Vestavia Hills
City Council Agenda
December 8, 2025
6:00 PM

1. Call to Order
2. Roll Call
3. Invocation — Butch Williams, Vestavia Hills Chaplain
4. Pledge Of Allegiance
5. Approval Of The Agenda
6. Announcements, Candidates and Guest Recognition
7. City Manager's Report - Discussion of Gateway Signage Design Considerations
8. Councilors' Reports
9. Approval Of Minutes - November 17, 2025 work session minutes and November 24, 2025 regular meeting minutes

Old Business (Public Hearing)

10. Public Hearing - Ordinance Number 3304 - An Ordinance authorizing the Mayor and City Manager to execute and deliver an agreement with the State of Alabama by and through the Alabama Department of Transportation for the funding of the construction of the Greendale Road Sidewalk through the awarded ALDOT TAP grant TAPAA-TA26(920)

New Business

11. Resolution Number 5610 - A Resolution appointing a member to the Vestavia Hills Parks and Recreation Board
12. Resolution Number 5611 - A Resolution appointing a member to the Vestavia Hills Library Board

New Business Requesting Unanimous Consent (Public Hearing)

First Reading (No Action To Be Taken At This Meeting)

13. Public Hearing - Ordinance Number 3305 - Rezoning - 4308, 4312, 4316 and 4320 Dolly Ridge Road; Rezone from VH R-4 (medium density residential district) to VH B-1.2 (planned neighborhood mixed use district); Paradox Properties, LLC, owner

14. Public Hearing - Ordinance Number 3306 - Rezoning and Conditional Use Approval - 4521 Pine Tree Circle; Lot 23, Topfield Subdivision; Rezone from VH O-1 to VH B-2 with limited uses and conditional use approval for on-site indoor storage of certain construction materials and equipment; Canwyn LLC, owners
15. Public Hearing - Ordinance Number 3307 - Authorizing the Mayor and City Manager to Execute an Architectural Professional Service Contract for the Construction of an Eastside Police Operations Building Located at the Sicard Hollow Athletic Complex
16. Public Hearing - Ordinance Number 3308 - An Ordinance Authorizing the Mayor and City Manager to Execute an Architectural Professional Service Contract for the Construction of a Maintenance Facility Located at the Sicard Hollow Athletic Complex
17. Public Hearing - Ordinance Number 3309 - An Ordinance Authorizing the Mayor and City Manager to Execute a Limited Scope Architectural Professional Service Contract to Begin the Design Process for an Eastside Library Facility
18. Citizens Comments
19. Time Of Adjournment

PUBLIC HEARING PROCEDURES

The following procedures shall be followed for every public hearing of the City Council:

- All comments shall be limited to **3 minutes**. A countdown clock will be provided on the video screens.
- Do not duplicate comments made by previous speakers. For example, if traffic is mentioned as an issue, do not readdress that issue.
- All comments shall be directed to the Mayor and/or presiding officer. Do not address the audience or the applicant.
- Each speaker shall identify himself, including full name and address.

SPECIAL NOTICE CONCERNING CITY COUNCIL MEETINGS

If you prefer not to attend a City Council meeting or work session in person, you may participate remotely:

- **Videoconference:** To participate by videoconference, you may access the meeting via Zoom at https://us02web.zoom.us/j/5539517181. When the Zoom.us window opens in your browser, click "Allow" to be placed in a virtual "waiting room." The host will open the meeting and allow all participants to join the meeting at that time. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, activate the "video" feature and unmute yourself by toggling the mute button. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then you may address the Council. Some useful Zoom functions include: microphone Mute/Unmute; Start/Stop Video; and View Participants – opens a pop-out screen that includes the "Raise Hand" icon that you may use to raise a virtual hand.
- **Teleconference:** To participate by telephone, dial 312.626.6799 and enter the meeting ID: 5539517181. All participants will be automatically muted upon entrance to the meeting. If you wish to speak during time(s) identified for public input, unmute yourself by pressing *6 on your keypad. Then state your name and wait for the Mayor to recognize you. When the Mayor recognizes you and gives you the floor, state your name and address for the record and then address the Council.

Meetings may be recorded. By participating in the meeting, you are consenting to be recorded.

"Zoom-bombing." Zoom-bombing is a cyber-crime and is punishable by law. In the event of an attendee intruding into any City of Vestavia Hills Zoom meeting, the online broadcast will be terminated immediately. Council and/or board members may be readmitted but online attendees will not. Although Zoom-bombing is not a frequent occurrence, those wishing to make public comment should attend the meeting in person.

Vestavia Hills
City Council Minutes
November 17, 2025
6:00 PM

1. Call to Order

The City Council of Vestavia Hills met in regular work session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order and the City Clerk called the roll with the following:

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilors Kimberly Cook, Ali Pilcher, Mike Vercher

MEMBERS ABSENT: None.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Shane Ware, Police Chief; Zachary Clifton, Asst. Finance Director; Ethan Fisher, City Engineer; Jamie Lee, Director of Parks and Leisure Services; Taneisha Tucker, Director of Library in the Forest; Daniel Tackett, Asst. Director, Library in the Forest; Ryan Farrell, Deputy Fire Chief; Scott Ferrell, Deputy Fire Chief; Umang Patel, Court Director*

**attended via Zoom*

Current and Future Budget Plan - Jeff Downes

Mr. Downes presented details on the series of projects known as the "Plan for Growth." He explained the growth of the City on the east side of the city, which is creating additional demand for fire, police, and library services in Liberty Park, all of which was discussed the previous administration at 2025 Strategic Planning. At that time, the Council decided to gather information on these projects which are divided into FY26 projects and future projects.

The FY 26 projects include the renovation of the Vestavia Hills Alberto C. Zaragoza, Jr., Fire Station No. 4; installation of a pool heater at the Vestavia Hills Aquatic

Center; professional fees for construction and SHAC sitework plans. These projects are funded in the FY26 budget and have already been approved. The City has retained Doster Construction to guide the City through the construction and planning for these projects. He showed the details of what was approved in the FY26 budget totaling $8,182,188.

Mr. Downes explained that the Phase II projects are estimated at roughly $34.5million, and he asked if there could be some discussion and feedback on these projects. He stated that Doster Construction will give a progress report on Phase One projects and then, following that, discussion on the Phase II projects and seek concurrence on what due diligence needs to occur next.

Mrs. Cook asked if the newest Council members have been briefed on what the Council saw at strategic planning, what was discussed and decided previously, and if there were any questions concerning it. Mrs. Pilcher and Mr. Vercher indicated they had seen the surveys and information.

Presentation by Doster Construction regarding Phase One (FY26) Projects - Doster Construction

Brian Corley, Doster Construction, gave updates on the three projects:

- **VHAC pool heater** - Half of the construction documents have been received and there is a request for more storage in the vicinity of the center for storing pool furniture and equipment. The addition is being studied as an "add alternate". Discussion ensued as to a cover which is also still being explored to determine the cost vs. value of energy efficiency. The schedule shows a bid just before Christmas with completion of the project, hopefully, prior to Memorial Day. The intent is not to use the heater until next Fall, so a delay in the project would not be of great concern. Budget is $300,000.
- **Vestavia Hills Alberto C. Zaragoza, Jr. Fire Station No. 4 renovations** - These drawings and plans are more complicated. The apparatus would need to be moved to an alternative location. The Fire Department has asked for an additional driveway access and an additional bay for an alternate apparatus storage. Discussion ensued that the extra drive is needed because the public comes to the station and uses the same drive as the emergency apparatus, which may cause conflicts. He showed details of the renovations and the building layout. The building would have a "safe shelter" in the center for storms.
    - Mr. Downes stated that this might also serve as an off-site computer storage room for disaster recovery.
    - Mr. Corley stated they are expecting construction documents in March with an April bid. He explained that the program budget is $5.6 million for this project.
    - Mr. Downes stated there will be a portable building set up as a temporary shelter at the rear of the property for the firefighters. Medics will be housed at a Livano cottage, in the Bray development, as a base of operations.
- **SHAC roadway construction**. An engineering contract has been secured, and a survey is in process. This will bring the road up to a gravel base, with no asphalt or curb/gutter. It would also include grading to building pads. Milestone dates are construction drawings in December, with design in

January. Mr. Downes stated that is a very aggressive schedule. Budget is $1.8 million.

Discussion with City Council on next steps associated with Phase Two (FY27) Projects

Mr. Corley showed the initial masterplan for SHAC. He showed the location of the projected maintenance facility, police facility, satellite library, and intersection and access road improvements at the current maintenance facility site. The estimate is $14.7 million for a police department training and operations facility; $1.7 million for a park maintenance facility; and $9 million for a library facility to include additional parking estimated $1.2 million. Discussion ensued as to safety concerns at the current access road, and need for additional parking.

Mr. Downes stated that the total program cost for the library is $9 million, which includes construction, materials, furniture, equipment (books, computers) etc., which is expected to be offset by fundraising. The net cost to the City budget would be less the funds that are raised by the Library Board and Foundation.

Mr. Downes opened discussion on the Phase Two projects and financing options.

Discussion ensued among the Council concerning the improvements needed.

Mrs. Cook stated that Liberty Park and Cahaba Heights residents have been talking about the need for library services since she moved to Liberty Park in 2002, and that this was an issue during the election. She stated that the library provides space for the community to meet and hold events, and this is something greatly needed on the east side of town.

Mr. Weaver stated that these issues were brought out last year and, after a lot of analysis, he feels that the City is right on track with all of these projects.

The Mayor added that all the surveys show library services are wanted and needed in Liberty Park.

Mrs. Pilcher asked if a library is needed or a community space. VHECH to SHAC and it is 6.5 miles; VHECH to Library in the Forest is 5.2 miles, so this new facility would just really be for one community -- Liberty Park.

Mayor Curry said the facility needs to provide book space and meeting space.

Mrs. Cook said it is the programs that distinguish our library – not books on shelves. It's impossible to distinguish community space from the library books, because both are important and appropriate.

Mrs. Pilcher asked how this would affect current programs at the Library in the Forest.

Mrs. Tucker stated that the vision for the "Library in the Park" would be more dedicated to children. Outreach funding has already been set aside for these areas and staff are doing as much as possible, but there are no facilities for these programs.

Mrs. Pilcher asked how the library is reaching out currently.

Mrs. Tucker said we visit them when we can at the park, which limits to outdoor programming. When the library tried to work with Parks and Recreation Board, there was no space they could offer. Residents have asked for space for these activities and for access to technology. Discussion ensued about the need for a library in this area.

Mrs. Cook noted that the civic center is too far away for Liberty Park residents to make use of that facility, and space at SHAC might serve a variety of ages and needs.

Mr. Downes stated there will need to be some studies regarding cost and how to fund Phase 2 projects. The Council concurred and Mr. Downes stated he will do his due diligence and report back to the Council his findings.

Time of Adjournment

There being no further business, Mr. Weaver made a motion to adjourn. The Mayor adjourned the meeting at 6:55 pm.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk

Vestavia Hills
City Council Minutes
November 24, 2025
6:00 PM

1. Call to Order

The City Council of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. A number of staff and members of the general public also attended virtually, via Zoom.com, following publication pursuant to Alabama law. The Mayor called the meeting to order and the City Clerk called the roll.

2. Roll Call

Roll call was as follows:

MEMBERS PRESENT: Mayor Ashley Curry, Mayor Pro-Tem Rusty Weaver, City Councilors Kimberly Cook, Ali Pilcher, and Mike Vercher

MEMBERS ABSENT: None.

OTHER OFFICIALS PRESENT: Jeff Downes, City Manager; Patrick H. Boone, City Attorney; Cinnamon McCulley, Asst. City Manager; Rebecca Leavings, City Clerk; Shane Ware, Police Chief; Melvin Turner, Finance Director; Zachary Clifton, Asst. Finance Director; Lori Beth Kearley, Public Works Director; Ethan Fisher, City Engineer; Marvin Green, Fire Chief;

3. Invocation — David Phillips, Vestavia Hills Chaplain

4. Pledge Of Allegiance

5. Approval Of The Agenda

The Mayor opened the floor for a motion to approve the agenda as presented.

MOTION: Approve the agenda as presented. Motion By: Rusty Weaver. Seconded By: Kimberly Cook.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Ali Pilcher, Mike Vercher.
No: None. Abstain: None. Motion passed.

6. Announcements, Candidates and Guest Recognition

- Mayor Curry welcomed Vestavia Hills Library Board member Susan Swagler to the meeting.

7. City Manager's Report

- Mr. Downes gave an update on the following capital projects:
    - The round-a-bout has reached its completion. This was a joint project between the County and the City and is located at Cahaba Heights Road, Sicard Hollow Road and Blue Lake. The project came in under budget and the City is set to get a refund in excess of $250,000.
    - Three bidders responded to the invitation for bid for the Veteran's Memorial and came in on budget, so that bid is being reviewed and should be presented to the Council soon.
    - The Highway 31 Gateway project was approved by the Council accepting the bid from the low bidder, Gillespie Construction. The contractor is working with ALDOT and the notice to proceed would be secured shortly after that. The initial focus will be the Hwy 31 erosion control and limited grading with some nightly closures on the highway. The Council will be shown newer designs as ways to improve the aesthetic connection between the wall and temple structure, while remaining within the original scope of work, with a simple change order. The retaining wall work will begin in January and the Council should have the final decision made by then with an expected completion (weather permitting) of spring 2026.
    - Two ALDOT projects are underway with contracts between the contractor and ALDOT. The City is not a part of the contracts.
        - Massey Road project issues have been resolved and should be finished about March 2026.
        - The pedestrian bridge has been delayed by the contractor, which might push completion until after the New Year. There are liquidated damages in the contract, but the contract is not with the City, but with ALDOT. The City is advocating for ALDOT to use all the provisions for liquidated damages due to the delay.

8. Councilors' Reports

- Mr. Vercher reported that the Parks and Recreation Board interviews will culminate on December 4. He stated that they have received several great candidates.
- Mrs. Cook stated she will be attending her first Library Board meeting on December 3. She met with Library Director Taneisha Tucker last week to get updated on recent Board activities.
- Mr. Weaver stated that the Planning and Zoning Commission met in regular session with the approval of several plats and one recommendation for rezoning which will come to City Council later.
- Mrs. Pilcher stated that the Board of Education met last week and approved a couple of improvements for some schools. Also, congratulations to the Principal of the 9th Grade School, Bill Mann, who earned his doctorate.

- The Mayor stated that there was a tremendous turnout for the tree-lighting ceremony that was in the Civic Center last week. He stated that the ceremony was nice with several choirs performing. Mrs. Cook also attended.
- Mr. Downes stated that the PlacerAI software blacks out government buildings so there is no way to gauge the numbers that attended the treelightng; however, more than 6,000 attended the Deck the Heights event in Cahaba Heights.

9. Approval Of Minutes - November 10, 2025, regular meeting minutes

The Mayor announced that the minutes of the November 10, 2025, are being presented for approval. He opened the floor for a motion.

MOTION: Approve the minutes of the November 10, 2025, regular meeting minutes as presented. Motion By: Rusty Weaver. Seconded By: Kimberly Cook.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Ali Pilcher, Mike Vercher.
No: None. Abstain: None. Motion passed.

Old Business (Public Hearing)

10. Public Hearing - Resolution Number 5599 - A Resolution authorizing the installation of a new support structure for a small cell facility to be located in the right-of-way at 3801 Crosshaven Drive U1; AT&T owners, Allison Crows, Mastec, contractors

MOTION: Approve Resolution Number 5599 as presented. Motion by: Rusty Weaver. Seconded by: Mike Vercher.

Mr. Downes explained that this request is for a small cell facility on Crosshaven. He reminded everyone of the City Attorney and Attorney General legal opinions concerning the Council's limits on restricting these facilities. He showed a map of the number of these facilities already existing in Cahaba Heights and the targeted site for this proposed pole.

The Mayor opened the floor for a public hearing.

Chris Malone, 538 Cross Street, Springville, stated that he represents the Cahaba Heights Baptist Church and asked if there is any effect on the residences in the area based upon recent articles that show harmful effects of 5G exposure, and wanted to know how the tower will look, especially whether a wood tower will fit in with the aesthetics. His church is right across the street from the proposed pole location.

Michelle Fogle, AT&T, stated there are FCC guidelines to address these health concerns which show that this technology is not harmful for the community. The wooden pole should be more aesthetically pleasing because of the treeline located in the area along with the fact that all the surrounding poles in this area resemble this pole.

Discussion ensued that the City Council cannot deny his due to health concerns due to the laws of the government, and there's no basis for health concerns that is located on the City's website.

Mrs. Cook read a statement from the city website on small-cell facilities and their safety. She encouraged the public to get more information by searching for "small-cell" on the city's website.

There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Ali Pilcher, Mike Vercher.
No: None. Abstain: None. Motion passed.

11. Public Hearing - Ordinance Number 3300 - Rezoning - 3122, 3128, 3134 and 3136 Sunview Drive; Rezone from Vestavia Hills B-1.2 to Vestavia Hills B-1.2 with a revised plan for a bank

MOTION: Approve Ordinance Number 3300 as presented. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

Mr. Weaver reported that the Planning and Zoning Commission considered this request and recommends approval of the site plan revision, changing the use from a salon to a branch bank with drive-thru.

The Mayor opened the floor for a public hearing. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Ali Pilcher, Mike Vercher.
No: None. Abstain: None. Motion passed.

12. Public Hearing - Ordinance Number 3301 - Rezoning - 3951 Wall Street; Rezone from Vestavia Hills B-2 to Vestavia Hills R-9; KSA Holdings, LLC, owners; Jason Kessler, representing

MOTION: Approve Ordinance Number 3301 as presented. Motion by: Kimberly Cook. Seconded by: Rusty Weaver.

Mr. Weaver reported that the Planning and Zoning Commission unanimously recommends changing this zoning to allow the construction of six townhomes.

Mrs. Pilcher said she appreciated the petition from surrounding residences in support of the request.

The Mayor opened the floor for a public hearing. There being no one present to address the Council on this issue, the Mayor closed the public hearing and called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Ali Pilcher, Mike Vercher.
No: None. Abstain: None. Motion passed.

New Business

13. Resolution Number 5604 - A Resolution declaring certain personal property as surplus and authorizing the City Manager to sell/dispose of said vehicles.

MOTION: Approve Resolution Number 5604 as presented. Motion by: Rusty Weaver. Seconded by: Kimberly Cook.

Mr. Downes stated that these are two fire apparatus which are being replaced. The City expects to receive top dollar for these items that are in high demand.

There being no further discussion, the Mayor called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Ali Pilcher, Mike Vercher.
No: None. Abstain: None. Motion passed.

14. Resolution Number 5605 - A Resolution rescheduling the January 19, 2026, City Council meeting to January 21, 2026, in observance of the Martin Luther King, Jr., holiday

MOTION: Approve Resolution Number 5605 as presented. Motion by: Rusty Weaver. Seconded by: Ali Pilcher.

The Mayor stated that this will move the January 19, 2025, Council meeting to January 21, 2025.

There being no further discussion, the Mayor called for the question.

VOTE: Roll call vote as follows: Yes: Ashley Curry, Rusty Weaver, Kimberly Cook, Ali Pilcher, Mike Vercher.
No: None. Abstain: None. Motion passed.

New Business Requesting Unanimous Consent (Public Hearing)

First Reading (No Action To Be Taken At This Meeting)

15. Public hearing - Ordinance Number 3304 - An ordinance authorizing the Mayor and City Manager to execute and deliver an agreement with the State of Alabama by and through the Alabama Department of Transportation for the funding of the construction of the Greendale Road Sidewalk through the awarded ALDOT TAP grant TAPAA-TA26(920)

16. Citizens Comments

- None.

17. Time Of Adjournment

There being no further business, Mrs. Cook made a motion to adjourn. The Mayor adjourned the meeting at 6:31pm.

Ashley C. Curry, Mayor

ATTESTED BY:

Rebecca Leavings, City Clerk

CITY OF VESTAVIA HILLS
PUBLIC SERVICES
INTER-DEPARTMENT MEMO

December 8, 2025

To: Jeff Downes, City Manager

From: Ethan Fisher, City Engineer

Cc: Lori Beth Kearley, Public Services Director
Christopher Brady, City Engineer

RE: Public Hearing - Ordinance Number 3304 - An Ordinance authorizing the Mayor and City Manager to execute and deliver an agreement with the State of Alabama by and through the Alabama Department of Transportation for the funding of the construction of the Greendale Road Sidewalk through the awarded ALDOT TAP grant TAPAA-TA26(920)

Background:
The Engineering Department submitted an application for the Transportation Set-aside program (TAP) in line with Resolution Number 5566. The City was awarded the grant and is now preparing the necessary plans to bid and construct the project with ALDOT's oversight. Based on the award, the City is required to enter into a contract with the State of Alabama to establish how the project will be managed and how and when funding is paid and reimbursed. This project is consistent with our sidewalk masterplan priorities.

Recommendation:

The Engineering Department recommends approval of the ordinance to allow for the execution of the contract with the State of Alabama.

Fiscal Impact:
The funding is anticipated to be budgeted in FY27. No current fiscal impact is anticipated.

Attachments:
1. Ordinance 3304
2. TAPAA-TA26(920) 100080926 VESTAVIA HILLS (BLANK)

ORDINANCE NUMBER 3304

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH THE STATE OF ALABAMA ACTING BY AND THROUGH THE ALABAMA DEPARTMENT OF TRANSPORTATION RELATING TO A SIDEWALK PROJECT

BE IT ORDAINED, BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA ("City"), AS FOLLOWS:

That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation ("ALDOT") relating to a project for:

Sidewalk along Greendale Rd. from Crosshaven Dr. to White Oak Dr. and along White Oak Dr. from Greendale Rd. to East St.; Project# TAPAA-TA26(920); CPMS Ref# 100080926.

Which agreement is before this Council, and that the agreement, marked as Exhibit A attached to and incorporated into this Ordinance Number 3304 as if written fully therein, be executed in the name of the City, by the Mayor and City Manager for and on its behalf and that it be attested by the City Clerk and the official seal of the City be affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City.

DONE, ORDERED, ADOPTED and APPROVED this the 8th day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, the undersigned qualified and acting Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true copy of Ordinance Number 3304 lawfully passed and adopted by the City named therein, at a regular meeting of such Council held on the 8th day of December, 2025, and that such resolution is on file in the City Clerk's Office.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, New Merkel House and Vestavia Hills Civic Center this the ____ day of _____, 2025.

_____

City Clerk

CONSTRUCTION
AGREEMENT
FOR A
TRANSPORTATION ALTERNATIVES PROGRAM
PROJECT

BETWEEN THE STATE OF ALABAMA
AND THE
CITY OF VESTAVIA HILLS
Jefferson County

Project No. TAPAA-TA26(920)
CPMS Ref# 100080926

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Vestavia Hills, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the sidewalk along Greendale Rd. from Crosshaven Dr. to White Oak Dr. and along White Oak Dr. from Greendale Rd. to East St.; Project# TAPAA-TA26(920); CPMS Ref# 100080926.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

A. **Project Funding:** Funding for this Agreement is subject to availability of Federal Aid funds at the time of authorization. It is expressly understood that federal funds for this project will be provided from Transportation Alternatives Program (TAP) funds as authorized by the U.S. Congress and the STATE will not be liable for any funding. Cost for the project will be financed, when eligible for Federal participation, on the basis of 80 percent Federal funds and 20 percent CITY funds, based on the contract as let price plus CE&I or the estimated costs below, whichever is lower. Any deficiency in Federal Aid or overrun in costs will be borne by the CITY from CITY funds unless approved in writing by the STATE. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible costs, whichever is less.

