultant's services. If the Owner suspends the Project or the Consultant's services for more than ninety (90) consecutive days (provided such delays or suspensions are not caused by Consultant or its subconsultants), the Consultant shall be compensated for reasonable services performed prior to notice of such suspension. When the Project or the Consultant's services are resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services to the extent the Consultant has commenced providing construction phase services pursuant to Article 10. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted to the extent required because of the delay.

§ 7.3 Omitted.

§ 7.4 Except as otherwise provided herein, including section 7.1, 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.

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

§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and reasonable and mutually agreed upon Termination Expenses as defined in Section 7.7, but Consultant shall not be entitled to compensation on account of unperformed work nor for the Consultant's anticipated profit on the value of services not performed.

§ 7.7 Termination Expenses are in addition to compensation for the Consultant's services and include reasonable, documented and verifiable out-of-pocket expenses directly attributable to demobilizing the Consultant's employees and consultants ("Termination Expenses").

§ 7.8 The Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in Article 5.

§ 7.9 Upon termination by either party (whether for cause or due to the Owner's termination for convenience) (1) the Owner shall be entitled to use the Work Product, including the Instruments of Service, to complete the Project, (2) at the written request of the Owner, the Consultant shall assign any and all consultant contracts to the Owner or the Owner's designee, and (3) the Consultant shall deliver to the Owner all books, records, electronic files, plans, drawings, papers, models and information of any kind relating to the Project which is the property of the Owner. The Consultant shall further reasonably cooperate with the Owner to affect an orderly, smooth, prompt and efficient transition.

ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for services described in Article 2 as follows:
(Insert amount of, or basis for, compensation)

« See **Exhibit (Consultant's Compensation and Hourly Rates)**, attached hereto. The Consultant shall also acquire and pay for within its compensation any and all permits required by applicable law for the Consultant to properly perform its services under this Agreement.

For any Designed Work to be constructed or installed by the Consultant, the Consultant shall submit applications for payment for all construction services on a monthly basis in the amount of the Designed Work performed by the Consultant during that month. Such applications for payment shall be reviewed and approved by the Architect and/or the Construction Manager; upon such approval, the Architect and/or the Construction Manager shall issue a certificate of payment. The Owner shall not be required to make payment to the Consultant until the Architect and/or the Construction Manager has issued a certificate for payment. The Owner shall be entitled to withhold retainage in an amount up to ten (10%) of all sums owing to the Consultant for its construction phase services, with all retainage to be released to the Consultant upon the Consultant achieving Substantial Completion (as defined below). »

§ 8.2 The Owner shall compensate the Consultant for Additional Services that may arise during the course of the Project that are not required due to the fault or negligence of the Consultant or its subconsultants as set forth on **Exhibit** attached hereto, and if not specifically indicated on **Exhibit**, based upon the hourly rates and corresponding personnel categories as set forth on **Exhibit** or for a mutually agreed upon lump sum.

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant's subconsultants, if any, are set forth on **Exhibit**. Such rates shall not be adjusted without the prior written approval of the Owner in each instance.

§ 8.4 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within thirty (30) days' of the Owner's receipt of the Consultant's invoice. Amounts unpaid « thirty » (« 30 ») days after the Owner's receipt of the Consultant's invoice 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 Consultant.

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

« The "Prime Rate", as published by the Wall Street Journal from time to time. »

Each invoice shall be in the form approved in advance by the Owner and otherwise in a form reasonably acceptable to the Owner and shall: (1) contain a clear description of the services performed during the applicable billing period; (2) identify the percentage of the services that the Consultant reasonably believes has been performed during such billing period; (3) shall contain an itemized statement of permitted Reimbursable Expenses properly incurred by the Consultant during the applicable billing period (together with supporting documentation and reasonable evidence as may be requested of and invoices covering such Reimbursable Expenses); (4) shall be accompanied by the applicable duly executed conditional lien waivers for the current amounts requested, and duly executed unconditional lien waivers for the amounts included in all prior payments from the Consultant and its subconsultants who may have lien rights, which lien waivers shall be in the form prescribed by statutes and conform with the applicable laws; and (5) include such additional information as the Owner or the Owner's lender may reasonably

require to substantiate the amounts so requested for payment. Upon receipt of written notice from the Owner, the Consultant shall comply with such other reasonable billing policies and procedures as Owner's lender may implement from time to time.