B. The estimated cost and participation by the various parties is as follows:

FUNDING SOURCE	ESTIMATED COSTS
Federal TAP Funds	$ 767,003.91
City Funds	$ 191,750.98
TOTAL (Incl CE&I)	$ 958,754.89

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the FHWA or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost to the Project. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

B. The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will be an eligible cost to the project, as approved by the application.

C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost to the Project.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for ***Procedures for Processing State and Industrial Access Funded County and City Projects***, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

D. The CITY will furnish all construction engineering for the project with CITY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost to the Project.

E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.

B. Associated Construction costs will be an eligible cost to the Project.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement. The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

   The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.

E. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), to the maximum extent permitted by Alabama law and the Constitution of the State of Alabama, the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees caused by the negligent, careless or unskillful acts of the CITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.

F. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.

G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law.

PART FIVE (5): ACCOUNTING PROVISIONS

A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.

C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

   All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

   The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

   The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

   The CITY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.

E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

A. By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.

B. It is agreed that the terms and commitments contained in this agreement shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in this agreement shall be deemed null and void.

C. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.

E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.

F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.

G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

City of Vestavia Hills, Alabama **ATTEST:**

By: _____ **By:** _____

As Mayor/City Manager (Signature) **Clerk (Signature)**

Ashley C. Curry/ Jeff Downes _____

Print Name of Mayor/City Manager **Print Name of Clerk**

(AFFIX SEAL)

This contract has been legally reviewed and approved as to form.

By: _____

Legal Counsel for

Alabama Department of Transportation

RECOMMENDED FOR APPROVAL:

_____ _____

DeJarvis Leonard, P.E. **Bradley B. Lindsey, P.E.**

East Central Region Engineer **State Local Transportation Engineer**

_____

Edward N. Austin, P. E.

Chief Engineer

STATE OF ALABAMA, ACTING BY AND THROUGH

THE ALABAMA DEPARTMENT OF TRANSPORTATION

_____

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS _____DAY OF _____, 20_____.

_____

KAY IVEY

GOVERNOR, STATE OF ALABAMA

RESOLUTION NUMBER_____

BE IT RESOLVED, by the City of Vestavia Hills as follows:

That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a project for:

Sidewalk along Greendale Rd. from Crosshaven Dr. to White Oak Dr. and along White Oak Dr. from Greendale Rd. to East St.; Project# TAPAA-TA26(920); CPMS Ref# 100080926.

Which agreement is before this Council, and that the agreement be executed in the name of the City, by the Mayor for and on its behalf and that it be attested by the City Clerk and the official seal of the City be affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City.

I, the undersigned qualified and acting Clerk of the City of , Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City named therein, at a regular meeting of such Council held on the _____day of _____, 20____, and that such resolution is on file in the City Clerk's Office.

ATTESTED:

_____ _____

City Clerk Mayor

_____day of _____, 20_____, and that such resolution is of record in the Minute Book of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this_____day of _____, 20_____.

_____

City Clerk

(AFFIX SEAL)

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:

   1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

   2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CITY is in the exclusive possession of another who fails or refuses to furnish this information, the CITY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the CITY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the CITY under contract until the CITY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The CITY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The CITY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a CITY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the CITY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the CITY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

The CITY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not 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. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CITY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CITY agrees to comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CITY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The CITY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The CITY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

a. The CITY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

CITYS' CERTIFICATIONS

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION

SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL ACCESS FUNDED COUNTY AND CITY PROJECTS

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

1-20

Rev. 10/2017

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL: _____

BUREAU CHIEF/REGION ENGINEER

APPROVAL: _____

CHIEF ENGINEER

APPROVAL: _____ NOVEMBER 1, 2017

TRANSPORTATION DIRECTOR **DATE**

1-20

Rev. 10/2017

RESOLUTION NUMBER 5610

APPOINTING A MEMBER TO THE VESTAVIA HILLS PARKS AND RECREATION BOARD

BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

WHEREAS, _____ is hereby appointed as a member of the City of Vestavia Hills Parks and Recreation Board; and

WHEREAS, the appointment shall be effective January 1, 2026, and shall expire December 31, 2030.

APPROVED AND ADOPTED this the 8th day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 5611

APPOINTING A MEMBER TO THE VESTAVIA HILLS LIBRARY BOARD

BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

WHEREAS, _____ is hereby appointed as a member of the City of Vestavia Hills Library Board; and

WHEREAS, the said appointment shall be effective January 1, 2026 and shall expire December 31, 2029.

APPROVED AND ADOPTED this the 8th day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS
PLANNING & ZONING
INTER-DEPARTMENT MEMO

December 8, 2025

To: Jeff Downes, City Manager

From: Conrad Garrison, City Planner

Cc: Rebecca Leavings, City Clerk

RE: Public Hearing - Ordinance Number 3305 - Rezoning - 4308, 4312, 4316 and 4320 Dolly Ridge Road; Rezone from VH R-4 (medium density residential district) to VH B-1.2 (planned neighborhood mixed use district); Paradox Properties, LLC, owner

---

Background:
This request is for a rezoning of properties along a transitional portion of Dolly Ridge Road to rezone from VH R-4 to VH B-1.2 conditioned upon a mandatory 20' buffer adjacent to all residential, maintaining a large buffer toward the rear of the property as shown in the attached drawings and limiting the use of the property to professional/medical offices and their ancillary uses with no drive thrus. Light poles shall also be limited to 10' in height.

Recommendation:
Planning and Zoning Commission considered this at their regular November meeting and unanimously recommended approval with the above stated conditions which have been written into the Ordinance.

Fiscal Impact:
na

Attachments:
1. Ordinance 3305
2. Protest2

ORDINANCE NUMBER 3305

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS R-4 TO VESTAVIA HILLS B-1.2

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills R-4 (medium density residential) to Vestavia Hills B-1.2 (planned neighborhood mixed use district):

4308, 4312, 4316 and 4320 Dolly Ridge Road
Paradox Properties, LLC, owner(s)

More particularly described as follows:

Parcel I: Lots 2 and 3, Block 1, according to the Survey of New Merkle Heights, as recorded in Map Book 19, Page 92, in the Office of the Judge of Probate of Jefferson County, Alabama.

Parcel II: A portion of Lot 4, Block 1, according to the Survey of New Merkle Heights, as the same is recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Map Book 19, Page 92, more particularly described as follows:

Commence at the Southwest corner of said Lot 4 in Block 1 of New Merkle Heights Survey as recorded in Map Book 19 at Page 92 in the Probate Office of Jefferson County, Alabama and run thence East along the South line of said Lot 4 for a distance of 342.37 feet to the point of beginning of the portion of Lot 4 here considered; from the Point of Beginning thus established continue thence East along the said South line of said Lot 4 for a distance of 167.63 fee to a point on the West right of way line of a public road known as Dolly Ridge Road; thence turn an angle to the left of 60°22'30" and run along said West right of way line of said Dolly Ridge Road for a distance of 114.97 feet; thence turn an angle to the left of 119°37'30" and run West along the North line of said Lot 4 for a distance of 210 feet, more or less, to a point on said North line which is 360 feet East of the Northwest corner of said Lot 4; thence turn an angle to the left of 81°46' and run for a distance of 100.96 feet to the Point of Beginning.

Parcel lII: Part of Lot 5, Block 1, in the Survey of New Merkle Heights, as recorded in Map Book 16, Page 20 and Map Book 19, Page 92, in the Probate Office of Jefferson County, Alabama and situated in the SE 1/4 of NW 1/4 of Section 22, Township 18, Range 2 West, Jefferson County, Alabama, more particularly described as follows:

Commence at the Southwest corner of the SE 1/4 of NW 1/4 of Section 22, Township 18, Range 2 West; thence North along the West line of said 1/4-1/4 section for a distance of 426.5 feet to the Southwest corner of Lot 5, Block 1; thence at an angle of 91°49' to the right and along the South boundary line of said lot a distance of 363.5 feet for the point of beginning of the property herein described: thence continue along the South boundary of said lot in an Easterly direction for a distance of 200 feet to the West right of way line of the country road known as Caldwell Mill Road; thence in a Northerly direction along the West right of way line of said road for a distance of 115.4 feet; thence in a Westerly direction along the North line of Lot 5, Block 1, and parallel with the South line of said lot for a distance of 260.81 feet; thence at an angle of 91°49' to the left and parallel to the West line of said lot for a distance of 100 feet to the point of beginning.

BE IT FURTHER ORDAINED that said rezoning be conditioned upon the following: (1) the development shall be constructed substantially as described in plans attached to and incorporated into this Ordinance Number 3305 as if written fully therein as detailed in the attached drawings; and (2) the uses on said property shall be limited to professional and medical offices and their ancillary uses with no drive thru; and (3) a 20’ landscape buffer shall be reserved adjacent to neighboring properties and must include the large landscaping buffer as shown in the attached drawings; and (4) any parking lot lighting shall be limited poles no more than 10’ in height with LED or better bulbs; and (5) building heights shall be limited to 2-stories; and

This Ordinance Number 3305 shall become effective immediately upon the adoption, approval and publishing/publication as required by Alabama law.

APPROVED and ADOPTED this the 22nd day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

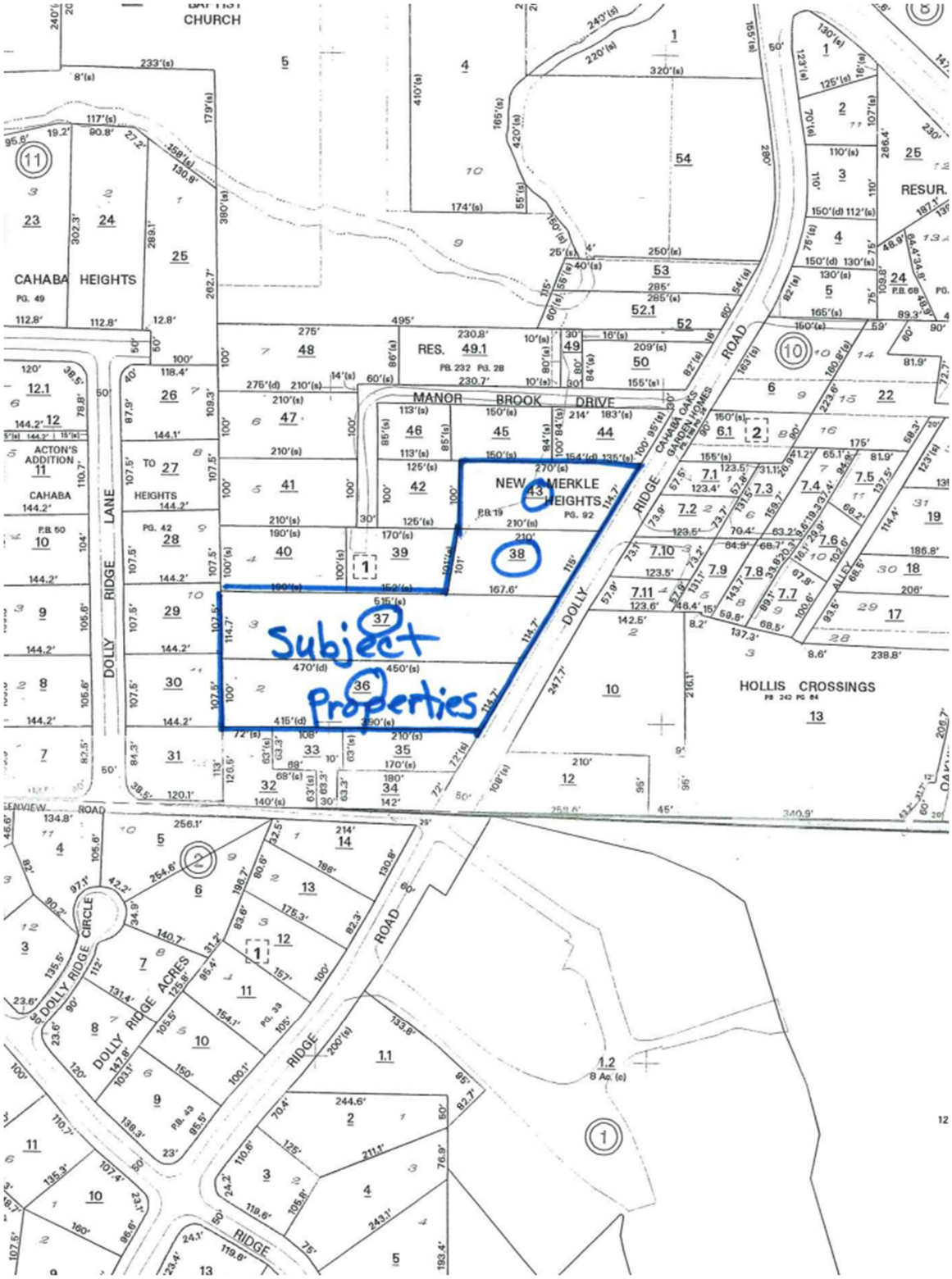
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3305 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 22nd day of December, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk


Subject Properties
CHURCH
CAHABA HEIGHTS
PG. 49
ACTON'S ADDITION
CAHABA
HEIGHTS
TO
DOLLY RIDGE LANE
MANOR BROOK DRIVE
RES. 49.1
PB. 232 PG. 28
NEW MERKLE HEIGHTS
PG. 92
CAHABA OAKS GARDEN HOMES
DOLLY RIDGE ROAD
HOLLIS CROSSINGS
RESUR.
DOLLY RIDGE CIRCLE
DOLLY RIDGE ACRES
PG. 33
RIDGE ROAD
ALLEY

City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation

Case Number: RZ-25-10

Owner Name: John Weaver, Member

Owner Address: 3015 Weatherton Drive
Mountain Brook, Alabama 35223

Representative: Joshua Watkins

Rep. Address: 4000 Eagle Point Corp. Dr.
Birmingham, AL 35242

Project Address: 4308 Dolly Ridge Road

Legal Description:

Parcel I:

Lots 2 and 3, Block 1, according to the Survey of New Merkle Hetghts, as recorded in Map Book 19, Page 92, in the Office of the Judge of Probate of Jefferson County, Alabama.

Parcel II:

A portion of Lot 4, Block 1, according to the Survey of New Merkle Heights, as the same is recorded in the Office of the Judge of Probate of Jefferson County, Alabama, in Map Book 19, Page 92, more particularly described as follows:

Commence at the Southwest corner of said Lot 4 in Block 1 of New Merkle Heights Survey as recorded in Map Book 19 at Page 92 in the Probate Office of Jefferson County, Alabama and run thence East along the South line of said Lot 4 for a distance of 342.37 feet to the point of beginning of the portion of Lot 4 here considered; from the Point of Beginning thus established continue thence East along the said South line of said Lot 4 for a distance of 167.63 feet to a point on the West right of way line of a public road known as Dolly Ridge Road; thence turn an angle to the left of 60°22'30" and run along said West right of way line of said Dolly Ridge Road for a distance of 114.97 feet; thence turn an angle to the left of 119°37'30" and run West along the North line of said Lot 4 for a distance of 210 feet, more or less, to a point on said North line which is 360 feet East of the Northwest corner of said Lot 4; thence turn an angle to the left of 81°46' and run for a distance of 100.96 feet to the Point of Beginning.

Parcel III:

Part of Lot 5, Block 1, in the Survey of New Merkie Heights, as recorded in Map Book 16, Page 20 and Map Book 19, Page 92, in the Probate Office of Jefferson County, Alabama and situated in the SE 1/4 of NW 1/4 of Section 22, Township 18, Range 2 West, Jefferson County, Alabama, more particularly described as follows:

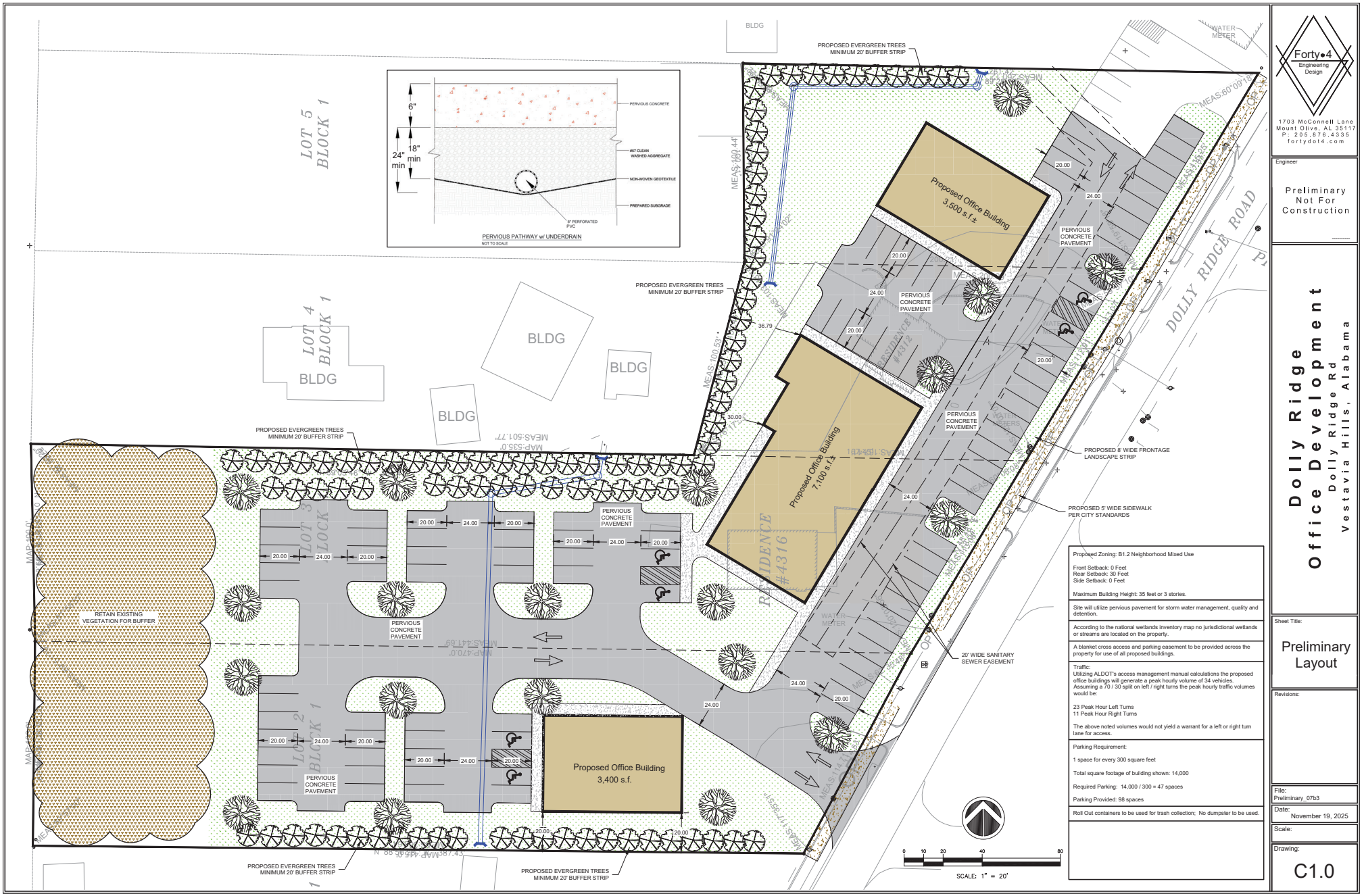
Commence at the Southwest corner of the SE 1/4 of NW 1/4 of Section 22, Township 18, Range 2 West; thence North along the West line of said 1/4-1/4 section for a distance of 426.5 feet to the Southwest corner of Lot 5, Block 1; thence at an angle of 91°49' to the right and along the South boundary line of said lot a distance of 363.5 feet for the point of beginning of the property herein described: thence continue along the South boundary of said lot in an Easterly direction for a distance of 200 feet to the West right of way line of the country road known as Caldwell Mill Road; thence in a Northerly direction along the West right of way line of said road for a distance of 115.4 feet; thence in a Westerly direction along the North line of Lot 5, Block 1, and parallel with the South line of said lot for a distance of 260.81 feet; thence at an angle of 91°49' to the left and parallel to the West line of said lot for a distance of 100 feet to the point of beginning.

Parcel ID Number:	28002220110360
Current Zoning:	R-4
Requested Zoning:	B-1.2
Intended Purpose:	Dental/Medical Offices

P&Z Recommendation:	MOTION Mr. Weaver made a motion to recommend Rezoning for 4308, 4312, 4316, and 4320 Dolly Ridge Rd. from Vestavia Hills R-4 to Vestavia Hills B-1.2 with the following conditions: 1. Uses limited to Professional and Medical Offices and ancillary uses; 2. 20' landscape buffer adjacent to neighboring properties and must include the large landscapping buffer as shown in the application exhibit; 3. Any parking lot lighting limited to 10' poles with LED or better bulbs; 4. Buildings limited to 2-stories. Second was by Mr. Pierce. Motion was carried on a roll call; vote as follows: Mr. Pierce – yes Mr. Weaver – yes Mr. Romeo – yes Mr. Maloof– yes Mr. Honeycutt – yes Ms. Cochran– yes Motion carried.

Date of P&Z Meeting:	November 13, 2025

Authorized by:	Vestavia Hills Planning and Zoning Commission, Lindsey Cochran, Chair
Issued by:	Conrad Garrison, City Planner



Forty•4 Engineering Design
1703 McConnell Lane
Mount Olive, AL 35117
P: 205.876.4335
fortydot4.com

Engineer

Preliminary Not For Construction

Dolly Ridge Office Development

Dolly Ridge Rd
Vestavia Hills, Alabama

Sheet Title:
Preliminary Layout

Revisions:

File: Preliminary_07b3

Date: November 19, 2025

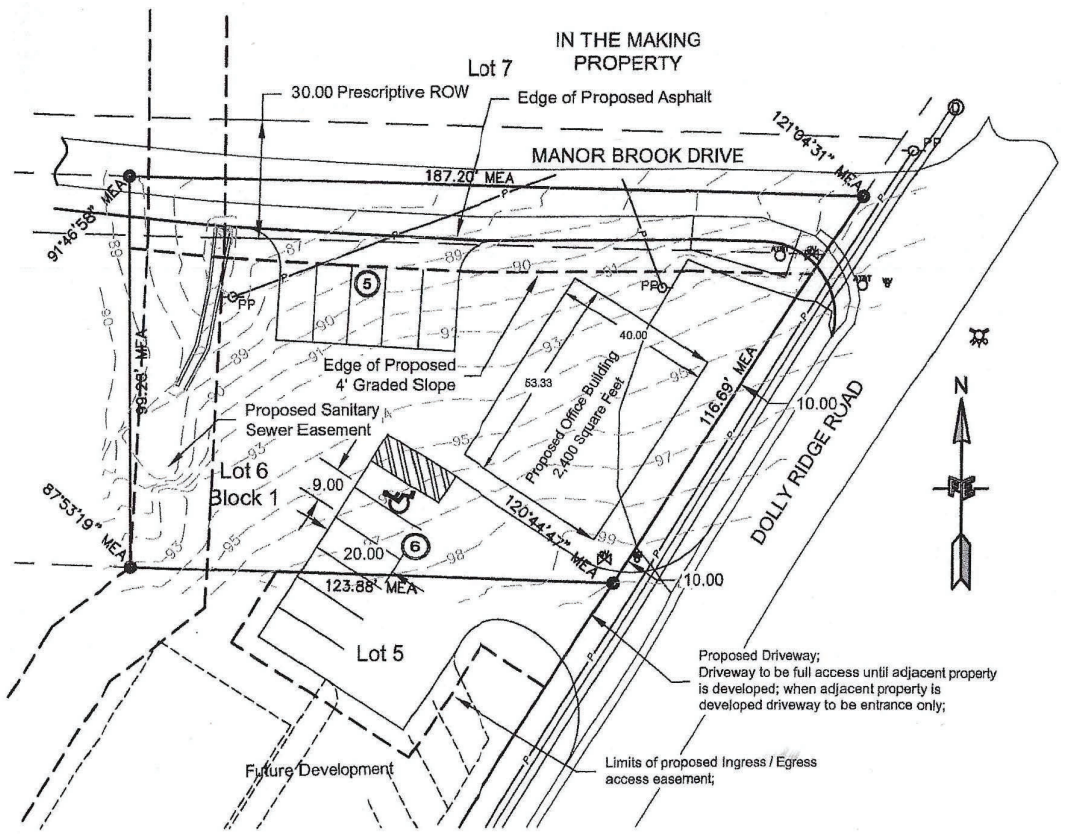
Scale:

Drawing: C1.0

Preliminary Layout for

Dolly Ridge Road Dental

4300 Dolly Ridge Road



Site Information:

Current Zoning: R-4

Proposed Zoning: B-1.2

Legal Description: Lot 6 Block 1, less and except the west 501 feet of New Merkle Heights as recorded in Map Book 19, Page 92 in the office of the Judge of Probate, Jefferson County, Alabama.

Parking Requirement:

1 Space for each doctor plus 1 per employee.

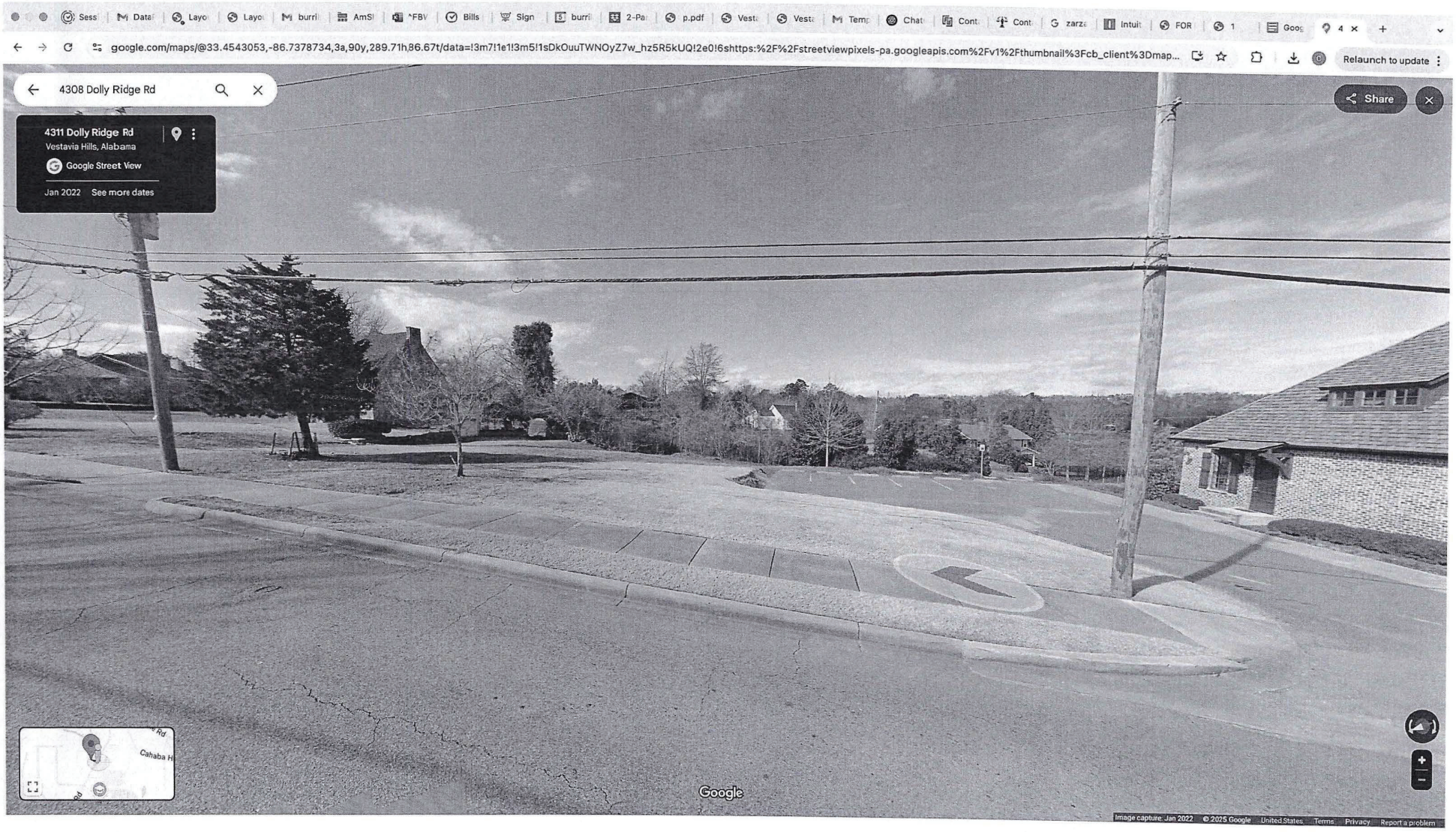
Building will have 1 doctor and 3 employees, therefore 7 parking spaces required.

Site contains 11 parking spaces.

Pressnell Engineering
884 High Pointe Drive
Hayden, AL 35079
P: 205.876.4335
F: 205.417.2507

0 15 30 60 120

SCALE: 1" = 30'


4308 Dolly Ridge Rd
4311 Dolly Ridge Rd
Vestavia Hills, Alabama
Google Street View
Jan 2022 See more dates
Share
Google
Image capture: Jan 2022 © 2025 Google United States Terms Privacy Report a problem

Vestavia Hills Zoning Map

with ArcGIS Web AppBuilder

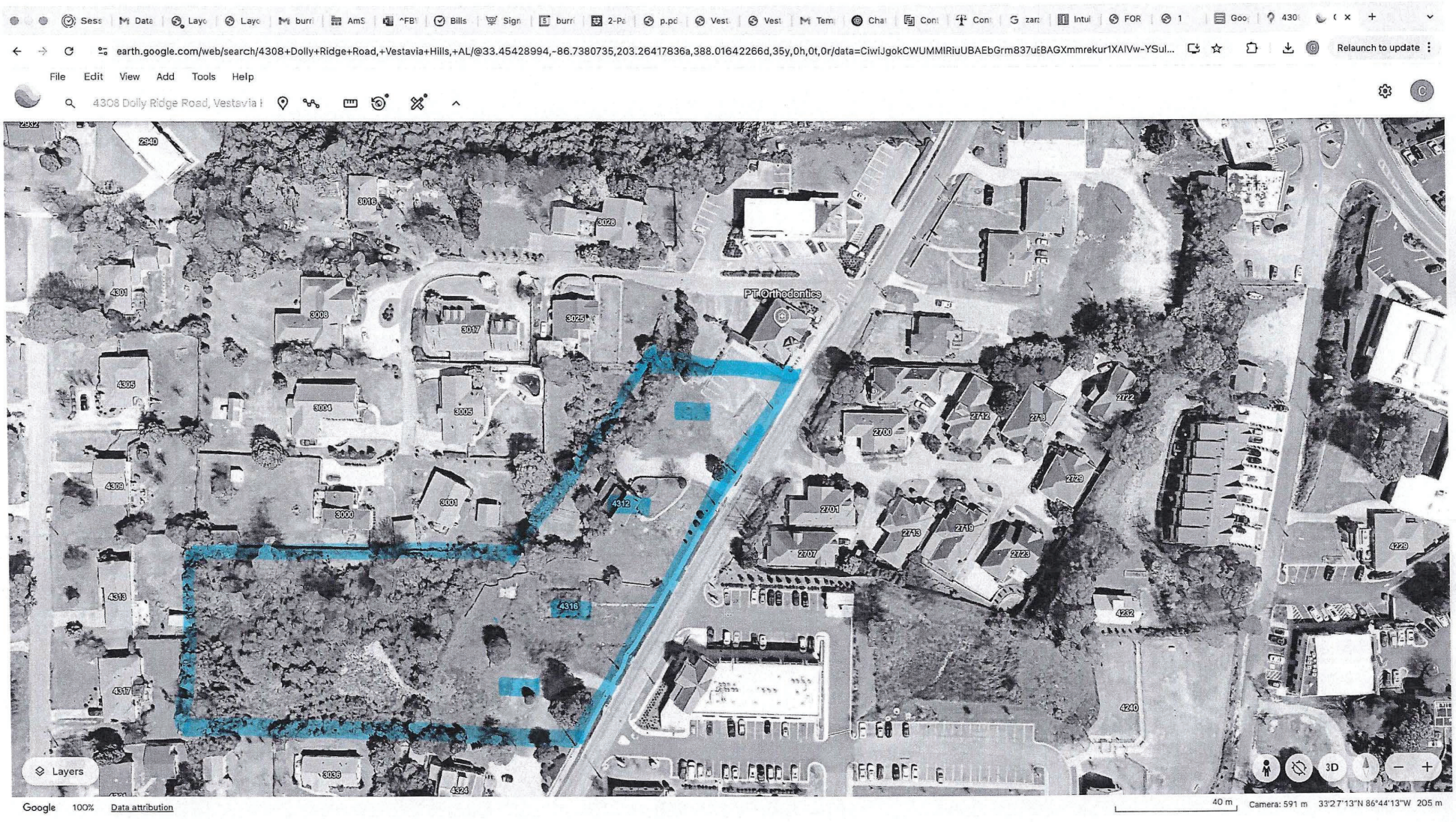


Vestavia Hills Zoning Classification | Address Number

Options | Filter by map extent | Zoom to | Clear selection | Refresh

PARCELID	DISTRICT	ESN_NUM	PROPADD	TAX_TOWNSH	SECTION	QSECTION	BLOCK	PARCEL	VH_ZONING	ZNG_C
28002220110360	020	62	4320 DOLLY RIDGE RD	28	22	2	011	036000	R-4	1983

1 features 0 selected


earth.google.com/web/search/4308+Dolly+Ridge+Road,+Vestavia+Hills,+AL/@33.45428994,-86.7380735,203.26417836a,388.01642266d,35y,0h,0t,0r/data=CiwiJgokCWUMMlRiuUBAEbGrm837uEBAGXmmrekur1XAlVw-YSul...
Relaunch to update
File Edit View Add Tools Help
4308 Dolly Ridge Road, Vestavia H
PT Orthodontics
Layers
3D
Google 100% Data attribution
40 m
Camera: 591 m 33°2'7"13"N 86°44'13"W 205 m

Vestavia Hills Planning and Zoning Department
1032 Montgomery Highway
Vestavia Hills, AL 35216

Re: Rezoning Justification Letter for Parcel Comprising 4 Lots from R-4 to B-1.2 Light Mixed Use (4308, 4312, 4316, and 4320 Dolly Ridge Road)

To Whom It May Concern,

I am writing on behalf of the property owner, John Weaver, to respectfully request the rezoning of a parcel consisting of four (4) adjacent lots currently zoned R-4 (Residential) to B-1.2 Light Mixed Use. This request is made to facilitate the construction of four professional medical office buildings consistent with the established character and zoning of the surrounding area.

In 2015, the adjacent property to the west was successfully rezoned to B-1.2 and developed as a professional medical office. At that time, a small corner of one of the subject lots was also rezoned to B-1.2 to allow for a shared parking lot easement serving the medical office. The remaining portions of the subject lots have remained R-4 but are functionally and contextually integrated with the adjacent commercial use.

The subject lots are located on a significant traffic corridor, making them less suitable for single-family residential use and well-positioned for low-impact commercial development. Across the roadway to the east are parcels zoned R-6 (High Density Residential), further supporting the appropriateness of transitioning this site to a neighborhood-compatible commercial zoning designation.

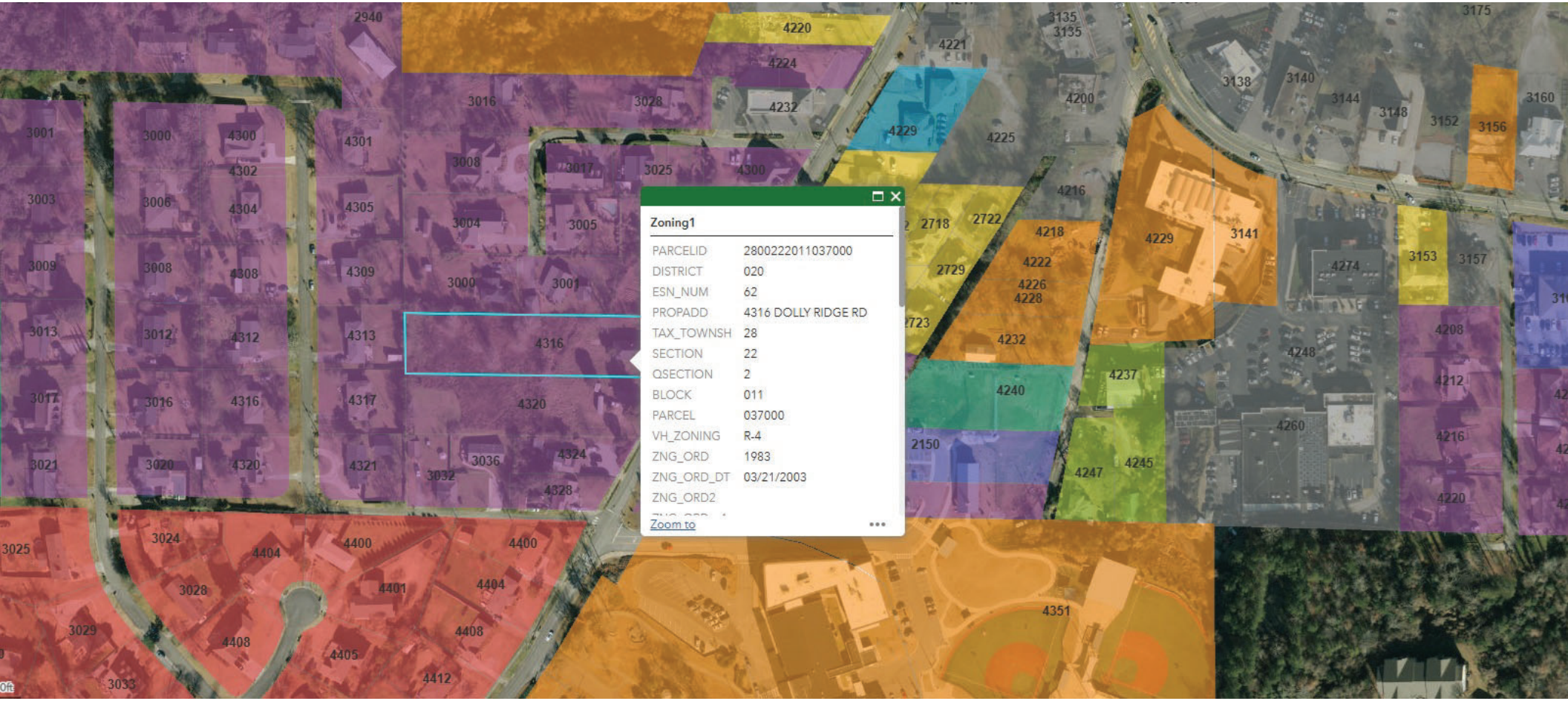
The proposed B-1.2 zoning would permit development of four professional medical office buildings that mirror the design, scale, and use of the 2015 development. This zoning change aligns with both the existing land use patterns and the long-term vision for mixed-use corridors that support medical and professional services accessible to nearby residential communities.

We respectfully request favorable consideration of this rezoning application, as it represents a logical, compatible, and community-serving expansion of the existing B-1.2 zone.

Thank you for your attention and consideration.

Sincerely,

Joshua Watkins
Burrill Watkins LLC
Representing the Property Owner


Zoning1
PARCELID 2800222011037000
DISTRICT 020
ESN_NUM 62
PROPADD 4316 DOLLY RIDGE RD
TAX_TOWNSH 28
SECTION 22
QSECTION 2
BLOCK 011
PARCEL 037000
VH_ZONING R-4
ZNG_ORD 1983
ZNG_ORD_DT 03/21/2003
ZNG_ORD2
Zoom to

CITY OF VESTAVIA HILLS
PLANNING & ZONING
INTER-DEPARTMENT MEMO

December 8, 2025

To: Jeff Downes, City Manager

From: Conrad Garrison, City Planner

Cc: Rebecca Leavings, City Clerk

RE: Public Hearing - Ordinance Number 3306 - Rezoning and Conditional Use Approval - 4521 Pine Tree Circle; Lot 23, Topfield Subdivision; Rezone from VH O-1 to VH B-2 with limited uses and conditional use approval for on-site indoor storage of certain construction materials and equipment; Canwyn LLC, owners

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Background:
This property is located in an area in transition with primarily office zoned properties. This request is for the operation of a framing construction company office and an added warehouse to the rear to house materials and vehicles/equipment for said construction company

Recommendation:
The Planning and Zoning Commission recommended approval based on the following: (1) the use on said property shall be limited to a framing construction company or similar or any permitted use in Vestavia Hills O-1 zoning classification; and (2) that any and all storage on the property be housed inside the storage building as proposed and storage limited for the

construction materials, vehicles and equipment only, outdoor storage is prohibited; and (3) no parking of heavy construction equipment on premise; and (4) fabrication onsite is prohibited; and (5) the storage building shall appear similar to the existing building on the property

Fiscal Impact:
na

Attachments:
1. Ordinance 3306
2. Ordinance 3306

ORDINANCE NUMBER 3306

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS O-1 TO VESTAVIA HILLS B-2 WITH LIMITED USES AND A CONDITIONAL USE FOR CERTAIN STORAGE

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills O-1 (office park district) to Vestavia Hills B-2 with uses limited to a construction framing company with a conditional use for indoor storage as an accessory to said construction company:

4521 Pine Tree Circle
Lot 23, Topfield Subdivision
Canwyn LLC, owner(s)

BE IT FURTHER ORDAINED that said rezoning and conditional use be conditioned upon the following: (1) the use on said property shall be limited to a framing construction company or similar or any permitted use in Vestavia Hills O-1 zoning classification; and (2) that any and all storage on the property be housed inside the storage building as proposed and storage limited for the construction materials, vehicles and equipment only, outdoor storage is prohibited; and (3) no parking of heavy construction equipment on premise; and (4) fabrication onsite is prohibited; and (5) the storage building shall appear similar to the existing building on the property; and

This Ordinance Number 3306 shall become effective immediately upon the adoption, approval and publishing/publication as required by Alabama law.

APPROVED and ADOPTED this the 22nd day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

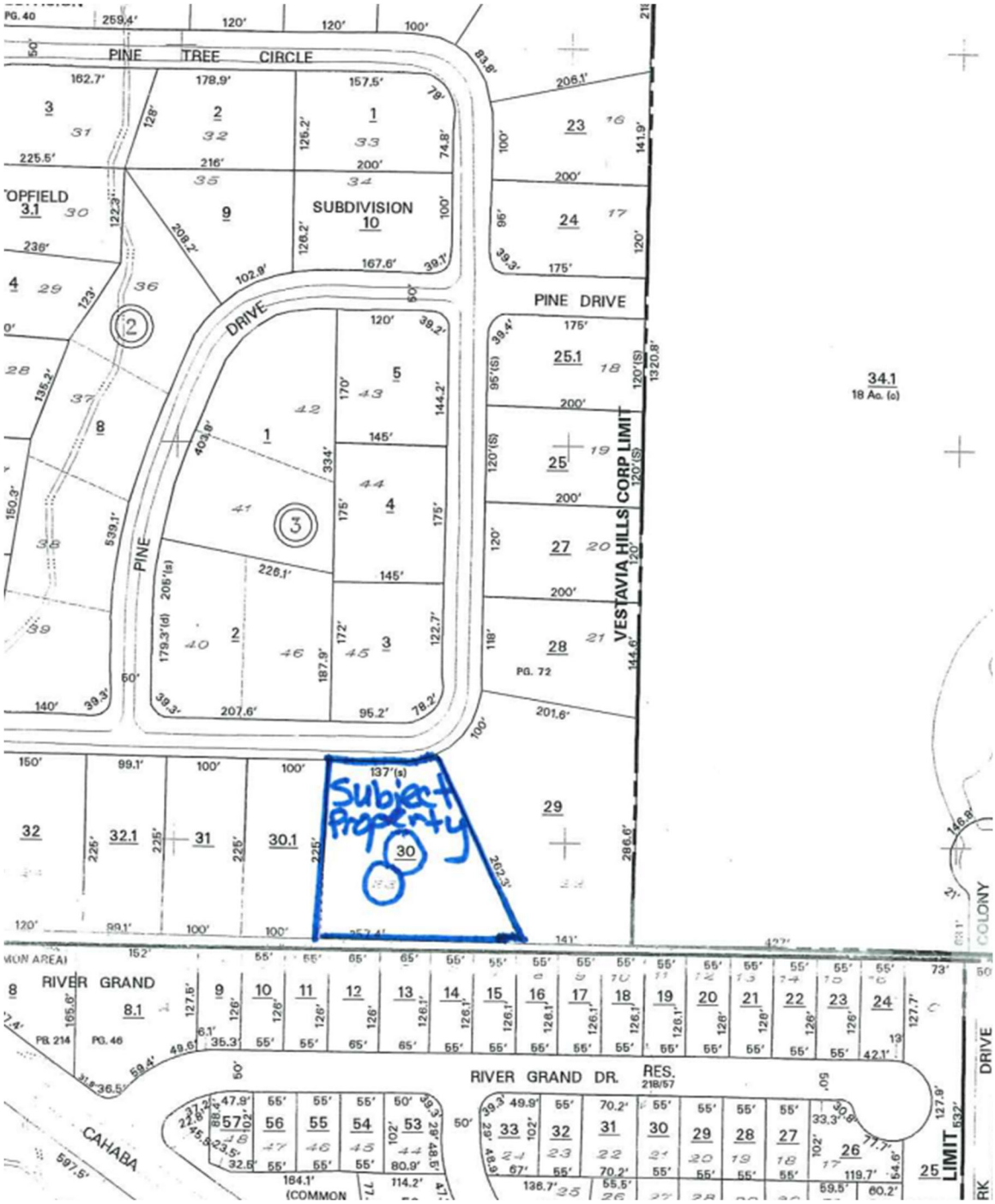
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3306 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 22nd day of December, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk


PINE TREE CIRCLE
PINE DRIVE
PINE DRIVE
SUBDIVISION
VESTAVIA HILLS CORP LIMIT
Subject Property
RIVER GRAND
RIVER GRAND DR. RES.
CAHABA
34.1
18 Ac. (o)
PG. 72
PB. 214
PG. 46

City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation

Case Number:	RZ-25-11	Representative:	Lauren Barrett
Owner Name:	Canwyn LLC	Rep. Address:	4521 Pine Tree Circle, Vestavia Hills, AL 35243
Owner Address:	4521 Pine Tree Circle, Vestavia Hills, AL 35243		

Project Address:	4521 Pine Tree Circle, Vestavia Hills, AL 35243
Legal Description:	Lot 23, Topfield Subdivision, Jefferson County Map Book 42, page 72
Parcel ID Number:	
Current Zoning:	O-1
Requested Zoning:	B-2 w/Conditional Use for storage
Intended Purpose:	Construction of a free-standing addition to be located in the rear yard of the property

P&Z Recommendation:

MOTION Mr. Weaver made a motion to recommend Rezoning for 4521 Pine Tree Cir. from Vestavia Hills O-1 to Vestavia Hills B-2 with a Conditional Use for indoor storage with the following conditions:
1. Use is only approved as a framing construction company or similar trade and O-1 uses;
2. Fabrication onsite is prohibited;
3. No outside storage or materials;
4. No parking of heavy construction equipment;
5. New building must look similar to existing building.