§ 8.5 The Owner shall not withhold amounts from the Consultant's compensation to impose a penalty or liquidated damages on the Consultant, or to offset sums requested by or paid to contractors for the cost of changes in the Project unless the Consultant agrees or has been found liable for the amounts in a binding dispute resolution proceeding. No payment by the Owner to the Consultant shall waive or affect the Owner's right to make claims against the Consultant.

§ 8.6 Reimbursable Expenses

§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's professional services and include expenses incurred by the Consultant directly related to the Project that are approved in writing by the Owner and the Construction Manager upon notice from the Consultant, as follows:

- .1
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, but only for non-standard documents;
- .5 Postage, handling and delivery;
- .6 All taxes levied on professional services and on reimbursable expenses;
- .7 Other similar Project-related expenditures, if approved in advance by Owner in writing.

§ 8.6.2 For Reimbursable Expenses the compensation shall be the actual expenses reasonably incurred by the Consultant without mark-up. The Consultant shall keep full and accurate records of all costs incurred and items billed to the Owner in connection with the performance of the services related to the Project, which records shall be subject to audit by the Owner and/or their authorized representatives at any time during the period commencing on the date of this Agreement and including the date that is the three (3) year anniversary of the expiration or termination date of this Agreement.

§ 8.6.3 Omitted.

§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 8.7 [Intentionally omitted]

§ 8.8 The Consultant agrees to pay its subconsultants within ten (10) calendar days after the Consultant receives payment from the Owner. In the event Owner is advised that the Consultant has failed to pay any subconsultant as required above, the Consultant agrees that the Owner may (but in no event is obligated to) make all future payments directly to such subconsultant or by check payable jointly to the subconsultant and the Consultant, and the Owner may withhold from subsequent payments to the Consultant any amounts that the Owner paid or intends to pay to such subconsultant because the Consultant did not pay such subconsultant as required above.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Project is located. If requested by the Owner, the Consultant shall cause its personnel engaged in the performance of the services, to reasonably assist the Owner in resolving any dispute (including arbitration or other proceedings) between the Owner and the Consultant or and any contractor, subcontractor or supplier on the Project, and the Owner shall reimburse the Consultant for any reasonable, actual and documented costs incurred by the Consultant in connection with such request.

§ 9.2 The Owner and Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Owner may assign or novate all or a portion of its rights under this Agreement in its sole discretion to lenders, entities affiliated with the Owner or other persons or entities financially able to pay amounts due under this Agreement. In the event of such assignment or novation, this Agreement shall remain fully binding upon the Consultant to the full extent as if executed initially with the assignee or novatee. The Consultant may not assign this Agreement or any of its obligations to perform under this Agreement without the

express written consent of the Owner, nor may the Consultant assign its rights to payment without the Owner's express written consent.

§ 9.3 If the Owner requests the Consultant to execute certificates, the proposed language of such certificates shall be submitted to the Consultant for review at least seven (7) days prior to the requested dates of execution. If the Owner requests the Consultant to execute consents reasonably required to facilitate assignment to a lender, the Consultant shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Consultant for review at least seven (7) days prior to execution. The Consultant shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement, but shall not unreasonably deny requests for other certificates.

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

§ 9.5 Unless otherwise required in this Agreement, the Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, unless such discovery, presence, handling, removal, disposal, or exposure resulted from the Consultant's or its subcontractant's request or order or complying with the express requirements and specifications of the Instruments of Service.