Second was by Mr. Romeo. Motion was carried on a roll call; vote as follows:

Mr. Pierce – yes Mr. Weaver – yes
Mr. Romeo – yes Mr. Maloof– yes
Mr. Honeycutt – yes Ms. Cochran– yes
Motion carried.

Date of P&Z Meeting: November 13, 2025

Authorized by: Vestavia Hills Planning and Zoning Commission, Lindsey Cochran, Chair

Issued by: Conrad Garrison, City Planner

City of Vestavia Hills, AL

October 28, 2025

RZ-25-11

Rezoning Application
Status: Active
Submitted On: 9/22/2025

Primary Location

4521 PINE TREE CIR
VESTAVIA HILLS, AL
35243

Owner

Canwyn, LLC
4521 Pine Tree Circle 4521
Vestavia, Alabama 35243

Applicant

Lauren Barrett
205-531-0118
lauren@barrettarchstudio.com
4701 Jackson Loop
Vestavia, AL 35242-8102

Property Information

Subject Property Address*

4521 Pine Tree Circle, Vestavia Hills, AL 35243

Tax Parcel ID Number

Legal Description

Lot 23, Topfield Subdivision, Jefferson County Map Book 42, page 72

Existing Parking Spaces

7

Proposed Parking Spaces

11

Submission Date*

09/16/2025

Type of Project*

New Non-Residential Development/use

Action Requested:

From Existing Zoning Classification*

O-1

To Requested Zoning Classification*

B-2 w/Conditional Use for storage

For the Intended Purpose of:*

Construction of a free-standing addition to be located in the rear yard of the property

Acreage of Subject Property*

1.05ac

Acreage of Property to be Disturbed*

0.294ac

Setbacks

Front

30

Back

30

Side

10

Open Space

0.16

Lot Coverage Percentage

25

Tree Save Plan - I acknowledge that a if this is a new non-residential development or is a residential development in excess of 3 units, that I am required to submit a tree save plan concurrent with this application (excludes PUDs). *

☑

Owner Information

Applications must be either submitted by the owner of the property or a representative duly appointed by the owner by way of a notarized letter and/or power of attorney.

Property Owner Name*

Canwyn LLC

Company Name

Canopy Building Company

Owner Address City State Zip*

4521 Pine Tree Circle, Vestavia Hills, AL 35243

Owner's Phone Number*

2058763674

Email Address of Owner*

david@canopybuilding.com

By checking this box, I hereby affirm that I am the representative of the owner duly authorized to represent this petition for rezoning. Simultaneously with this application, I am submitting notarized documentation from the owner which authorizes me to represent this case. If no authorization is provided, this application cannot be processed.*

☑

Owner Representative/Responsible Party

Lauren Barrett

Company Name

Lauren Barrett, Architect

Contact Email of Responsible Party

lauren@barrettarchstudio.com

Mailing Address of Responsible Party

4521 Pine Tree Circle, Vestavia Hills, AL 35243

Phone No. of Responsible Party

2058763674

Email Address of Responsible Party

david@canopybuilding.com

Project Engineer Information (if applicable)

Name

David Q. Haynes

Company

St. John and Assoc, Inc.

Mailing Address

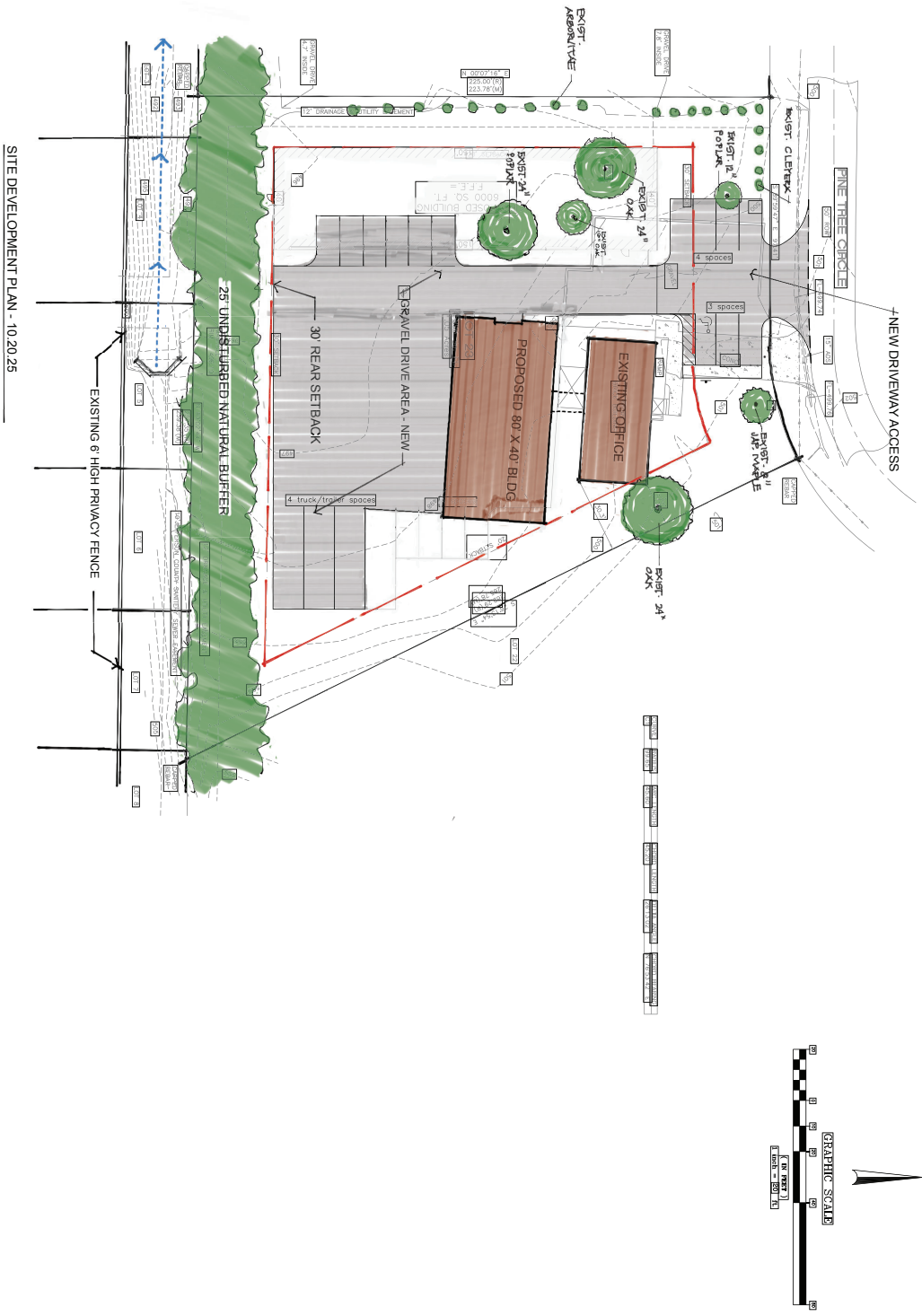
508 First Avenue SE,Cullman, AL 35055

Phone Number

2567342114

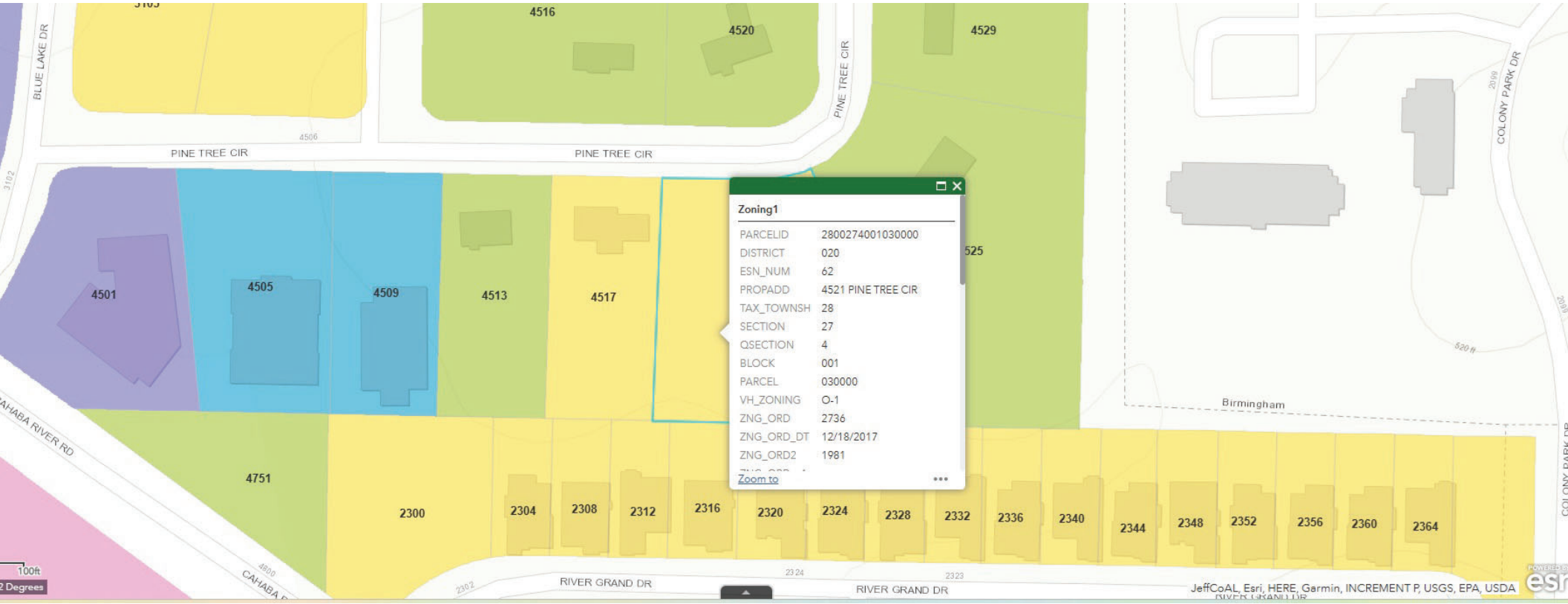
Email

david@sjaonline.com



SHEET C-0	JOB NO. 1618	Canopy Building Site Improvement Plans VESTAVIA, ALABAMA CONCEPTUAL SITE LAYOUT	St. John & Associates, Inc. Consulting Engineers and Planners Cullman, Alabama 508 FIRST AVENUE S.E., CULLMAN, ALABAMA 35055 (256) 734-2114 DRAWN BY JDP · DESIGNED BY DAB · APPROVED BY DOH DATE 9/19/25 · SCALE 1"=20'		0 · 9/19/25 · ISSUED FOR APPROVAL · DOH NO. · DATE · DESCRIPTION · APP'D BY REVISION	ST. JOHN & ASSOCIATES 30 YEARS PLANNING & DESIGN




BLUE LAKE DR
PINE TREE CIR
PINE TREE CIR
PINE TREE CIR
4516
4520
4529
4501
4505
4509
4513
4517
4525
4751
2300
2304
2308
2312
2316
2320
2324
2328
2332
2336
2340
2344
2348
2352
2356
2360
2364
Zoning1
PARCELID 2800274001030000
DISTRICT 020
ESN_NUM 62
PROPADD 4521 PINE TREE CIR
TAX_TOWNSH 28
SECTION 27
QSECTION 4
BLOCK 001
PARCEL 030000
VH_ZONING O-1
ZNG_ORD 2736
ZNG_ORD_DT 12/18/2017
ZNG_ORD2 1981
Zoom to
Birmingham
COLONY PARK DR
CAHABA RIVER RD
RIVER GRAND DR
RIVER GRAND DR
JeffCoAL, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

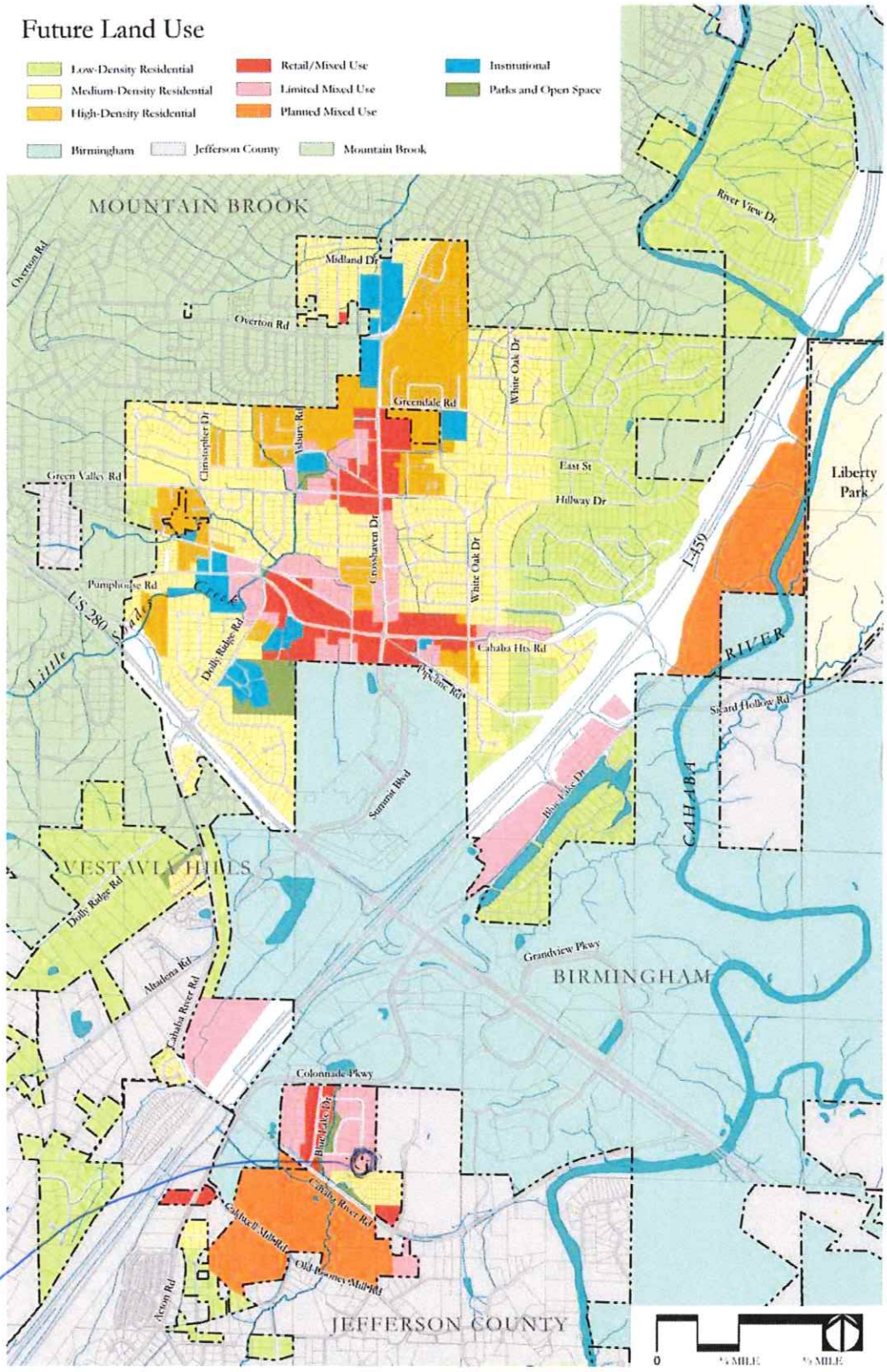


Figure 4: Future Land Use Map

Subject Parcel

ORDINANCE NUMBER 3306

AN ORDINANCE TO FURTHER AMEND THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF VESTAVIA HILLS, ALABAMA, ADOPTED SEPTEMBER 16, 1985, AND AS LAST AMENDED SO AS TO CHANGE THE CLASS OF DISTRICT ZONING OF PROPERTY FROM VESTAVIA HILLS O-1 TO VESTAVIA HILLS B-2 WITH LIMITED USES AND A CONDITIONAL USE FOR CERTAIN STORAGE

BE IT ORDAINED by the City Council of the City of Vestavia Hills, Alabama, as follows: That the Zoning Ordinance and Zoning Map of the City of Vestavia Hills, Alabama, adopted September 16, 1985, and as last amended so as to change the class of district zoning of the following described property from Vestavia Hills O-1 (office park district) to Vestavia Hills B-2 with uses limited to a construction framing company with a conditional use for indoor storage as an accessory to said construction company:

4521 Pine Tree Circle
Lot 23, Topfield Subdivision
Canwyn LLC, owner(s)

BE IT FURTHER ORDAINED that said rezoning and conditional use be conditioned upon the following: (1) the use on said property shall be limited to a framing construction company or similar or any permitted use in Vestavia Hills O-1 zoning classification; and (2) that any and all storage on the property be housed inside the storage building as proposed and storage limited for the construction materials, vehicles and equipment only, outdoor storage is prohibited; and (3) no parking of heavy construction equipment on premise; and (4) fabrication onsite is prohibited; and (5) the storage building shall appear similar to the existing building on the property; and

This Ordinance Number 3306 shall become effective immediately upon the adoption, approval and publishing/publication as required by Alabama law.

APPROVED and ADOPTED this the 22nd day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

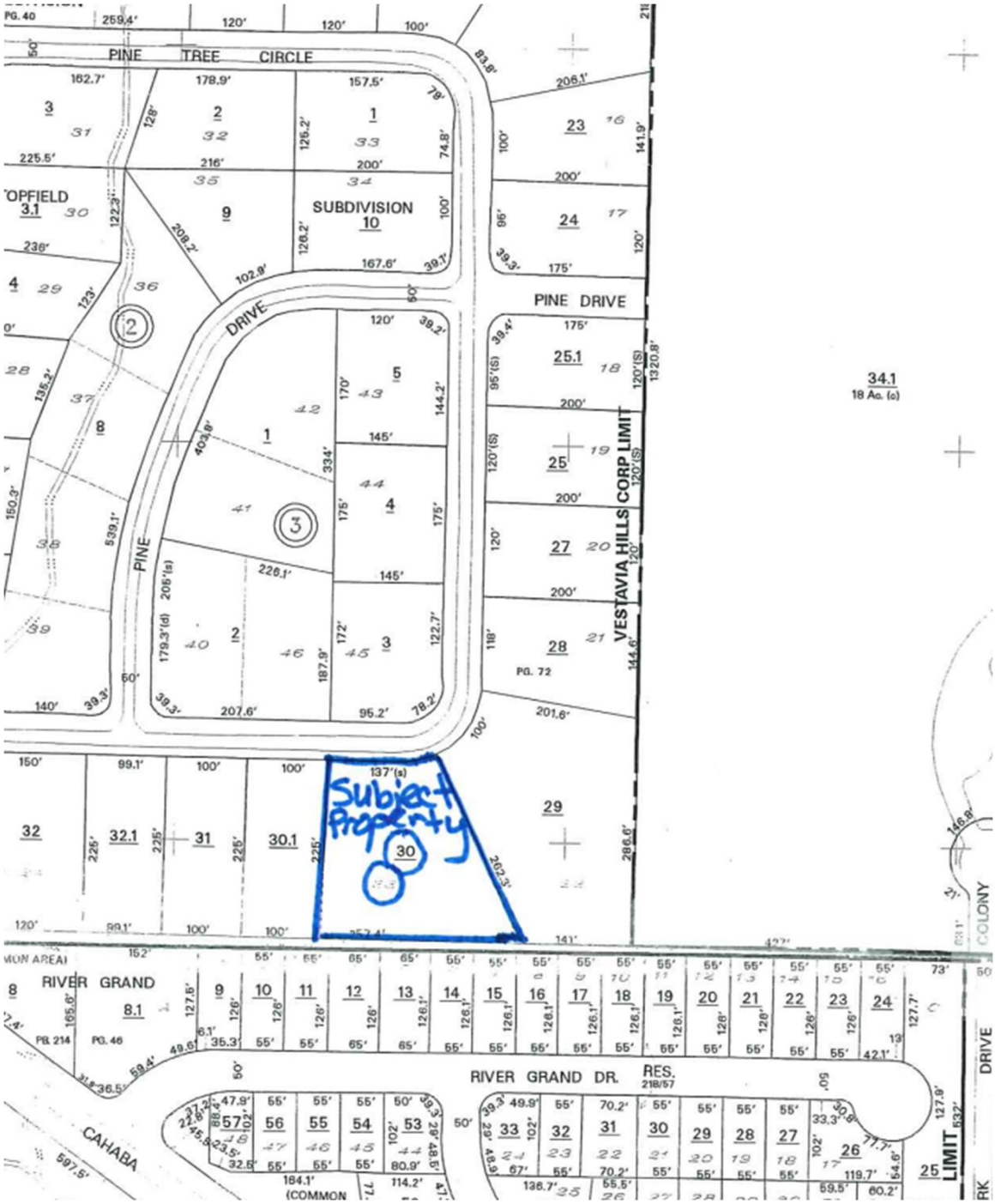
Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3306 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 22nd day of December, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk


PINE TREE CIRCLE
PINE DRIVE
PINE DRIVE
SUBDIVISION
VESTAVIA HILLS CORP LIMIT
Subject Property
RIVER GRAND
RIVER GRAND DR.
RES.
CAHABA
DRIVE
COLONY

City of Vestavia Hills

Planning and Zoning Commission Review and Recommendation

Case Number:	RZ-25-11	Representative:	Lauren Barrett
Owner Name:	Canwyn LLC	Rep. Address:	4521 Pine Tree Circle, Vestavia Hills, AL 35243
Owner Address:	4521 Pine Tree Circle, Vestavia Hills, AL 35243		

Project Address:	4521 Pine Tree Circle, Vestavia Hills, AL 35243
Legal Description:	Lot 23, Topfield Subdivision, Jefferson County Map Book 42, page 72
Parcel ID Number:	
Current Zoning:	O-1
Requested Zoning:	B-2 w/Conditional Use for storage
Intended Purpose:	Construction of a free-standing addition to be located in the rear yard of the property

P&Z Recommendation:

MOTION Mr. Weaver made a motion to recommend Rezoning for 4521 Pine Tree Cir. from Vestavia Hills O-1 to Vestavia Hills B-2 with a Conditional Use for indoor storage with the following conditions:
1. Use is only approved as a framing construction company or similar trade and O-1 uses;
2. Fabrication onsite is prohibited;
3. No outside storage or materials;
4. No parking of heavy construction equipment;
5. New building must look similar to existing building.

Second was by Mr. Romeo. Motion was carried on a roll call; vote as follows:

Mr. Pierce – yes Mr. Weaver – yes
Mr. Romeo – yes Mr. Maloof– yes
Mr. Honeycutt – yes Ms. Cochran– yes
Motion carried.

Date of P&Z Meeting: November 13, 2025

Authorized by: Vestavia Hills Planning and Zoning Commission, Lindsey Cochran, Chair

Issued by: Conrad Garrison, City Planner

City of Vestavia Hills, AL

October 28, 2025

RZ-25-11

Rezoning Application
Status: Active
Submitted On: 9/22/2025

Primary Location

4521 PINE TREE CIR
VESTAVIA HILLS, AL
35243

Owner

Canwyn, LLC
4521 Pine Tree Circle 4521
Vestavia, Alabama 35243

Applicant

Lauren Barrett
205-531-0118
lauren@barrettarchstudio.com
4701 Jackson Loop
Vestavia, AL 35242-8102

Property Information

Subject Property Address*

4521 Pine Tree Circle, Vestavia Hills, AL 35243

Tax Parcel ID Number

Legal Description

Lot 23, Topfield Subdivision, Jefferson County Map Book 42, page 72

Existing Parking Spaces

7

Proposed Parking Spaces

11

Submission Date*

09/16/2025

Type of Project*

New Non-Residential Development/use

Action Requested:

From Existing Zoning Classification*

O-1

To Requested Zoning Classification*

B-2 w/Conditional Use for storage

For the Intended Purpose of:*

Construction of a free-standing addition to be located in the rear yard of the property

Acreage of Subject Property*

1.05ac

Acreage of Property to be Disturbed*

0.294ac

Setbacks

Front

30

Back

30

Side

10

Open Space

0.16

Lot Coverage Percentage

25

Tree Save Plan - I acknowledge that a if this is a new non-residential development or is a residential development in excess of 3 units, that I am required to submit a tree save plan concurrent with this application (excludes PUDs). *

☑

Owner Information

Applications must be either submitted by the owner of the property or a representative duly appointed by the owner by way of a notarized letter and/or power of attorney.

Property Owner Name*

Canwyn LLC

Company Name

Canopy Building Company

Owner Address City State Zip*

4521 Pine Tree Circle, Vestavia Hills, AL 35243

Owner's Phone Number*

2058763674

Email Address of Owner*

david@canopybuilding.com

By checking this box, I hereby affirm that I am the representative of the owner duly authorized to represent this petition for rezoning. Simultaneously with this application, I am submitting notarized documentation from the owner which authorizes me to represent this case. If no authorization is provided, this application cannot be processed.*

☑

Owner Representative/Responsible Party

Lauren Barrett

Company Name

Lauren Barrett, Architect

Contact Email of Responsible Party

lauren@barrettarchstudio.com

Mailing Address of Responsible Party

4521 Pine Tree Circle, Vestavia Hills, AL 35243

Phone No. of Responsible Party

2058763674

Email Address of Responsible Party

david@canopybuilding.com

Project Engineer Information (if applicable)

Name

David Q. Haynes

Company

St. John and Assoc, Inc.

Mailing Address

508 First Avenue SE,Cullman, AL 35055

Phone Number

2567342114

Email

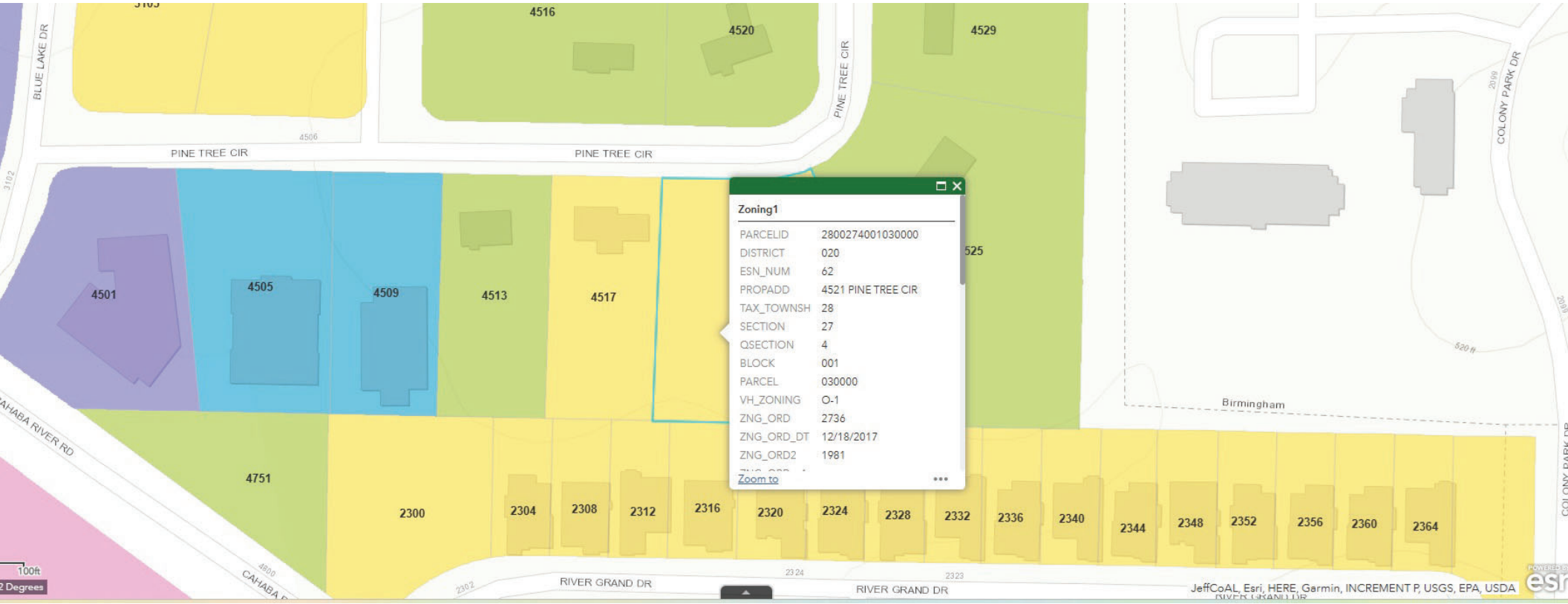
david@sjaonline.com



SHEET C-0	JOB NO. 1618	Canopy Building Site Improvement Plans VESTAVIA, ALABAMA	St. John & Associates, Inc. Consulting Engineers and Planners Cullman, Alabama 508 FIRST AVENUE S.E., CULLMAN, ALABAMA 35055 (256) 734-2114		NO. 0	DATE 9/19/25	REVISION: ISSUED FOR APPROVAL	APP'D BY DOH
REV. 0		CONCEPTUAL SITE LAYOUT	DRAWN BY JDP DESIGNED BY DAB APPROVED BY DOH DATE 9/19/25 SCALE 1"=20'					

ST. JOHN & ASSOCIATES
30 YEARS PLANNING & DESIGN




BLUE LAKE DR
PINE TREE CIR
PINE TREE CIR
PINE TREE CIR
4516
4520
4529
4501
4505
4509
4513
4517
4525
Zoning1
PARCELID 2800274001030000
DISTRICT 020
ESN_NUM 62
PROPADD 4521 PINE TREE CIR
TAX_TOWNSH 28
SECTION 27
QSECTION 4
BLOCK 001
PARCEL 030000
VH_ZONING O-1
ZNG_ORD 2736
ZNG_ORD_DT 12/18/2017
ZNG_ORD2 1981
Zoom to
COLONY PARK DR
Birmingham
4751
2300
2304
2308
2312
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RIVER GRAND DR
RIVER GRAND DR
JeffCoAL, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

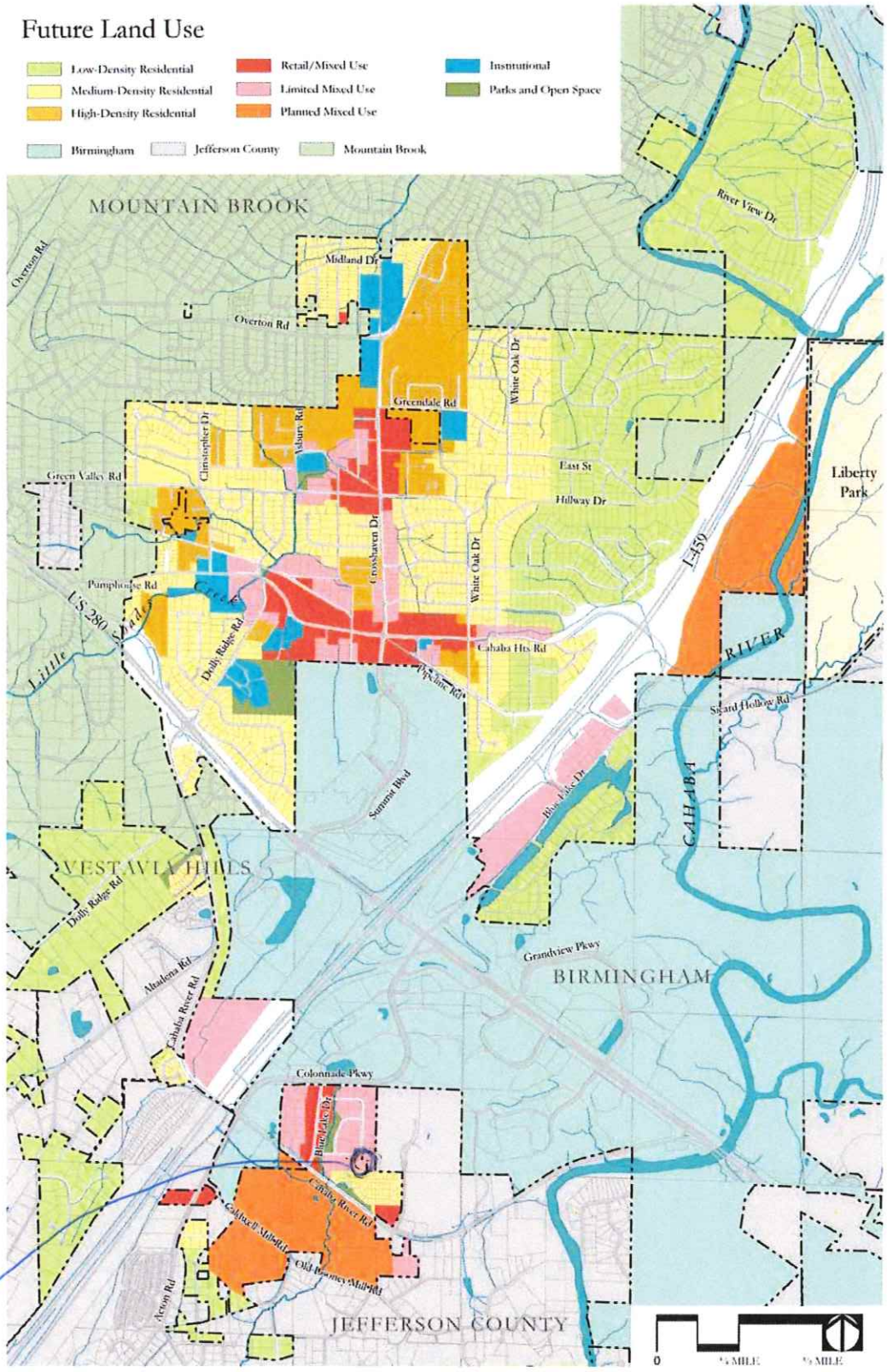


Figure 4: Future Land Use Map

Subject Parcel

CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO

December 8, 2025

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc:

RE: Public Hearing - Ordinance Number 3307 - Authorizing the Mayor and City Manager to Execute an Architectural Professional Service Contract for the Construction of an Eastside Police Operations Building Located at the Sicard Hollow Athletic Complex

---

Background:
Consistent with the adopted masterplan referenced as the Plan for Growth, CMH Architects have presented a proposal for design services to construct a 25,000+/- police operations facility that will serve the eastern side of the City. The budgeted construction costs are anticipated to be $13,565,160. CMH Architects submitted a proposal to design the building for an "all-in" fee of $873,845 (5.9% architectural fee) that includes architectural and sub-consultant fees. The proposal will be incorporated as a part of an AIA (B-132-2019 Edition) contract with the City's standard supplemental conditions addendum.

Recommendation:
It is recommended to grant this authority to allow commencement of the design phase of this project.

Fiscal Impact:
The proposed fees are within the projected total program budget for this project ($14,700,000) and are intended to be funded by a public financing vehicle ultimately approved by the City Council.

Attachments:
1. Ordinance 3307
2. SHAC-Police Building Design Proposal - CMH
3. SHAC Police Station B132-2019-Working draft
4. SHAC Police Station - A232-2019-Working draft
5. SHAC Police Station - Addendum No. 001 - Working draft

ORDINANCE NUMBER 3307

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT FOR ARCHITECTURAL SERVICES FOR AN EASTSIDE POLICE OPERATIONS CENTER

WHEREAS, Consistent with the adopted masterplan referenced as the Plan for Growth, CMH Architects have presented a proposal for design services to construct a 25,000+/- police operations facility that will serve the eastern side of the City; and

WHEREAS, the budgeted construction costs are anticipated to be $13,565,160; and

WHEREAS, CMH Architects submitted a proposal to design the building for an "all-in" fee of $873,845 (5.9% architectural fee) that includes architectural and sub-consultant fees, a copy of which is marked as Exhibit A, attached to an incorporated into this Ordinance Number 3307 as if written fully therein; and

WHEREAS, the proposal will be incorporated as a part of an AIA (B-132-2019 Edition) contract with the City's standard supplemental conditions addendum a copy of which is marked as Exhibit B, attached to an incorporated into this Ordinance Number 3307 as if written fully therein; and

WHEREAS, the City Manager has recommended the Council to grant this authority to allow commencement of the design phase of this project; and

WHEREAS, the proposed fees are within the projected total program budget for this project ($14,700,000) and are intended to be funded by a public financing vehicle ultimately approved by the City Council; and

WHEREAS, the Mayor and the City Council have found that it is in the best public interest to accept the City Manager's recommendation and authorize the execution of the contracts detailed in Exhibit B.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and the City Manager are hereby authorized to execute and deliver said agreements pursuant to the proposal as detailed in Exhibits A and B; and
2. Said agreements shall be attested by the City Clerk and a copy retained for the record in the Office of the City Clerk; and

3. The proposed fees are within the projected total program budget for this project ($14,700,000) and are intended to be funded by a public financing vehicle ultimately approved by the City Council
4. This Ordinance Number 3307 shall become effective immediately upon adoption and approval by the City Council following posting/publication pursuant to Alabama law.

DONE, ORDERED, ADOPTED and APPROVED, this the 22nd day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3307 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 22nd day of December, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk

CMH ARCHITECTS

1800 International Park Drive
Suite 300
Birmingham, AL 35243

205 / 969-2696
info@cmharch.com
cmharch.com

October 27, 2025

Mr. Brian Corley, Project Director
Doster Construction
2100 International Park Drive
Birmingham, Alabama 35243

RE: Proposal for SHAC Police Station & Associated Site Work
Vestavia Hills, Alabama
CMH Proposal No. 2042

Dear Brian:

CMH is pleased to make a proposal to provide Architectural and Engineering Services to the City of Vestavia Hills for a New Police Station to be located on the Sicard Hollow Athletic Complex site at 4851 Sicard Hollow Road, Vestavia Hills, AL 35242.

A. The scope of the project is as follows:
   a. Architectural and Engineering Services for the design of a ±25,000-square-foot Police Station and associated improvements per the attached Conceptual Space Program and Conceptual Site Plan.
   b. This project will be designed using sustainable, energy-efficient design principles to the greatest extent possible. No LEED certification or commissioning of the facility is required.
   c. The conceptual plan does not include an ICC500 Storm Shelter, but one can be added for a mutually agreeable fee.

B. The fee is based on State of Alabama Division of Construction Management (DCM) Guidelines and will be as follows:

A/E Basic Services Fee:

Building Group III @ 5.9% based on construction value of $13,565,160.00
Project Design Fee - $800,345.00 (plus fees below)

Based on Percentage of Construction per attached DCM Fee Schedule for Type III Buildings:

Civil Engineering	$37,500.00 Lump Sum
Landscape Architecture & Irrigation Design Services	$16,000.00 Lump Sum
Interior Design Services & Furniture-Procurement Assistance	$20,000.00 Lump Sum

All in Design Fee - $873,845.00

Reimbursable expenses, advertisement, printing, mileage, etc. will be billed at 1.2 x the actual cost.

For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment. donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. Per DCM Guidelines, sales taxes on materials for the project will be included in the Cost of Work when calculating the fees of the design team whether paid or submitted to the State Department of Revenue by the Trade Contractors, Construction Manager/Program

Manager or Owner for sales tax exemption. Cost of the work will also include the Construction Manager cost (fee and cost of field personnel) during construction of the project. This does not include any pre-construction services.

C. Proposed consultants for this project are listed below:
   - Geotechnical Consultant – N/A
   - Construction Material Testing & Special Inspections – N/A
   - Civil Engineering – Caprine Engineering LLC
   - Structural Engineering – MBA Engineers, Inc.
   - Mechanical, Plumbing, Fire Protection & HVAC Engineering – MBA Engineers, Inc.
   - Electrical Engineering – Hyde Engineering
   - Landscape Architecture – Renta Urban Land Design

D. The Services and Fees above assume the following:
   a. Services are based on the project being issued as one substantially complete Construction Document Package. If the issuing of a separate construction package is required, there would be an additional fee as mutually agreed upon.
   b. CMH does not anticipate any environmental engineering to be required for this project. However, if during the development of the project documents, environmental engineering is required, the service can be provided at a mutually agreed upon fee.
   c. This proposal is based on our understanding of the Scope of Services as outlined herein. If the scope of the project should change, the fee is to be equitably adjusted.
   d. To the best of our ability, we will identify current codes and ordinances applicable to this project in effect at the time the documents are prepared and communicate with those officials charged with enforcing applicable codes and ordinances into the Contract Documents. Because all codes and ordinances are subject to interpretation, CMH does not make any warranties that the Architect's interpretation shall not be modified, overruled, or changed by code officials.
   e. Other Additional Services required, but not included herein, shall, when authorized by the Owner, be compensated at normal hourly rates based on 2.8 DPE (Direct Personnel Expense).
   f. The Architect's invoices shall be issued monthly, based on the work completed at the end of each month. Invoices for services are due and payable upon receipt and if unpaid after sixty (60) days will bear interest at three percent (3%). Expenses for collection of unpaid invoices, including legal costs, will be paid by Owner.
   g. Only the testing and/or investigation noted herein are included in the fees specified in the proposal. Special inspections that may be required by City Officials and not required by IBC are not included in this proposal. Should any additional testing and/or investigations be required, they can be provided at a mutually agreed upon fee.
   h. This proposal does not include design fees for the identification and removal of hazardous materials. However, this service can be provided at a mutually agreed upon fee.
   i. The proposal does not include the ALTA topographic survey. This survey will be furnished to the Design Team by the Owner.
   j. Geotechnical Consulting, Construction Material Testing, and Special Inspections as required by the International Building Code (IBC) are NOT included in this proposal.
   k. The design of infrastructure for a radio system, bio-directional amplifier, and/or a radio tower are not included in this proposal.

l. The general conditions of the AIA Document B132-2019 – Standard Form of Agreement between Owner and Architect, Construction Manager as Adviser Edition, are mutually agreed upon and are included in this proposal by reference.
m. Construction Administration Services included in this proposal are limited to a maximum of a sixteen (16) month construction schedule with a maximum of bi-weekly site visits. Any services required past this schedule will be billed hourly as Additional Services.
n. This proposal is based on Construction Documents commencing within six (6) months from the date of this proposal. If the project is delayed beyond this schedule. Fees would be subject to adjustment.

We appreciate the opportunity to provide this proposal for your consideration. If it meets with your approval, please have it executed and return a copy to us. As we understand it, Doster will prepare the AIA Document B132-2019 – Standard Form of Agreement between Owner and Architect, Construction Manager as Adviser Edition, for our review and execution. Please let us know if you have any questions.

Sincerely,

CMH ARCHITECTS, INC.