§ 9.6 "**Confidential Information**" is information containing confidential or business proprietary information that is clearly marked as "confidential" or that should be reasonably interpreted by the recipient to be confidential or proprietary. If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. Each party shall (1) not copy the Confidential Information or any part of it, other than as strictly necessary for the purposes of this Agreement; (2) safeguard the Confidential Information in the same way as it safeguards its own confidential information; (3) implement commercially reasonable security practices against any unauthorized access, use, copying, disclosure (whether that disclosure is oral, electronic, in writing or in any other form), damage to or destruction of the Confidential Information; (4) immediately notify the other party if the party suspects or becomes aware of any unauthorized access, use, copying, or disclosure in any form; (5) comply with all directions given by the other party regarding a suspected or actual breach of this Section 9.6; and (6) upon any termination of this Agreement, promptly return all Confidential Information to the other party upon written request.

§ 9.6.1 A party receiving Confidential Information may only disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants, or contractors or those who need to know the content of such information for the Project or in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors and such other persons are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Agreement.

§ 9.7 By executing this Agreement, the Consultant represents and acknowledges that (1) it has carefully examined this Agreement, and all exhibits, (2) the compensation stated herein is reasonable compensation for the Consultant's services, and (3) the Commencement Date and required date of Completion are adequate for the performance of the Services.

§ 9.8 All notices provided or permitted to be given under this Agreement shall be properly given only if made in writing and (1) mailed by certified mail, return receipt requested, postage prepaid, or (2) delivered by hand (including messenger or recognized delivery, courier or air express service), or (3) by email (accompanied by telephonic notice), provided, however, that if such communication is given via email, an original counterpart of such communication shall concurrently be sent in the manner specified in item (2) above, to the party at the address set forth in this Section 9.8 or such other address as such party may designate by notice to the other party pursuant to this Section 9.8. Such notices and other communications shall be effective on the date of receipt (evidenced by the certified mail receipt) if mailed, on the date of such hand delivery if hand delivered, or on the date the email is sent, provided that the sender does not receive any failure of delivery notice (provided that the foregoing requirements in connection with such email are satisfied). If any such notice or other communication is not received or cannot be

delivered due to a change in the address of the receiving party of which notice was not previously given to the sending party or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery is attempted. Any notice or other communication under this Agreement may be given on behalf of a party by the attorney for such party.

To the Owner:

Emily Patterson »
«Executive Director of Facilities Planning »
«Wichita State University »
«1845 N. Fairmount, Box 23 »
«Wichita, KS 67260-023 »
«316-841-3444

with a copy to:

Stacia Boden,
General Counsel
Wichita State University
201 Morrison Hall
1845 Fairmont St.
Wichita, Kansas 67260

To the Consultant: [redacted]
[redacted]
[redacted]
Attn: [redacted]
Email: [redacted]

§ 9.9.1 The Consultant shall provide to the Owner’s lender any information or certification that the lender reasonably requires.

§ 9.9.2 The Consultant agrees to execute such documents as may be reasonably required by the Owner’s lender, including, but not limited to, a consent to assignment of this Agreement to the Owner’s lender, under terms reasonably acceptable to the lender, and to agree to such modifications to this Agreement as the Owner’s lender may reasonably require. If the Consultant’s costs or time of performance are increased by such lender-required changes, this Agreement shall be equitably adjusted.

ARTICLE 10 SPECIAL TERMS AND CONDITIONS (CONSTRUCTION PHASE SERVICES)

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

§ 10.1 The Designed Work

§ 10.1.1 The Consultant’s Basic Services shall include (1) the development of all Drawings and Specification pertaining to the Designed Work and (2) the installation and construction of the Designed Work. The Consultant shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Designed Work.

§ 10.1.2 As used in this Agreement: (1) the “**Contract Documents**” consist of this Agreement, its exhibits, any mutually approved modifications to this Agreement, the Drawings and the Specifications, (2) the “**Drawings**” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Designed Work, generally including plans, elevations, sections, details, schedules, and diagrams; (3) the “**Specifications**” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Designed Work, and performance of related services; and (4) the “**Designed Work**” means the construction and services required to be performed by the Consultant under the Contract Documents, and reasonably inferable therefrom, whether completed or partially completed, and includes all

other labor, materials, equipment, and services (including the delivery, storage, handling, and installation of materials) and related incidental work and services necessary to fulfill the Consultant's obligations.