Billy R. Morace, Jr.
Project Manager

CC: Everett Hatcher
Joan Parker

Attachments: Conceptual Space Plan
Conceptual Site Plan
DCM Fee Schedule

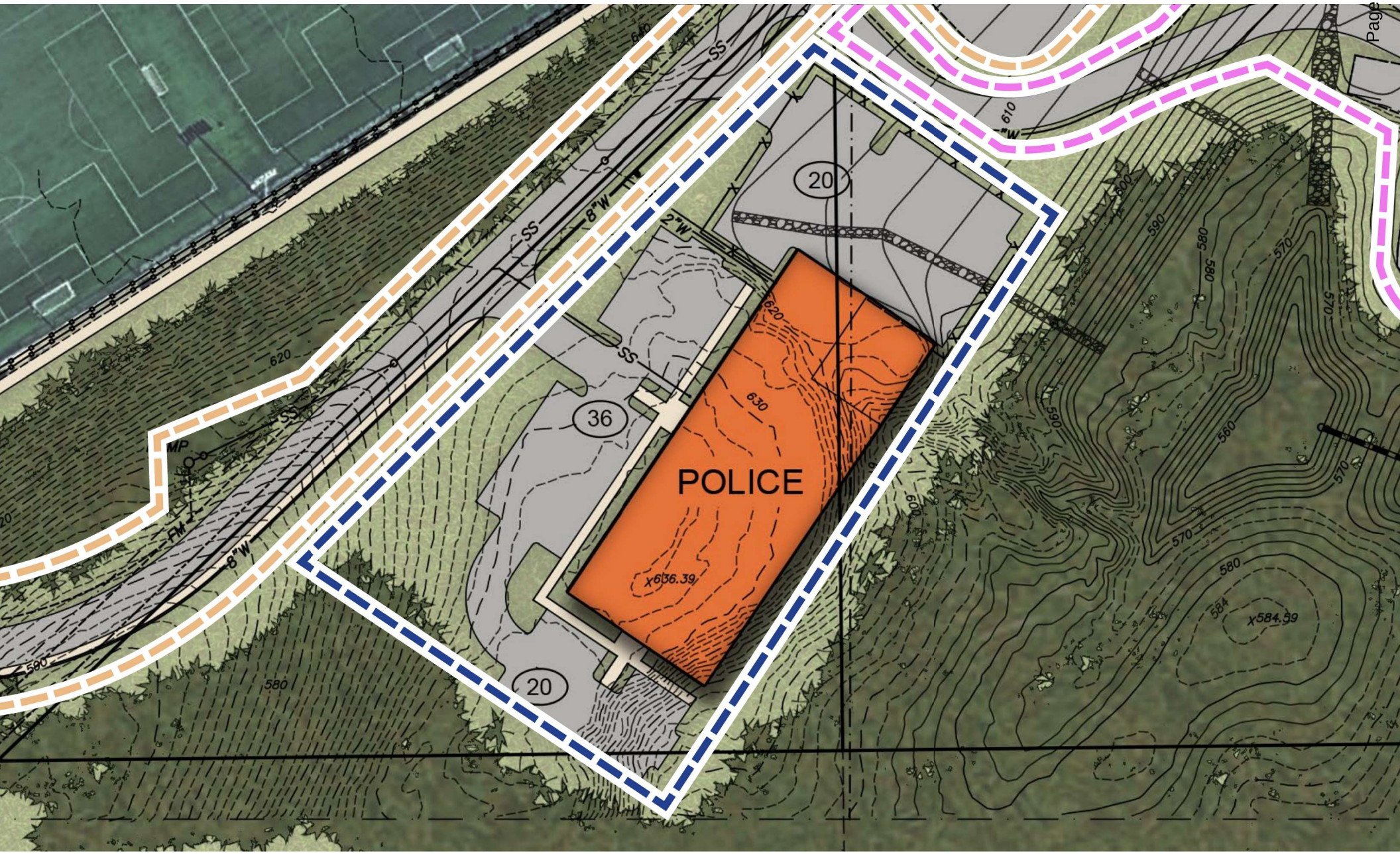
Accepted By: _____
ENTITY NAME

Signature:_____

Printed Name:_____

Title:_____

Date: _____


POLICE
20
36
20
SS
8"W
2"W
FM
MP
620
630
610
600
590
580
570
560
584
x636.39
x584.39

CMH ARCHITECTS

Project: SHAC Feasibility Study, Vestavia Hills
Date: 12.12.24
CMH Project No.: 2042

CONCEPTUAL SPACE PROGRAM:
SHAC Master Plan / Feasibility Study

Police Station – New Building
Square Footage – 12.12.24

		Program (SF)
Administration Areas		
Precinct Commander (w/RR)	=	360 SF
Conference Room (20 People)	=	420 SF
Subtotal		780 SF
Training		
Training Officers (4@120sf)	=	240 SF
Training Officers Storage	=	80 SF
Multi-Purpose/Training Room (75 people)	=	1,500 SF
A/V Room at Training	=	80 SF
Training Room Storage	=	275 SF
Toilets at Training Room – 3 WC/4 lavs (2@180sf)	=	360 SF
Subtotal		2,535 SF
Public Entry/Records		
Public Entrance Lobby	=	350 SF
Public Toilets (2@65sf)	=	130 SF
Clerks (2@65sf)	=	130 SF
Work Area	=	150 SF
Files **Confirm this is required at this location and size required*	=	500 SF
Subtotal		1,240 SF
Detective Areas		
Detective Offices (4@120sf)	=	480 SF
Restrooms (2@65sf)	=	130 SF
Work Area	=	100 SF
Storage	=	300 SF
Interview Rooms (2@75sf)	=	150 SF
Viewing Room	=	75 SF
Subtotal		1,995 SF

Patrol Areas		
Patrol Commanders (2@165sf)	=	330 SF
Patrol Supervisors (4@80sf)	=	320 SF
Report Writing/Work Area	=	280 SF
Booking Room	=	180 SF
Storage	=	180 SF
Restrooms (2@65sf)	=	130 SF
Subtotal		1,420 SF
Animal Control		
Code Enforcement Officers (4@100sf)	=	400 SF
Kennels (2@40sf)	=	80 SF
Subtotal		480 SF
SWAT		
SWAT Locker Room	=	250 SF
SWAT Showers/Toilets	=	220 SF
SWAT Storage	=	180 SF
Subtotal		650 SF
Support Areas		
Male Locker Room (50)	=	400 SF
Male Showers/Vanity/WC	=	265 SF
Female Locker Room (15)	=	200 SF
Female Showers/Vanity/WC	=	80 SF
Gym	=	450 SF
Note outdoor area requested, to be discussed. This area based on a previous project this area should be approximately 800-1000sf		
Gym Storage	=	60 SF
Laundry	=	100 SF
Kitchen/Breakroom	=	200 SF
Seating at Kitchen	=	200 SF
Pantry	=	80 SF
Arms Work Area	=	225 SF
Arms Locker	=	120 SF
Ammo Storage	=	120 SF

Evidence Area *(Confirm requirement here) or just lockers*	=	1,600 SF
Intake	=	120 SF
Subtotal	=	4,164 SF

Fleet Management

Fleet Management Officers (3@100sf)	=	300 SF
Maintenance Bays (2@325sf)	=	650 SF
Maintenance Storage - Parts and supplies	=	500 SF
Vehicle Storage	=	3,200 SF
Subtotal		4,650 SF

Total of Programmed Area	**=**	**17,914 SF**
Allowance for corridors, mechanical rooms, electrical rooms, walls, etc.	**=**	**7,165 SF**
Grand Total	**=**	**25,079 SF**

CHAPTER 4
SUPPLEMENT

DETERMINATION OF BASIC FEE OR BASIC FEE RATE FOR DESIGN PROFESSIONAL SERVICES

Contents **Pages**

A. Maximum Basic Fee....4S - 1
B. Schedule of Basic Fee Rates....4S - 2
C. Application of Basic Fee Rate....4S - 3
D. Adjustment for Major Renovation....4S - 4

A. MAXIMUM BASIC FEE

The Basic Fee shall be based upon the budgeted cost of the planned work stipulated in the O/A Agreement, but shall not be higher than a fee as determined by the "Schedule of Basic Fee Rates" below. A higher Basic Fee may be paid only if approved by the Director. A Basic Fee determined by the schedule may be adjusted without the Director's approval for Major Renovation as defined in Section D of this Supplement. Lower Basic Fees may be negotiated without the Director's approval when appropriate considering project size, cost, scope, repetition, etc.

If the Basic Fee is to be a percentage rate applied to the cost of the work, the percentage rate shall not be higher than the applicable rate of the "Schedule of Basic Fee Rates" with adjustment for major renovation, if applicable. If the Basic Fee is to be a fixed, lump sum amount, that amount shall not be greater than the amount that is the product of multiplying the budgeted cost of the work by the applicable percentage rate of the "Schedule of Basic Fee Rates" with adjustment for major renovation, if applicable.

B. SCHEDULE OF BASIC FEE RATES

COST OF THE WORK			FEE IN PERCENTAGE				
			BUILDING GROUP				
			I	II	III	IV	V
Up	to	$100,000	8.0	9.0	10.0	11.0	12.0
100,001	to	200,000	7.0	8.0	9.0	10.0	11.0
200,001	to	300,000	6.0	7.0	8.0	9.0	10.0
300,001	to	400,000	5.9	6.9	7.9	8.9	9.9
400,001	to	500,000	5.8	6.8	7.8	8.8	9.8
500,001	to	600,000	5.7	6.7	7.7	8.7	9.7
600,001	to	700,000	5.6	6.6	7.6	8.6	9.6
700,001	to	800,000	5.5	6.5	7.5	8.5	9.5
800,001	to	900,000	5.4	6.4	7.4	8.4	9.4
900,001	to	1,000,000	5.3	6.3	7.3	8.3	9.3
1,000,001	to	1,250,000	5.2	6.2	7.2	8.2	9.2
1,250,001	to	1,500,000	5.1	6.1	7.1	8.1	9.1
1,500,001	to	1,750,000	5.0	6.0	7.0	8.0	9.0
1,750,001	to	2,000,000	4.9	5.9	6.9	7.9	8.9
2,000,001	to	2,500,000	4.8	5.8	6.8	7.8	8.8
2,500,001	to	3,000,000	4.7	5.7	6.7	7.7	8.7
3,000,001	to	3,500,000	4.6	5.6	6.6	7.6	8.6
3,500,001	to	4,000,000	4.5	5.5	6.5	7.5	8.5
4,000,001	to	5,000,000	4.4	5.4	6.4	7.4	8.4
5,000,001	to	6,000,000	4.3	5.3	6.3	7.3	8.3
6,000,001	to	8,000,000	4.2	5.2	6.2	7.2	8.2
8,000,001	to	10,000,000	4.1	5.1	6.1	7.1	8.1
10,000,001	to	12,000,000	4.0	5.0	6.0	7.0	8.0
12,000,001	to	14,000,000	3.9	4.9	5.9	6.9	7.9
14,000,001	to	16,000,000	3.8	4.8	5.8	6.8	7.8
16,000,001	to	18,000,000	3.7	4.7	5.7	6.7	7.7
18,000,001	to	20,000,000	3.6	4.6	5.6	6.6	7.6
20,000,001	to	22,000,000	3.5	4.5	5.5	6.5	7.5
22,000,001	to	24,000,000	3.4	4.4	5.4	6.4	7.4
24,000,001	to	27,000,000	3.3	4.3	5.3	6.3	7.3
27,000,001	to	30,000,000	3.2	4.2	5.2	6.2	7.2
30,000,001	to	33,000,000	3.1	4.1	5.1	6.1	7.1
33,000,001	to	36,000,000	3.0	4.0	5.0	6.0	7.0
36,000,001	to	39,000,000	2.9	3.9	4.9	5.9	6.9
39,000,001	to	42,000,000	2.8	3.8	4.8	5.8	6.8
42,000,001	to	46,000,000	2.7	3.7	4.7	5.7	6.7
46,000,001	to	50,000,000	2.6	3.6	4.6	5.6	6.6
50,000,001	to	and over	2.5	3.5	4.5	5.5	6.5

BUILDING GROUPS OF THE SCHEDULE

Group I: Industrial buildings without special facilities, parking structures and repetitive garages, simple loft type structures, warehouses exclusive of automated equipment, and other similar utilitarian type buildings.

Group II: Armories, apartments, cold storage facilities, dormitories, exhibition halls, hangers, manufacturing/industrial plants, office buildings without tenant improvements, printing plants, public markets, and service garages.

Group III: College classroom facilities, convention facilities, correctional and detention facilities, extended care facilities, gymnasiums (simple, prefabricated-pre-engineered, minimum types shall be classified under Group II), hospitals, institutional dining halls, laboratories, libraries, medical schools, medical office facilities and clinics, mental institutions, office buildings with tenant improvements, parks, playground and recreational facilities, police stations, public health centers, research facilities, schools (elementary and secondary), stadiums, and welfare buildings.

Also, central utilities plants, water supply and distribution plants, sewage treatment and underground systems, electrical sub-stations and primary and secondary distribution systems, roads, bridges and major site improvements when performed as independent projects. When any or all of these types of improvements are incidental to an overall plan of architectural development they will be grouped with the basic architectural service of the overall project unless stated otherwise in the agreement.

Group IV: Aquariums, auditoriums, art galleries, college buildings with special facilities, communications buildings, special schools, theaters and similar facilities.

Group V: Residences and specialized decorative buildings unless otherwise stated in the agreement. Custom designed furnishings shall be categorized in Group V except when considered incidental to the basic architectural service for a building.

C. APPLICATION OF BASIC FEE RATE

1. The Basic Fee percentage rate determined by the project budget shall be applied to the actual cost of the work. It is not necessary to change the Basic Fee percentage rate if the amount of the subsequent construction contract (as awarded or adjusted for minor change orders) falls within a higher or lower bracket of the schedule than the project budget. If major changes in the project and budget occur during the design or construction phases of the project and warrant a change in the Basic Fee percentage rate to provide fair and reasonable compensation, the change must be agreed upon in an amendment to the agreement. "Major Changes" include, but are not limited to, changes in project size, complexity, usage, arrangement, schedule, or phasing of the construction or improvement work and may or may not result in a major, or significant, change in the cost of the work. A Major Change may warrant adjustment of the Basic Fee rate if the change is requested by the Awarding Authority/Owner and the change requires additional design, administrative, consultant, or other services not

contemplated in the agreement.

2. Unless otherwise stipulated in the agreement, the Basic Fee rate shall apply to the combined cost of all buildings or other work covered by the Agreement. If the work is executed in any manner other than under one lump sum construction contract, or one lump sum construction contract for sitework and a second lump sum construction contract for building construction, the Basic Fee rate shall be subject to adjustment.

3. If the work covered by an agreement is so divided that more than one building group is involved, the Basic Fee rate of the appropriate building group may be applied to each building. Such division of Basic Fee rates must be stipulated in the agreement.

4. If the scope of an agreement involves substantial duplication of buildings on the same site, the basic fee for all services shall be applicable to the cost of the work for the first building. One-half of the basic fee for Services A, B, and C (design services) shall be applicable to the cost of the work for the second building which is a substantial duplication of the first. The basic fee for Services A, B, and C for other buildings which are substantial duplications of the first and second buildings shall be negotiated and defined in the agreement, but in no case shall exceed the fee for the first duplication. The fees for Services D and E (contract and construction administration services) shall be paid in full for duplicated buildings.

5. If the scope of an agreement involves substantial duplication of buildings on more than one site, the Basic Fee for all services shall be applicable to the cost of the work of site improvements of each site as well as modifications required to adapt the design of the substantially duplicated building to conditions of the second, third, etc., sites. The Basic Fee for all services shall be applicable to the cost of the work for the first building. One-half of the Basic Fee for design services shall be applicable to the cost of the work for the second building which is a substantial duplication of the first. The basic fee for design services for other buildings which are substantial duplications of the first and second buildings shall be negotiated and defined in the agreement, but in no case shall exceed the fee for the first duplication. The fees for contract and construction administration services shall be paid in full for duplicated buildings.

D. ADJUSTMENT FOR MAJOR RENOVATION

An increase of up to 25% in the Basic Fee Rate will be allowed for major renovation projects. This adjustment is intended to provide compensation to the design professional for the added effort required to investigate and develop drawings of existing conditions and other additional work required for renovation. A project is considered a major renovation if more than 50% of the construction cost involves renovations and alterations. The application of this adjustment is negotiable and must be stipulated in the agreement to be effective. The presence and accuracy of "as-built" drawings of the existing conditions that can be provided by the Awarding Authority/Owner to the design professional may minimize or eliminate the need for this adjustment. In general, exterior projects, including, but not limited to, re-roofing, re-coating, and landscape/hardscape are not to be considered as major renovations.

AIA® Document B132™ – 2019

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

AGREEMENT made as of the 2nd day of December in the year 2025
(In words, indicate day, month, and year.)

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

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

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

CMH Architects, Inc.
1800 International Park Drive, Suite 300
Birmingham, AL 35243

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

SHAC Police Station & Associated Site Work
Sicard Hollow Athletic Complex Site
4851 Sicard Hollow Road
Vestavia Hills, AL 35242

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

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

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

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

New Police Station to be located on the Sicard Hollow Athletic Complex site at 4851 Sicard Hollow Road, Vestavia Hills, AL 35242.

§ 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.)

TBD

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

$16,395,457

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

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.1 Design phase milestone dates, if any:

Schematic Design – May 2026
Design Development – September 2026
Construction Documents – January 2027

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Competitive Bid

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

TBD

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

N/A

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216
205-978-0195

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

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

TBD

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

.1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

.2 Land Surveyor:

Retained under Architect.

.3 Geotechnical Engineer:

Not anticipated at this time.

.4 Civil Engineer:

Retained under Architect.

.5 Other consultants and Contractors:
(List any other consultants and Contractors retained by the Owner.)

None anticipated at this time.

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

Billy R. Morace, Jr.
Project Manager
1800 International Park Drive
Suite 300
Birmingham, AL 35243
205-969-2696

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§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

MBA Engineers, Inc.
300 20th Street North #100
Birmingham, AL 35203

.2 Mechanical, Plumbing, Fire Protection & HVAC Engineer:

MBA Engineers, Inc.
300 20th Street North #100
Birmingham, AL 35203

.3 Electrical Engineer:

Hyde Engineering
3120 8th Avenue South
Birmingham, AL 35233

.4 Civil Engineer:

Caprine Engineering LLC
3 Office Park Circle #226
Birmingham, AL 35223

.5 Landscape Architect:

Renta Urban Land Design
5236 Caldwell Mill Road
Birmingham, AL 35242

§ 1.1.12.2 Consultants retained under Supplemental Services:

None anticipated at this time.

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

CMH Architects proposal dated October 27,2025

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

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model 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.

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

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 provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

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

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

§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million ($ 1,000,000) for each occurrence and Two Million ($ 2,000,000) in the aggregate for bodily injury and property damage.

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

§ 2.6.3 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 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The

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excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million ($ 1,000,000) each accident, One Million ($ 1,000,000) each employee, with policy 1. Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

Deleted: and ($) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million ($ 2,000,000) per claim and Four Million ($ 4,000,000) in the aggregate.

§ 2.6.7 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 Owner as an 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 Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

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

§ 3.1.5 The Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

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

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

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

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any

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adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, 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 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

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

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect 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, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager 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 agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms.

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing Contracts for Construction.

§ 3.5.2 Competitive Bidding

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

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§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager 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 bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

§ 3.5.3 Negotiated Proposals

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

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

.1 facilitating the distribution of Proposal Documents for distribution to prospective Contractors, and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective Contractors;

.3 preparing responses to questions from prospective Contractors and providing clarifications and interpretations of the Proposal Documents to the prospective Contractors in the form of addenda; and

.4 participating in negotiations with prospective Contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232–2019, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractors' 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 Construction Manager, or acts or omissions of the Contractors 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 initial 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 completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly

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report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, 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 Contractors, 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 the Construction Manager, Owner, or Contractors through the Construction Manager. 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 the Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

.1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.

.2 Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, 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 Contractors are 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.

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

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§ 3.6.3.4 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 Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the Construction Manager 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 Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. 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 Contractors 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 Contractors' design professionals, provided the submittals bear such professionals' 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 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, 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 transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 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. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall:

- **.1** conduct inspections to determine the date of Substantial Completion and the date of final completion;
- **.2** issue a Certificate of Substantial Completion prepared by the Construction Manager;
- **.3** review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- **.4** after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and

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

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

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

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager 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 Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

Supplemental Services	**Responsibility** *(Architect, Owner or Not Provided)*
§ 4.1.1.1 Assistance with selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple preliminary designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural interior design	
§ 4.1.1.12 Value analysis	
§ 4.1.1.13 Cost estimating	
§ 4.1.1.14 On-site project representation	
§ 4.1.1.15 Conformed documents for construction	

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§ 4.1.1.16	As-designed record drawings	
§ 4.1.1.17	As-constructed record drawings	
§ 4.1.1.18	Post-occupancy evaluation	
§ 4.1.1.19	Facility support services	
§ 4.1.1.20	Tenant-related services	
§ 4.1.1.21	Architect's coordination of the Owner's consultants	
§ 4.1.1.22	Telecommunications/data design	
§ 4.1.1.23	Security evaluation and planning	
§ 4.1.1.24	Commissioning	
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.26	Historic preservation	
§ 4.1.1.27	Furniture, furnishings, and equipment design	
§ 4.1.1.28	Other services provided by specialty Consultants	
§ 4.1.1.29	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's 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.)

TBD if needed.

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

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

TBD if needed.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

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

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

.1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the

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Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;

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

.4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;

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

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

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

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

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

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

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

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

.1 Reviewing a Contractor's submittal out of sequence from the Project submittal schedule approved by the Architect;

.2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractors' proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or

.5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractors 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 Owner:

.1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors

.2 Thirty-Two (32) visits to the site by the Architect during construction

.3 Incl Above () 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 Incl Above( ) 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 anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

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§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty (30) 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 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

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

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

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

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

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect

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requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

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

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

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 Before executing the Contracts for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contracts for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

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

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the

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Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

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

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

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

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

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this

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Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

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

§ 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 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.)

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[X] Arbitration pursuant to Section 8.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the

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Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

TBD

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

TBD

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

§ 9.9 The Owner's rights to use the Architect's 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 A232–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Architect and Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to

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this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, and including any payments due to the Architect by the Owner prior to the assignment.

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

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

$73,500.00

.2 Percentage Basis
(Insert percentage value)

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FIVE point NINE (5.9) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

Landscape Architecture
Mileage exceeding (40) miles will be reimbursed at the standard federal government rate
Drawing reproductions
Postage
Delivery
Outsourced Renderings
Travel
Overnight Stays
Cost of Advertisement for Bids

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

TBD

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

Additional Services are not anticipated at this time.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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

Schematic Design Phase	Fifteen percent (15 %)
Design Development Phase	Twenty-Five percent (25 %)
Construction Documents Phase	Thirty-Five percent (35 %)
Procurement Phase	Five percent (05 %)
Construction Phase	Twenty percent (20 %)
Total Basic Compensation	one hundred percent (100.00 %)

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

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the

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Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect 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.)

Employee or Category	Rate ($0.00)
Senior Principals/Senior Technical Staff	$325.00
Principals/Senior Associates	$285.00
Junior Principals	$190.00
Creative Director	$220.00
Associates	$175.00
Staff Architect/Technical Staff	$150.00
Intern Architect/Interior Designer	$135.00
Graphic Designer	$150.00
Draftsmen	$110.00
Administrative Staff	$100.00

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§ 11.8 Compensation for Reimbursable Expenses

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

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

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

§ 11.9 Architect's Insurance

If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

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(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

N/A

§ 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 Owner's account in the final invoice.

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

§ 11.10.2 Progress Payments

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

3 % per annum

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

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

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.)

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B132™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition

.2 Building Information Modeling Exhibit, if completed:

N/A

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

[X] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:

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(Insert the date of the E235-2019 incorporated into this Agreement.)

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

Exhibit A – Architects Basic Services Scope

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

First Addendum to Standard Form Agreement between Owner and Architect, Construction Manager ad Adviser Edition and General Conditions of the Contract

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

OWNER *(Signature)*
«Ashley C. Curry
Its Mayor

OWNER *(Signature)*

Jeffrey D. Downes
Its City Manager»« »

ARCHITECT *(Signature)*

«Everett Hatcher »«President »

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AIA® Document A232® – 2019

General Conditions of the Contract for Construction, *Construction Manager as Adviser Edition*

for the following PROJECT:
(Name, and location or address)

SHAC Police Station & Associated Site Work
Sicard Hollow Athletic Complex Site
4851 Sicard Hollow Road
Vestavia Hills, AL 35242

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

THE OWNER:
(Name, legal status, and address)

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

THE ARCHITECT:
(Name, legal status, and address)

CMH Architects, Inc.
1800 International Park Drive, Suite 300
Birmingham, AL 35243

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1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT AND CONSTRUCTION MANAGER

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.8 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.9 Instruments of Service. 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 Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.10 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the

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Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents 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 Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

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§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model 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 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.6 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.7 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such

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portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor 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 Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special 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 in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and

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cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the

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Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data, and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified

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materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the

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cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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§ 4.1.3 Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will 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 will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to

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exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any 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.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.19 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.20 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

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§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- **.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- **.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- **.5** Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be

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issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

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§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager'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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation 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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

.1 defective Work not remedied;

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.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor or other Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to 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 Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to

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the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

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.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
.4 construction or operations by the Owner, Separate Contractors, or other Contractors.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner, Construction Manager and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies
In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to

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an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract 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 15.4.

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§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is

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located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the

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Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of this Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after

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expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information

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from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims 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 Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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.

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§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim 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 the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 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 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.

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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STATE OF ALABAMA

JEFFERSON COUNTY

FIRST ADDENDUM TO
STANDARD FORM AGREEMENT BETWEEN OWNER AND ARCHITECT,
CONSTRUCTION MANAGER AS ADVISER EDITION
AND GENERAL CONDITIONS OF THE CONTRACT

WITNESSETH THIS FIRST ADDENDUM TO STANDARD FORM AGREEMENT BETWEEN OWNER AND ARCHITECT, CONSTRUCTION MANAGER AS ADVISER EDITION AND GENERAL CONDITIONS OF THE CONTRACT, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner" ("City"), and CMH Architects, Inc., as "Architect", made and entered into on this the 7th day of October 2025.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner," and CMH Architects, Inc., as "Architect," have executed and delivered a Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition (being "AIA Document B132-2019") (hereinafter referred to as "Architect Contract" and General Conditions of the Contract (being "**AIA Document A232-**2019") hereinafter referred to as General Conditions") on this date; and

WHEREAS, the Owner and Architect wish to amend the Architect Contract and General Conditions by the execution and deliveryof this First Addendum.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the Owner and Architect hereby mutually and expressly amend the Architect Contract and General Conditions as set forth below.

Notwithstanding anything contained in the Architect Contract and General Conditions to the contrary, the Owner and Architect agree to modify, add and/or delete the following terms, provisions, limitations and conditions to said Architect Contract and General Conditions:

I. AMENDMENTS TO THE ARCHITECT CONTRACT

A. **Section 8.1.3** of the Architect Contract is amended to read in words and figures as follows:

> **"§8.1.3.** The Architect shall defend, indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement."

B. The following language shall be added as **Section 2.6.9**:

> **COMMERCIAL UMBRELLA LIABILITY INSURANCE:**
>
> **1**. Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Worker's Compensation and Professional Liability to satisfy the minimum limits set forth herein.
>
> **2**. Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:
>
> **(a)** $5,000,000 per Occurrence
>
> **(b)** $5,000,000 Aggregate.
>
> **3.** Additional Requirements for Commercial Umbrella Liability Insurance:
>
> **(a)** The policy shall name the City, its City Manager, Mayor and other public officials and employees, as Owner, as additional insureds.
>
> **(b)** The policy must be on an "occurrence" basis."

C. The following language shall be added as Article 10, **Section 10.10**:

"**IMMIGRATION**: By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom."

D. The following language shall be added as Article 10, **Section 10.11**:

"**COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS:** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than $15,000.00. General Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade."

II. AMENDMENTS TO THE GENERAL CONDITIONS

A. Section **3.18.1** shall be amended to read in words and figures as follows:

"§3.18 Indemnification

§3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be

liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18."

B. Section 10.3.3 is deleted in its entirety. ***This section dealt with the Owner ("City") indemnifying and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, agents and employees, etc.***

C. The following language shall be added to **Section 11.1.2**:

"This is a public works project. Therefore, the General Contractor shall provide and maintain a Performance Bond and Payment Bond as required by Title 39-1-1, *Code of Alabama, 1975."*

D. **Section 3.6** shall be amended to read in words and figures as follows:

"Title 40-23-4(a), *Code of Alabama, 1975,* exempts municipalities in Alabama from the requirement to pay sales tax. The Contractor and Owner shall avoid the payment of sales, use and similar taxes by using the process outlined in Act Number 2013-205 now codified at Title 40-9-14.1, *Code of Alabama, 1975."*

E. **Article 13, Section 13.6** shall be added and read as follows:

"**IMMIGRATION**: By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom."

F. **Article 13, Section 13.7** shall be added and read as follows:

"**COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS:** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing

business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than $15,000.00. General Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade."

III. RATIFICATION OF ARCHITECT CONTRACT AND GENERAL CONDITIONS

The Owner and Architect hereby ratify and reconfirm the terms, provisions, limitations and conditions of the Architect Contract and General Conditions that were not modified or otherwise amended by this First Addendum.

IV. CONFLICT

If any terms, provisions, limitations or conditions of AIA Form Document B132-2019 and AIA Form Document **A232-2019** conflict with this First Addendum, then in such event the terms, provisions, limitations and conditions of this First Addendum shall apply.

IN WITNESS WHEREOF, the Owner and Architect have hereunto set their hands and seals all being done in duplicate originals with one (1) original being delivered to each party on the day first above written.

OWNER:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

ARCHITECT:
CMH Architects, Inc.

By _____
Billy R. Morace, Jr.
Its Project Manager

ATTESTED

By _____

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Billy R. Morace, Jr. whose name as Project Manager of CMH Architects, Inc., is signed to the First Addendum to Architect Contract and General Conditions who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said CMH Architects, Inc. in Birmingham, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2025.

_____
Notary Public

My Commission Expires:

_____
SEAL

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Architect Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2025.

_____
Notary Public

My Commission Expires:

_____
SEAL

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Architect Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2025.

_____
Notary Public

My Commission Expires:

_____
SEAL

CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO

December 8, 2025

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc:

RE: Public Hearing - Ordinance Number 3308 - An Ordinance Authorizing the Mayor and City Manager to Execute an Architectural Professional Service Contract for the Construction of a Maintenance Facility Located at the Sicard Hollow Athletic Complex

---

Background:
Consistent with the adopted masterplan referenced as the Plan for Growth, CMH Architects have presented a proposal for design services to construct a 4,800+/- maintenance facility that will serve the eastern side of the City. The budgeted construction costs are anticipated to be $1,598,506. CMH Architects submitted a proposal to design the building for an "all-in" fee of $111,896. (7% architectural fee) that includes architectural and sub-consultant fees. The proposal will be incorporated as a part of an AIA (B-132-2019 Edition) contract with the City's standard supplemental conditions addendum.

Recommendation:
It is recommended to grant this authority to allow commencement of the design phase of this project.

Fiscal Impact:
The proposed fees are within the projected total program budget for this project ($1,752,238) and are intended to be funded by a public financing vehicle ultimately approved by the City Council.

Attachments:
1. Ordinance 3308
2. SHAC - Maintenance Building Design Proposal- CMH
3. VH Parks Rec Maintenance - B132-2019-Working draft
4. VH Parks Rec Maintenance - A232-2019-Working draft
5. VH Parks Rec Maintenance - Addendum No. 001 -Working draft

ORDINANCE NUMBER 3308

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT FOR ARCHITECTURAL SERVICES CONTRACT FOR CONSTRUCTION OF A MAINTENANCE FACILITY LOCATED AT SHAC

WHEREAS, consistent with the adopted masterplan referenced as the Plan for Growth, CMH Architects have presented a proposal for design services to construct a 4,800+/- maintenance facility that will serve the eastern side of the City; and

WHEREAS, the budgeted construction costs are anticipated to be $1,598,506; and

WHEREAS, CMH Architects submitted a proposal to design the building for an "all-in" fee of $111,896. (7% architectural fee) that includes architectural and sub-consultant fees, a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance Number 3308 as if written fully therein; and

WHEREAS, the proposal will be incorporated as a part of an AIA (B-132-2019 Edition) contract with the City's standard supplemental conditions addendum a copy of which is marked as Exhibit B, attached to an incorporated into this Ordinance Number 3308 as if written fully therein; and

WHEREAS, the City Manager has recommended the Council to grant this authority to allow commencement of the design phase of this project; and

WHEREAS, the proposed fees are within the projected total program budget for this project ($1,752,238) and are intended to be funded by a public financing vehicle ultimately approved by the City Council; and

WHEREAS, the Mayor and the City Council have found that it is in the best public interest to accept the City Manager's recommendation and authorize the execution of the contracts detailed in Exhibit B.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and the City Manager are hereby authorized to execute and deliver said agreements pursuant to the proposal as detailed in Exhibits A and B; and
2. Said agreements shall be attested by the City Clerk and a copy retained for the record in the Office of the City Clerk; and

3. The proposed fees are within the projected total program budget for this project ($1,752,238) and are intended to be funded by a public financing vehicle ultimately approved by the City Council
4. This Ordinance Number 3308 shall become effective immediately upon adoption and approval by the City Council following posting/publication pursuant to Alabama law.

DONE, ORDERED, ADOPTED and APPROVED, this the 22nd day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3308 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 22nd day of December, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk

CMH ARCHITECTS
1800 International Park Drive
Suite 300
Birmingham, AL 35243
205 / 969-2696
info@cmharch.com
cmharch.com

October 27, 2025

Mr. Brian Corley, Project Director
Doster Construction
2100 International Park Drive
Birmingham, Alabama 35243

RE: Proposal for SHAC Parks & Rec Maintenance Facility & Fire Station Bay
Vestavia Hills, Alabama
CMH Proposal No. 2043

Dear Brian:

CMH is pleased to make a proposal to provide Architectural and Engineering Services to the City of Vestavia Hills for a New Parks & Rec Maintenance Facility and Fire Station Bay to be located on the Sicard Hollow Athletic Complex site at 4851 Sicard Hollow Road, Vestavia Hills, AL 35242.

A. The scope of the project is as follows:
   a. Architectural and Engineering Services for the design of a ±4,800-square-foot Parks & Rec Maintenance Facility & Fire Station Bay and associated improvements per the attached Conceptual Space Program and Conceptual Site Plan.
   b. This project will be designed using sustainable, energy-efficient design principles to the greatest extent possible. No LEED certification or commissioning of the facility is required.
   c. The conceptual plan does not include an ICC500 Storm Shelter, but one can be added for a mutually agreeable fee.

B. The fee is based on State of Alabama Division of Construction Management (DCM) Guidelines and will be as follows:

A/E Basic Services Fee: Building Group III @ 7% based on construction value of $1,598,506.00
Project Design Fee - $111,896.00 (plus fees below)

Based on Percentage of Construction per attached DCM Fee Schedule for Type III Buildings:

Civil Engineering	$18,400.00 Lump Sum
Landscape Architecture & Irrigation Design Services*	$11,000.00 Lump Sum

**If required by Owner*

All in Design Fee - $141,296.00

Reimbursable expenses, advertisement, printing, mileage, etc. will be billed at 1.2 x the actual cost.

For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment. donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. Per DCM Guidelines, sales taxes on materials for the project will be included in the Cost of Work when calculating the fees of the design team whether paid or submitted

to the State Department of Revenue by the Trade Contractors, Construction Manager/Program Manager or Owner for sales tax exemption. Cost of the work will also include the Construction Manager cost (fee and cost of field personnel) during construction of the project. This does not include any pre-construction services.

C. Proposed consultants for this project are listed below:
- Geotechnical Consultant – N/A
- Construction Material Testing & Special Inspections – N/A
- Civil Engineering – Caprine Engineering LLC
- Structural Engineering – MBA Engineers, Inc.
- Mechanical, Plumbing, Fire Protection & HVAC Engineering – MBA Engineers, Inc.
- Electrical Engineering – Hyde Engineering
- Landscape Architecture – Renta Urban Land Design

D. The Services and Fees above assume the following:
a. Services are based on the project being issued as one substantially complete Construction Document Package. If the issuing of a separate construction package is required, there would be an additional fee as mutually agreed upon.
b. CMH does not anticipate any environmental engineering to be required for this project. However, if during the development of the project documents, environmental engineering is required, the service can be provided at a mutually agreed upon fee.
c. This proposal is based on our understanding of the Scope of Services as outlined herein. If the scope of the project should change, the fee is to be equitably adjusted.
d. To the best of our ability, we will identify current codes and ordinances applicable to this project in effect at the time the documents are prepared and communicate with those officials charged with enforcing applicable codes and ordinances into the Contract Documents. Because all codes and ordinances are subject to interpretation, CMH does not make any warranties that the Architect's interpretation shall not be modified, overruled, or changed by code officials.
e. Other Additional Services required, but not included herein, shall, when authorized by the Owner, be compensated at normal hourly rates based on 2.8 DPE (Direct Personnel Expense).
f. The Architect's invoices shall be issued monthly, based on the work completed at the end of each month. Invoices for services are due and payable upon receipt and if unpaid after sixty (60) days will bear interest at three percent (3%). Expenses for collection of unpaid invoices, including legal costs, will be paid by Owner.
g. Only the testing and/or investigation noted herein are included in the fees specified in the proposal. Special inspections that may be required by City Officials and not required by IBC are not included in this proposal. Should any additional testing and/or investigations be required, they can be provided at a mutually agreed upon fee.
h. This proposal does not include design fees for the identification and removal of hazardous materials. However, this service can be provided at a mutually agreed upon fee.
i. The proposal does not include the ALTA topographic survey. This survey will be furnished to the Design Team by the Owner.
j. Geotechnical Consulting, Construction Material Testing, and Special Inspections as required by the International Building Code (IBC) are NOT included in this proposal.
k. The design of infrastructure for a radio system, bio-directional amplifier, and/or a radio tower are not included in this proposal.

l. The general conditions of the AIA Document B132-2019 – Standard Form of Agreement between Owner and Architect, Construction Manager as Adviser Edition, are mutually agreed upon and are included in this proposal by reference.
m. Construction Administration Services included in this proposal are limited to a maximum of a twelve (12) month construction schedule with a maximum of bi-weekly site visits. Any services required past this schedule will be billed hourly as Additional Services.
n. This proposal is based on Construction Documents commencing within three (3) months from the date of this proposal. If the project is delayed beyond this schedule. Fees would be subject to adjustment.

We appreciate the opportunity to provide this proposal for your consideration. If it meets with your approval, please have it executed and return a copy to us. As we understand it, Doster will prepare the AIA Document B132-2019 – Standard Form of Agreement between Owner and Architect, Construction Manager as Adviser Edition, for our review and execution. Please let us know if you have any questions.

Sincerely,

CMH ARCHITECTS, INC.

Billy R. Morace, Jr.
Project Manager

CC: Everett Hatcher
Joan Parker

Attachments: Conceptual Space Plan
Conceptual Site Plan
DCM Fee Schedule

Accepted By: _____

ENTITY NAME

Signature:_____

Printed Name:_____

Title:_____

Date: _____

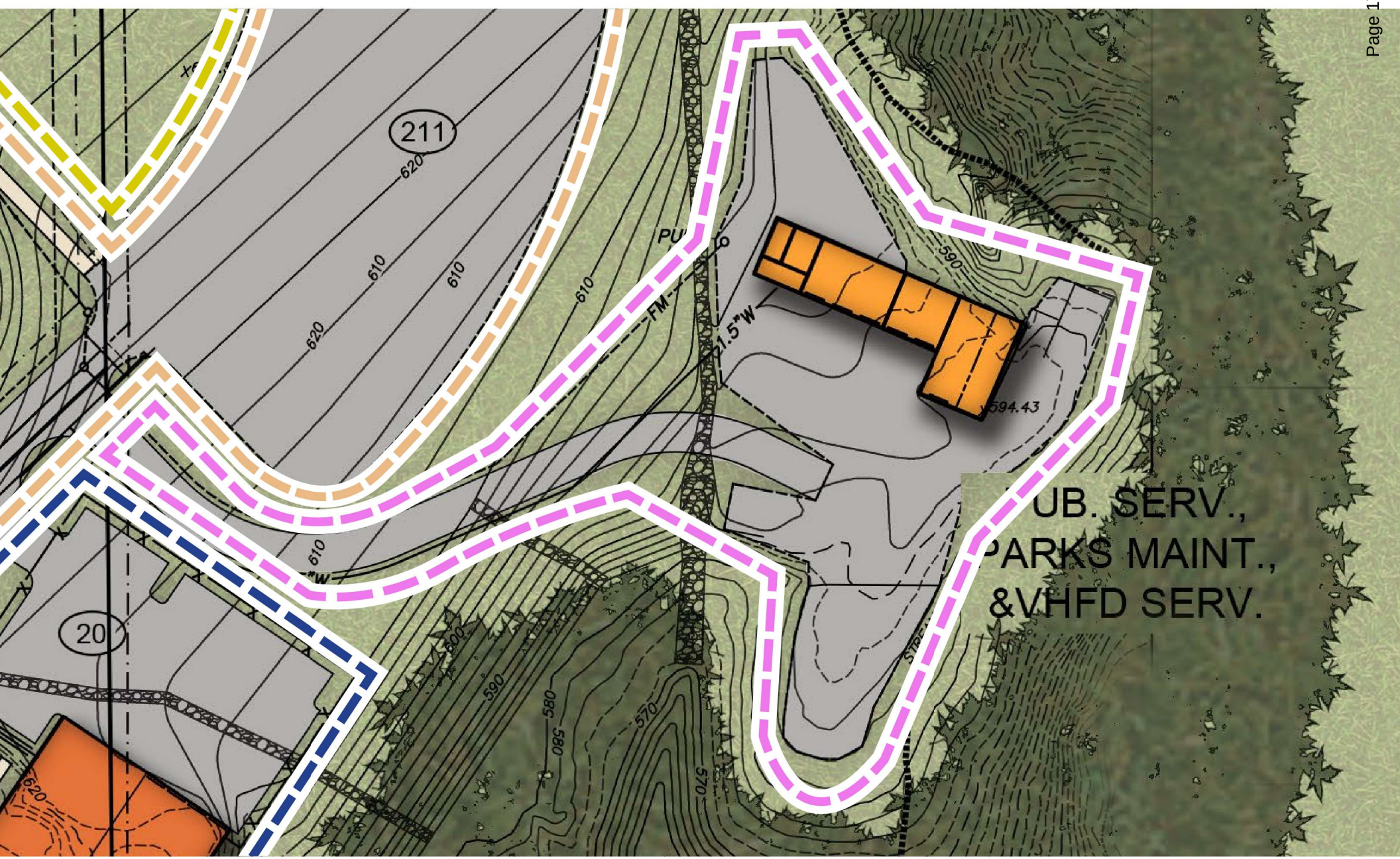
CMH ARCHITECTS

Project: SHAC Feasibility Study, Vestavia Hills
Date: 10.24.25
CMH Project No.: 2043

CONCEPTUAL SPACE PROGRAM:
SHAC Master Plan / Feasibility Study

Parks & Rec Maintenance Facility & Fire Station Bay – New Building Square Footage – 10.24.25

		Program (SF)
Fire Maintenance Area		
Fire Maintenance	=	1,802 SF
Subtotal		1,802 SF
Public Works Area		
Public Works	=	900 SF
Subtotal		900 SF
Parks & Recreation Area		
Parks & Leisure Shop	=	1,350 SF
Parks & Leisure Office, B/R, etc.	=	750 SF
Subtotal		2,100 SF
Total of Programmed Area	=	**4,802 SF**
Allowance for corridors, mechanical rooms, electrical rooms, walls, etc.	=	**xx SF**
Grand Total	=	**4,802 SF**


211
620
610
610
610
620
610
590
FM
21.5"W
594.43
UB. SERV.,
PARKS MAINT.,
&VHFD SERV.
610
20
600
590
580
580
570
570
620

CHAPTER 4
SUPPLEMENT

DETERMINATION OF BASIC FEE OR BASIC FEE RATE FOR DESIGN PROFESSIONAL SERVICES

Contents **Pages**

A. Maximum Basic Fee....4S - 1
B. Schedule of Basic Fee Rates....4S - 2
C. Application of Basic Fee Rate....4S - 3
D. Adjustment for Major Renovation....4S - 4

A. MAXIMUM BASIC FEE

The Basic Fee shall be based upon the budgeted cost of the planned work stipulated in the O/A Agreement, but shall not be higher than a fee as determined by the "Schedule of Basic Fee Rates" below. A higher Basic Fee may be paid only if approved by the Director. A Basic Fee determined by the schedule may be adjusted without the Director's approval for Major Renovation as defined in Section D of this Supplement. Lower Basic Fees may be negotiated without the Director's approval when appropriate considering project size, cost, scope, repetition, etc.

If the Basic Fee is to be a percentage rate applied to the cost of the work, the percentage rate shall not be higher than the applicable rate of the "Schedule of Basic Fee Rates" with adjustment for major renovation, if applicable. If the Basic Fee is to be a fixed, lump sum amount, that amount shall not be greater than the amount that is the product of multiplying the budgeted cost of the work by the applicable percentage rate of the "Schedule of Basic Fee Rates" with adjustment for major renovation, if applicable.

B. SCHEDULE OF BASIC FEE RATES

COST OF THE WORK			FEE IN PERCENTAGE				
			BUILDING GROUP				
			I	II	III	IV	V
Up	to	$100,000	8.0	9.0	10.0	11.0	12.0
100,001	to	200,000	7.0	8.0	9.0	10.0	11.0
200,001	to	300,000	6.0	7.0	8.0	9.0	10.0
300,001	to	400,000	5.9	6.9	7.9	8.9	9.9
400,001	to	500,000	5.8	6.8	7.8	8.8	9.8
500,001	to	600,000	5.7	6.7	7.7	8.7	9.7
600,001	to	700,000	5.6	6.6	7.6	8.6	9.6
700,001	to	800,000	5.5	6.5	7.5	8.5	9.5
800,001	to	900,000	5.4	6.4	7.4	8.4	9.4
900,001	to	1,000,000	5.3	6.3	7.3	8.3	9.3
1,000,001	to	1,250,000	5.2	6.2	7.2	8.2	9.2
1,250,001	to	1,500,000	5.1	6.1	7.1	8.1	9.1
1,500,001	to	1,750,000	5.0	6.0	7.0	8.0	9.0
1,750,001	to	2,000,000	4.9	5.9	6.9	7.9	8.9
2,000,001	to	2,500,000	4.8	5.8	6.8	7.8	8.8
2,500,001	to	3,000,000	4.7	5.7	6.7	7.7	8.7
3,000,001	to	3,500,000	4.6	5.6	6.6	7.6	8.6
3,500,001	to	4,000,000	4.5	5.5	6.5	7.5	8.5
4,000,001	to	5,000,000	4.4	5.4	6.4	7.4	8.4
5,000,001	to	6,000,000	4.3	5.3	6.3	7.3	8.3
6,000,001	to	8,000,000	4.2	5.2	6.2	7.2	8.2
8,000,001	to	10,000,000	4.1	5.1	6.1	7.1	8.1
10,000,001	to	12,000,000	4.0	5.0	6.0	7.0	8.0
12,000,001	to	14,000,000	3.9	4.9	5.9	6.9	7.9
14,000,001	to	16,000,000	3.8	4.8	5.8	6.8	7.8
16,000,001	to	18,000,000	3.7	4.7	5.7	6.7	7.7
18,000,001	to	20,000,000	3.6	4.6	5.6	6.6	7.6
20,000,001	to	22,000,000	3.5	4.5	5.5	6.5	7.5
22,000,001	to	24,000,000	3.4	4.4	5.4	6.4	7.4
24,000,001	to	27,000,000	3.3	4.3	5.3	6.3	7.3
27,000,001	to	30,000,000	3.2	4.2	5.2	6.2	7.2
30,000,001	to	33,000,000	3.1	4.1	5.1	6.1	7.1
33,000,001	to	36,000,000	3.0	4.0	5.0	6.0	7.0
36,000,001	to	39,000,000	2.9	3.9	4.9	5.9	6.9
39,000,001	to	42,000,000	2.8	3.8	4.8	5.8	6.8
42,000,001	to	46,000,000	2.7	3.7	4.7	5.7	6.7
46,000,001	to	50,000,000	2.6	3.6	4.6	5.6	6.6
50,000,001	to	and over	2.5	3.5	4.5	5.5	6.5

BUILDING GROUPS OF THE SCHEDULE

Group I: Industrial buildings without special facilities, parking structures and repetitive garages, simple loft type structures, warehouses exclusive of automated equipment, and other similar utilitarian type buildings.