§ 10.2 Development of Construction Documents Upon the Owner's, the Architect's and the Construction Manager's written approval of the Design Documents produced by the Consultant, the Consultant shall prepare Construction Documents for review and written approval by the Owner, the Architect and the Construction Manager. The Construction Documents shall set forth in detail the requirements for construction of the Designed Work. The Construction Documents shall include Drawings that establish the quality levels of materials and systems required for construction of the Designed Work, and shall:

- .1 be consistent with the approved Design Documents;
- .2 be consistent with the project criteria set forth in the Architect's construction documents for the Project;
- .3 comply with the Standard of Care;
- .4 include documents customarily required for regulatory agency approvals; and
- .5 comply with all applicable Legal Requirements.

The Owner and its consultants, including, without limitation, the Architect and the Construction Manager, shall be entitled to rely upon the accuracy of the Consultant's Construction Documents.

§ 10.2.1 The Consultant shall coordinate its Drawings, Specifications and other Instruments of Services with those of the Architect through the Construction Manager. The Consultant acknowledges that the Architect and the Construction Manager shall have no responsibility for the accuracy, completeness or sufficiency of the design-build Construction Documents, Drawings and other Instruments of Services produced by the Consultant, and any review by the Architect or the Construction Manager is solely for consistency with any performance specifications provided by the Architect, or consistency with the Architect's design concept for the Project if no performance specification is provided. The Consultant shall promptly report to the Owner, the Architect and the Construction Manager any errors, inconsistencies or omissions discovered by or made known to the Consultant between the Drawings and Specifications prepared by the Consultant and any separate instruments of service prepared by the Architect or the Owner's other separate consultants, including, without limitation, any requirements that may be contrary to any Legal Requirements.

§ 10.3 Construction and Installation of the Designed Work

§ 10.3.1 Upon approval by the Owner, the Architect and the Construction Manager or the Consultant's Construction Documents, the Consultant shall construct the Designed Work in accordance with all requirements of the approved Contract Documents, in accordance with the Instruments of Service developed by the Architect for the Project, in accordance with the Standard of Care, and in compliance with all Legal Requirements.

§ 10.3.2 The Consultant commencing construction and/or installation of the Designed Work shall constitute a representation that the Consultant has visited the Project site, become generally familiar with local conditions under which the Designed Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Consultant shall, before starting each portion of the Designed Work, carefully study and compare the various Contract Documents relative to that portion of the Designed Work, as well as the information furnished by the Owner, the Contractor, the Architect and the Construction Manager regarding the Project, shall take field measurements of any existing conditions related to that portion of the Designed Work and shall observe any conditions at the site affecting it.

§ 10.3.3 The Consultant shall supervise and direct the Designed Work, using the Consultant's best skill and attention. The Consultant shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Designed Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 10.3.4 The Consultant understands that the Designed Work is one component of a larger Project designed by the Architect to be constructed by the Contractor, with input from the Construction Manager, and that achieving a fully-functioning and integrated Project requires careful and close coordination of the Designed Work to be performed by the Consultant with the work performed by the Contractor under the supervision of the Construction Manager. The Consultant, in consultation with the Owner, the Architect and the Construction Manager, shall coordinate the Designed Work and its construction schedule with the work performed by the Contractor and with the Owner's other

Separate Contractors (e.g., other “Activities” consultants performing design-build services to the Owner). The Consultant shall follow the direction of the Construction Manager and the Contractor during the installation and construction of the Designed Work. The Consultant shall promptly report to the Owner, the Architect and the Construction Manager any defects and deficiencies that the Consultant encounters or observes in the work performed by the Contractor when installing and constructing the Designed Work.

§ 10.3.5 If the Consultant fails to correct Designed Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out the Designed Work in accordance with the Contract Documents, the Owner may issue a written order to the Consultant to stop the Designed Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Designed Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Consultant or any other person or entity. The Consultant shall not be entitled to an increase in price or extension of time as a consequence of the Owner’s proper stoppage of the Designed Work pursuant to this Section.

§ 10.3.6 The Consultant shall be responsible to the Owner for acts and omissions of the Consultant’s employees, subcontractors, suppliers, and their agents and employees, and other persons or entities performing portions of the Designed Work for or on behalf of the Consultant or any of its subcontractors or suppliers.

§ 10.3.7 Upon commencement of construction of the Designed Work and otherwise upon written request of the Construction Manager, the Consultant shall attend all DDG meetings organized by the Construction Manager as required by Section 2.3.1.

§ 10.3.8 The Consultant shall not unreasonably encumber the site with materials or equipment. The Consultant shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by the Consultant’s operations. At completion of the Designed Work, the Consultant shall remove waste materials, rubbish, the Consultant’s tools, construction equipment, machinery, and surplus material from and about the Project.

§ 10.3.9 The Consultant shall be responsible for cutting, fitting, or patching required to complete the Designed Work or to make its parts fit together properly and become fully integrated with the work of the Contractor.

§ 10.3.10 The Consultant shall provide the Owner, the Construction Manager, the Contractor, and the Architect with access to the Designed Work in preparation and in progress wherever such Designed Work is located.

§ 10.3.11 Any changes in the Designed Work after the execution of this Agreement may only be authorized by the Owner in writing and shall be considered an Additional Service of the Consultant. Adjustments in the contract sum and contract time resulting from a change in the Designed Work shall be determined by mutual agreement of the parties, in consultation with the Construction Manager. Notwithstanding the foregoing sentence, the Construction Manager, the Owner or the Architect will have authority to order minor changes in the Designed Work not involving adjustment in the Consultant’s compensation or extension of the contract time and not inconsistent with the intent of the Contract Documents, provided that the aesthetics and functionality of the Designed Work and the Project are not affected by such minor changes.

§ 10.3.12 So long as the Owner promptly pays the Consultant for all undisputed amounts, the Consultant shall (1) promptly pay all subconsultants, subcontractors and any other person or entity having mechanics’, material suppliers’, construction or similar lien rights or stop notices regarding the Project due to their performance of the Consultant’s obligations under the Contract Documents and (2) keep the Project free and clear of any and all such lien claims or stop notices filed by any person or entity at any tier performing the Designed Work or the Consultant’s obligations under the Contract Documents.

§ 10.4 Warranty

The Consultant warrants to the Owner that materials and equipment furnished by the Consultant will be of good quality, of recent manufacture, and new. The Consultant further warrants that the Designed Work will conform to the requirements of the Contract Documents, will be performed in a good and workmanlike manner, and will be free from defects. The Designed Work, materials, or equipment not conforming to these requirements may be considered defective. The Consultant’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Designed Work not executed by the Consultant, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued

in the name of the Owner, or shall be transferable to the Owner, and shall commence upon Substantial Completion of the Designed Work. If the Owner or the Architect so requests, the Consultant shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 10.5 Substantial Completion

§ 10.5.1 Subject to force majeure delay, the Consultant shall achieve Substantial Completion of the entire Designed Work by the date set forth in Exhibit. The term “**Substantial Completion**” shall mean the date certified and approved by the Owner, the Architect and the Construction Manager when (1) performance of the Designed Work is sufficiently complete in accordance with the Contract Documents so that the Designed Work can be used by the Owner for its intended purpose, (2) all required governmental inspections and approvals (if any) for the use and occupancy of the Designed Work have been conducted and obtained for the Owner, and (3) the Owner and the Construction Manager have approved a punch list of remaining, minor components of the Designed Work.

§ 10.5.2 When the Consultant considers that the Designed Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Consultant shall prepare and submit to the Owner, the Construction Manager and the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Consultant to complete all Designed Work in accordance with the Contract Documents.

§ 10.5.3 Upon receipt of the Consultant’s list, the Owner, the Construction Manager and the Architect will make an inspection to determine whether the Designed Work is substantially complete. When the Architect and the Construction Manager determine and the Owner agrees that the Designed Work is substantially complete, the Architect will issue a certificate of Substantial Completion, for the Owner’s review and when acceptable approval, which shall establish the date of Substantial Completion and fix the time within which the Consultant shall finish all items on the list accompanying the certificate.

§ 10.6 Final Completion

§ 10.6.1 The Consultant shall achieve (1) the full completion of the entire Designed Work in accordance with the Contract Documents, and (2) the full performance of all of the Consultant’s other obligations under this Agreement, except for the Consultant’s responsibility to correct defective or nonconforming Designed Work and to satisfy other requirements, if any, that extend beyond final payment to the Consultant (“**Final Completion**”) within sixty (60) days after Substantial Completion of the Designed Work.

§ 10.6.2 Upon receipt of the Consultant’s notice that the Designed Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, the Construction Manager and the Architect will promptly make such inspection and, when the Construction Manager and the Architect find (and the Owner agrees) that the Designed Work is acceptable under the Contract Documents and the Consultant has fully performed its obligations under the Contract Documents, the Architect will promptly issue a final Certificate for Payment stating that the Designed Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Consultant and noted in the final Certificate is due and payable.

§ 10.6.3 Final payment shall not become due until the Consultant has delivered to the Owner a complete release of all liens arising out of this Agreement from the Consultant and each subcontractor in the form required by the Owner, or a bond satisfactory to the Owner to indemnify the Owner against all such liens. If any such lien remains unsatisfied after payments are made, the Consultant shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys’ fees.

§ 10.6.4 Acceptance of final payment by the Consultant, a subcontractor or supplier shall constitute a waiver of claims by that payee.

§ 10.7 Correction of Designed Work

§ 10.7.1 The Consultant shall promptly correct Designed Work rejected by the Architect, the Construction Manager or the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Design Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect’s services and expenses made necessary thereby, shall be at the Consultant’s expense.

§ 10.7.2 In addition to the Consultant's obligations under Section 10.7.1, if, within one (1) year after the date of Substantial Completion of the Designed Work, or by terms of an applicable special warranty required by the Contract Documents, any of the Designed Work is found to be not in accordance with the requirements of the Contract Documents, the Consultant shall correct it promptly after receipt of notice from the Owner to do. The Owner shall give such notice promptly after discovery of the condition.

§ 10.7.3 If the Consultant fails to correct nonconforming Designed Work within a reasonable time, the Owner may correct it in accordance with Section 10.3.5.

§ 10.7.4 The one-year period for correction of Designed Work shall be extended with respect to portions of Designed Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Designed Work.

§ 10.8 Assignment of Subcontracts

The Consultant shall include in each subcontract (or work order) entered into in connection with the Designed Work a provision permitting the Consultant to assign each subcontract to the Owner or the assignee of the Owner upon the termination of this Agreement and upon the Owner's election to accept such assignment. Upon the termination of this Agreement, the Consultant agrees, upon the Owner's written request, to execute an assignment, in a form reasonably acceptable to the Owner, of any or all subcontracts to the Owner or the assignee of the Owner.

ARTICLE 11 SCOPE OF THE AGREEMENT

§ 11.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. In the event of a conflict between the terms and conditions of this C103™-2015, Standard Form Agreement between Owner and Consultant and an attached exhibit, the terms and conditions of the C103-2015, Standard Form Agreement between Owner and Consultant shall take precedence.

§ 11.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C103™-2015, Standard Form of Agreement Between Owner and Consultant.
- .2 Exhibits:

Exhibit A	Project Description
Exhibit B	Consultant's Scope of Work
Exhibit C	Project Schedule and Milestone Dates
Exhibit D	Consultant's Compensation and Hourly Rates

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

[REDACTED]

OWNER (Signature)

« »« »

(Printed name and title)

CONSULTANT (Signature)

« »« »

(Printed name and title)