Group II: Armories, apartments, cold storage facilities, dormitories, exhibition halls, hangers, manufacturing/industrial plants, office buildings without tenant improvements, printing plants, public markets, and service garages.

Group III: College classroom facilities, convention facilities, correctional and detention facilities, extended care facilities, gymnasiums (simple, prefabricated-pre-engineered, minimum types shall be classified under Group II), hospitals, institutional dining halls, laboratories, libraries, medical schools, medical office facilities and clinics, mental institutions, office buildings with tenant improvements, parks, playground and recreational facilities, police stations, public health centers, research facilities, schools (elementary and secondary), stadiums, and welfare buildings.

Also, central utilities plants, water supply and distribution plants, sewage treatment and underground systems, electrical sub-stations and primary and secondary distribution systems, roads, bridges and major site improvements when performed as independent projects. When any or all of these types of improvements are incidental to an overall plan of architectural development they will be grouped with the basic architectural service of the overall project unless stated otherwise in the agreement.

Group IV: Aquariums, auditoriums, art galleries, college buildings with special facilities, communications buildings, special schools, theaters and similar facilities.

Group V: Residences and specialized decorative buildings unless otherwise stated in the agreement. Custom designed furnishings shall be categorized in Group V except when considered incidental to the basic architectural service for a building.

C. APPLICATION OF BASIC FEE RATE

1. The Basic Fee percentage rate determined by the project budget shall be applied to the actual cost of the work. It is not necessary to change the Basic Fee percentage rate if the amount of the subsequent construction contract (as awarded or adjusted for minor change orders) falls within a higher or lower bracket of the schedule than the project budget. If major changes in the project and budget occur during the design or construction phases of the project and warrant a change in the Basic Fee percentage rate to provide fair and reasonable compensation, the change must be agreed upon in an amendment to the agreement. "Major Changes" include, but are not limited to, changes in project size, complexity, usage, arrangement, schedule, or phasing of the construction or improvement work and may or may not result in a major, or significant, change in the cost of the work. A Major Change may warrant adjustment of the Basic Fee rate if the change is requested by the Awarding Authority/Owner and the change requires additional design, administrative, consultant, or other services not

contemplated in the agreement.

2. Unless otherwise stipulated in the agreement, the Basic Fee rate shall apply to the combined cost of all buildings or other work covered by the Agreement. If the work is executed in any manner other than under one lump sum construction contract, or one lump sum construction contract for sitework and a second lump sum construction contract for building construction, the Basic Fee rate shall be subject to adjustment.

3. If the work covered by an agreement is so divided that more than one building group is involved, the Basic Fee rate of the appropriate building group may be applied to each building. Such division of Basic Fee rates must be stipulated in the agreement.

4. If the scope of an agreement involves substantial duplication of buildings on the same site, the basic fee for all services shall be applicable to the cost of the work for the first building. One-half of the basic fee for Services A, B, and C (design services) shall be applicable to the cost of the work for the second building which is a substantial duplication of the first. The basic fee for Services A, B, and C for other buildings which are substantial duplications of the first and second buildings shall be negotiated and defined in the agreement, but in no case shall exceed the fee for the first duplication. The fees for Services D and E (contract and construction administration services) shall be paid in full for duplicated buildings.

5. If the scope of an agreement involves substantial duplication of buildings on more than one site, the Basic Fee for all services shall be applicable to the cost of the work of site improvements of each site as well as modifications required to adapt the design of the substantially duplicated building to conditions of the second, third, etc., sites. The Basic Fee for all services shall be applicable to the cost of the work for the first building. One-half of the Basic Fee for design services shall be applicable to the cost of the work for the second building which is a substantial duplication of the first. The basic fee for design services for other buildings which are substantial duplications of the first and second buildings shall be negotiated and defined in the agreement, but in no case shall exceed the fee for the first duplication. The fees for contract and construction administration services shall be paid in full for duplicated buildings.

D. ADJUSTMENT FOR MAJOR RENOVATION

An increase of up to 25% in the Basic Fee Rate will be allowed for major renovation projects. This adjustment is intended to provide compensation to the design professional for the added effort required to investigate and develop drawings of existing conditions and other additional work required for renovation. A project is considered a major renovation if more than 50% of the construction cost involves renovations and alterations. The application of this adjustment is negotiable and must be stipulated in the agreement to be effective. The presence and accuracy of "as-built" drawings of the existing conditions that can be provided by the Awarding Authority/Owner to the design professional may minimize or eliminate the need for this adjustment. In general, exterior projects, including, but not limited to, re-roofing, re-coating, and landscape/hardscape are not to be considered as major renovations.

AIA® Document B132™ – 2019

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

AGREEMENT made as of the 2nd day of December in the year 2025
(In words, indicate day, month, and year.)

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

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

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

CMH Architects, Inc.
1800 International Park Drive, Suite 300
Birmingham, AL 35243

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

New Parks & Rec Maintenance Facility and Fire Station Bay
Sicard Hollow Athletic Complex Site
4851 Sicard Hollow Road
Vestavia Hills, AL 35242

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

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

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

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

New Parks & Rec Maintenance Facility and Fire Station Bay to be located on the Sicard Hollow Athletic Complex site at 4851 Sicard Hollow Road, Vestavia Hills, AL 35242

§ 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.)

TBD

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

$1,752,238.00

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

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.1 Design phase milestone dates, if any:

Schematic Design – March 2026
Design Development – June 2026
Construction Documents – September 2026

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid or negotiated contract.)

Competitive Bid

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)

TBD

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

N/A

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

Jeff Downes
City Manager
City of Vestavia Hills
1032 Montgomery Hwy
Vestavia Hills, AL 35216
205-978-0195

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

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

TBD

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

.1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

.2 Land Surveyor:

Retained under Architect.

.3 Geotechnical Engineer:

Not anticipated at this time.

.4 Civil Engineer:

Retained under Architect.

.5 Other consultants and Contractors:
(List any other consultants and Contractors retained by the Owner.)

None anticipated at this time.

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

Billy R. Morace, Jr.
Project Manager
1800 International Park Drive
Suite 300
Birmingham, AL 35243
205-969-2696

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§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

MBA Engineers, Inc.
300 20th Street North #100
Birmingham, AL 35203

.2 Mechanical, Plumbing, Fire Protection & HVAC Engineer:

MBA Engineers, Inc.
300 20th Street North #100
Birmingham, AL 35203

.3 Electrical Engineer:

Hyde Engineering
3120 8th Avenue South
Birmingham, AL 35233

.4 Civil Engineer:

Caprine Engineering LLC
3 Office Park Circle #226
Birmingham, AL 35223

.5 Landscape Architect:

Renta Urban Land Design
5236 Caldwell Mill Road
Birmingham, AL 35242

§ 1.1.12.2 Consultants retained under Supplemental Services:

None anticipated at this time.

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

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CMH Architects proposal dated October 27, 2025

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

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model 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.

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

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 provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

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

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

§ 2.6 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million ($ 1,000,000) for each occurrence and Two Million ($ 2,000,000) in the aggregate for bodily injury and property damage.

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

§ 2.6.3 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

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umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million ($ 1,000,000) each accident, One Million ($ 1,000,000) each employee, with policy 1. Worker's Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating that the Contractor qualifies to pay its own workers' compensation claims.

Deleted: and ($) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million ($ 2,000,000) per claim and Four Million ($ 4,000,000) in the aggregate.

§ 2.6.7 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 Owner as an 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 Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

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

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§ 3.1.5 The Architect shall not be responsible for an Owner's or Construction Manager's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

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

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

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

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

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§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, 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 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

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

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect 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, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager 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 agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms.

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing Contracts for Construction.

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§ 3.5.2 Competitive Bidding

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

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager 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 bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

§ 3.5.3 Negotiated Proposals

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

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

- **.1** facilitating the distribution of Proposal Documents for distribution to prospective Contractors, and requesting their return upon completion of the negotiation process;
- **.2** organizing and participating in selection interviews with prospective Contractors;
- **.3** preparing responses to questions from prospective Contractors and providing clarifications and interpretations of the Proposal Documents to the prospective Contractors in the form of addenda; and
- **.4** participating in negotiations with prospective Contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232–2019, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractors' 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 Construction Manager, or acts or omissions of the Contractors 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 initial 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

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determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, 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 Contractors, 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 the Construction Manager, Owner, or Contractors through the Construction Manager. 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 the Owner and Contractors, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232–2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

.1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.

.2 Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, 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 Contractors are 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.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project 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

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construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate each Contractor's right to payment, or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 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 Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the Construction Manager 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 Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractors' responsibilities. 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 Contractors 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 Contractors' design professionals, provided the submittals bear such professionals' 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 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, 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 transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 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. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall:

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

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.2 issue a Certificate of Substantial Completion prepared by the Construction Manager;

.3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and

.4 after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

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

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and Construction Manager 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 Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

Supplemental Services	Responsibility *(Architect, Owner or Not Provided)*
§ 4.1.1.1 Assistance with selection of Construction Manager	
§ 4.1.1.2 Programming	
§ 4.1.1.3 Multiple preliminary designs	
§ 4.1.1.4 Measured drawings	
§ 4.1.1.5 Existing facilities surveys	
§ 4.1.1.6 Site evaluation and planning	
§ 4.1.1.7 Building Information Model management responsibilities	
§ 4.1.1.8 Development of Building Information Models for post construction use	
§ 4.1.1.9 Civil engineering	
§ 4.1.1.10 Landscape design	
§ 4.1.1.11 Architectural interior design	
§ 4.1.1.12 Value analysis	

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§ 4.1.1.13	Cost estimating	
§ 4.1.1.14	On-site project representation	
§ 4.1.1.15	Conformed documents for construction	
§ 4.1.1.16	As-designed record drawings	
§ 4.1.1.17	As-constructed record drawings	
§ 4.1.1.18	Post-occupancy evaluation	
§ 4.1.1.19	Facility support services	
§ 4.1.1.20	Tenant-related services	
§ 4.1.1.21	Architect's coordination of the Owner's consultants	
§ 4.1.1.22	Telecommunications/data design	
§ 4.1.1.23	Security evaluation and planning	
§ 4.1.1.24	Commissioning	
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.26	Historic preservation	
§ 4.1.1.27	Furniture, furnishings, and equipment design	
§ 4.1.1.28	Other services provided by specialty Consultants	
§ 4.1.1.29	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's 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.)

TBD if needed.

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

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

TBD if needed.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

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

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

.1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work,

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constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;

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

.4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;

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

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

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

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

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

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

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

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

.1 Reviewing a Contractor's submittal out of sequence from the Project submittal schedule approved by the Architect;

.2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractors' proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or

.5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractors 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 Owner:

.1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors

.2 Twenty-Four (24) visits to the site by the Architect during construction

.3 Included above ( ) 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 included above ( ) 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

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(2) the anticipated date of Substantial Completion identified in the Initial Information, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-Four (24) months of the date 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 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Owner shall provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

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

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

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

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

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

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

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

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

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 Before executing the Contracts for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contracts for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the

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Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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

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

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

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

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity

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to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

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

§ 8.2 Mediation

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

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 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.

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§ 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.)

[X] Arbitration pursuant to Section 8.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

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

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

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ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

TBD

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

TBD

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

§ 9.9 The Owner's rights to use the Architect's 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.

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§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Architect and Construction Manager.

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

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

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

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$29,400.00

.2 Percentage Basis
(Insert percentage value)

SEVEN (7) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

Landscape Architecture
Mileage exceeding (40) miles will be reimbursed at the standard federal government rate
Drawing reproductions
Postage
Delivery
Outsourced Renderings
Travel
Overnight Stays
Cost of Advertisement for Bids

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

TBD

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

Additional Services are not anticipated at this time.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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

Schematic Design Phase	Fifteen percent (15 %)
Design Development Phase	Twenty-Five percent (25 %)
Construction Documents Phase	Thirty-Five percent (35 %)
Procurement Phase	Five percent (05 %)
Construction Phase	Twenty percent (20 %)
Total Basic Compensation	one hundred percent (100.00 %)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be

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providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

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

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect 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.)

Employee or Category	Rate ($0.00)
Senior Principals/Senior Technical Staff	$325.00
Principals/Senior Associates	$285.00
Junior Principals	$190.00
Creative Director	$220.00
Associates	$175.00
Staff Architect/Technical Staff	$150.00
Intern Architect/Interior Designer	$135.00
Graphic Designer	$150.00
Draftsmen	$110.00
Administrative Staff	$100.00

Deleted:

§ 11.8 Compensation for Reimbursable Expenses

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

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

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

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§ 11.9 Architect's Insurance

If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

N/A

§ 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 Owner's account in the final invoice.

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

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) 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.)

3 % per annum

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

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

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.)

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B132™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition

.2 Building Information Modeling Exhibit, if completed:

N/A

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

[X] AIA Document E235™–2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, dated as indicated below:
(Insert the date of the E235-2019 incorporated into this Agreement.)

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

Exhibit A – Architects Basic Services Scope

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

First Addendum to Standard Form Agreement between Owner and Architect, Construction Manager as Adviser Edition and General Conditions of the Contract

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

OWNER *(Signature)* «Ashley C. Curry Its Mayor	**ARCHITECT** *(Signature)*
OWNER *(Signature)* Jeffrey D. Downes Its City Manager»« »	«Everett Hatcher »«President »»

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Deleted: *(Printed name and title)*
Deleted: *(Printed name, title, and license number, if applicable)*

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AIA® Document A232® – 2019

General Conditions of the Contract for Construction, *Construction Manager as Adviser Edition*

for the following PROJECT:
(Name, and location or address)

New Parks & Rec Maintenance Facility and Fire Station Bay
Sicard Hollow Athletic Complex Site
4851 Sicard Hollow Road
Vestavia Hills, AL 35242

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Doster Construction Company, Inc.
2100 International Park Drive
Birmingham, AL 35243

THE OWNER:
(Name, legal status, and address)

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

THE ARCHITECT:
(Name, legal status, and address)

CMH Architects, Inc.
1800 International Park Drive, Suite 300
Birmingham, AL 35243

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5 SUBCONTRACTORS

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7 CHANGES IN THE WORK

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents. The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 The Drawings. The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.8 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.9 Instruments of Service. 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 Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.10 Initial Decision Maker. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the

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Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents 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 Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

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§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model 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 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

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§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.6 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.7 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such

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portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor 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 Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special 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 in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and

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cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- **.1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the

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Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data, and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified

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materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the

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cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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§ 4.1.3 Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will 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 will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to

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exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any 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.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

§ 4.2.19 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith.

§ 4.2.20 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

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§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Construction Manager, with notice to the Architect, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- **.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- **.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- **.5** Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be

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issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

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§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager'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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation 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, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or Architect.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

.1 defective Work not remedied;

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.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor or other Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to 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 Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to

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the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

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.1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents;
.3 terms of special warranties required by the Contract Documents; or
.4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

.1 employees on the Work and other persons who may be affected thereby;
.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
.4 construction or operations by the Owner, Separate Contractors, or other Contractors.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 Injury or Damage to Person or Property
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials
§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner, Construction Manager and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies
In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

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ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to

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an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract 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 15.4.

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§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is

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located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

.3 Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the

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Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of this Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after

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expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information

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from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims 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 Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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.

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§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim 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 the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 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 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.

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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STATE OF ALABAMA

JEFFERSON COUNTY

FIRST ADDENDUM TO
STANDARD FORM AGREEMENT BETWEEN OWNER AND ARCHITECT,
CONSTRUCTION MANAGER AS ADVISER EDITION
AND GENERAL CONDITIONS OF THE CONTRACT

WITNESSETH THIS FIRST ADDENDUM TO STANDARD FORM AGREEMENT BETWEEN OWNER AND ARCHITECT, CONSTRUCTION MANAGER AS ADVISER EDITION AND GENERAL CONDITIONS OF THE CONTRACT, by and between the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner" ("City"), and CMH Architects, Inc., as "Architect", made and entered into on this the 7th day of October 2025.

WITNESSETH THESE RECITALS:

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation, as "Owner," and CMH Architects, Inc., as "Architect," have executed and delivered a Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition (being "AIA Document B132-2019") (hereinafter referred to as "Architect Contract" and General Conditions of the Contract (being "**AIA Document A232-**2019") hereinafter referred to as General Conditions") on this date; and

WHEREAS, the Owner and Architect wish to amend the Architect Contract and General Conditions by the execution and deliveryof this First Addendum.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the Owner and Architect hereby mutually and expressly amend the Architect Contract and General Conditions as set forth below.

Notwithstanding anything contained in the Architect Contract and General Conditions to the contrary, the Owner and Architect agree to modify, add and/or delete the following terms, provisions, limitations and conditions to said Architect Contract and General Conditions:

I. AMENDMENTS TO THE ARCHITECT CONTRACT

A. **Section 8.1.3** of the Architect Contract is amended to read in words and figures as follows:

> **"§8.1.3.** The Architect shall defend, indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement."

B. The following language shall be added as **Section 2.6.9**:

> **COMMERCIAL UMBRELLA LIABILITY INSURANCE:**
>
> **1**. Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Worker's Compensation and Professional Liability to satisfy the minimum limits set forth herein.
>
> **2**. Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:
>
> **(a)** $5,000,000 per Occurrence
>
> **(b)** $5,000,000 Aggregate.
>
> **3.** Additional Requirements for Commercial Umbrella Liability Insurance:
>
> **(a)** The policy shall name the City, its City Manager, Mayor and other public officials and employees, as Owner, as additional insureds.
>
> **(b)** The policy must be on an "occurrence" basis."

C. The following language shall be added as Article 10, **Section 10.10**:

"**IMMIGRATION**: By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom."

D. The following language shall be added as Article 10, **Section 10.11**:

"**COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS:** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than $15,000.00. General Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade."

II. AMENDMENTS TO THE GENERAL CONDITIONS

A. Section **3.18.1** shall be amended to read in words and figures as follows:

"§3.18 Indemnification

§3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be

liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18."

B. Section 10.3.3 is deleted in its entirety. ***This section dealt with the Owner ("City") indemnifying and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, agents and employees, etc.***

C. The following language shall be added to **Section 11.1.2**:

"This is a public works project. Therefore, the General Contractor shall provide and maintain a Performance Bond and Payment Bond as required by Title 39-1-1, *Code of Alabama, 1975."*

D. **Section 3.6** shall be amended to read in words and figures as follows:

"Title 40-23-4(a), *Code of Alabama, 1975,* exempts municipalities in Alabama from the requirement to pay sales tax. The Contractor and Owner shall avoid the payment of sales, use and similar taxes by using the process outlined in Act Number 2013-205 now codified at Title 40-9-14.1, *Code of Alabama, 1975."*

E. **Article 13, Section 13.6** shall be added and read as follows:

"**IMMIGRATION**: By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom."

F. **Article 13, Section 13.7** shall be added and read as follows:

"**COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS:** Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing

business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than $15,000.00. General Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade."

III. RATIFICATION OF ARCHITECT CONTRACT AND GENERAL CONDITIONS

The Owner and Architect hereby ratify and reconfirm the terms, provisions, limitations and conditions of the Architect Contract and General Conditions that were not modified or otherwise amended by this First Addendum.

IV. CONFLICT

If any terms, provisions, limitations or conditions of AIA Form Document B132-2019 and AIA Form Document **A232-2019** conflict with this First Addendum, then in such event the terms, provisions, limitations and conditions of this First Addendum shall apply.

IN WITNESS WHEREOF, the Owner and Architect have hereunto set their hands and seals all being done in duplicate originals with one (1) original being delivered to each party on the day first above written.

OWNER:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

ARCHITECT:

_____

By _____
Its _____

ATTESTED

By _____

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Billy R. Morace, Jr. whose name as Project Manager of CMH Architects, Inc., is signed to the First Addendum to Architect Contract and General Conditions who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said CMH Architects, Inc. in Birmingham, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2025.

_____
Notary Public

My Commission Expires:

_____
SEAL

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Architect Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2025.

_____
Notary Public

My Commission Expires:

_____
SEAL

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Addendum to Architect Contract and General Conditions and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2025.

_____
Notary Public

My Commission Expires:

_____
SEAL

CITY OF VESTAVIA HILLS
OFFICE OF THE CITY MANAGER
INTER-DEPARTMENT MEMO

December 8, 2025

To: Mayor and City Council

From: Jeff Downes, City Manager

Cc:

RE: Public Hearing - Ordinance Number 3309 - An Ordinance Authorizing the Mayor and City Manager to Execute a Limited Scope Architectural Professional Service Contract to Begin the Design Process for an Eastside Library Facility

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Background:
Consistent with the Plan for Growth masterplan, an eastside library is contemplated for construction within the Sicard Hollow Athletic Complex. Williams Blackstock Architects have provided a limited scope architectural professional services contract to allow commencement of feasibility, space programming, concept design and summary documents to aid with fundraising and public involvement activities. This scope of work contemplates several public involvement and stakeholder meetings that will give direction to design opportunities and the ability to utilize the new facility for a multitude of uses.

Recommendation:
It is recommended to approve the contract to provide a more detailed design for future construction drawings and budget evaluation.

Fiscal Impact:
The anticipated fee for the proposed scope of work is $7,500 for the feasibility efforts, $56,500 for space programming and concept design, and $5,000 for support documents. The contract would utilize funds from a public financing vehicle to be determined by the City Council.

Attachments:
1. Ordinance 3309
2. 2025.11.12_VH Library Proposal

ORDINANCE NUMBER 3309

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A LIMITED ARCHITECTURAL AGREEMENT FOR COMMENCEMENT OF FEASIBILITY, SPACE PROGRAMMING, CONCEPT DESIGN AND SUMMARY DOCUMENTS TO AID WITH FUNDRAISING AND PUBLIC INVOLVEMENT ACTIVITIES FOR AN EASTSIDE LIBRARY

WHEREAS, consistent with the Plan for Growth masterplan, an eastside library is contemplated for construction within the Sicard Hollow Athletic Complex; and

WHEREAS, Williams Blackstock Architects have provided a limited scope architectural professional services contract to allow commencement of feasibility, space programming, concept design and summary documents to aid with fundraising and public involvement activities, a copy of which is marked as Exhibit A, attached to and incorporated into this Ordinance 3309 as if written fully therein. This scope of work contemplates several public involvement and stakeholder meetings that will give direction to design opportunities and the ability to utilize the new facility for a multitude of uses; and

WHEREAS, it is recommended to approve the contract to provide a more detailed design for future construction drawings and budget evaluation; and

WHEREAS, the anticipated fee for the proposed scope of work is $7,500 for the feasibility efforts, $56,500 for space programming and concept design, and $5,000 for support documents; and

WHEREAS, the contract would utilize funds from a public financing vehicle to be determined by the City Council; and

WHEREAS, the Mayor and the City Council have found that it is in the best public interest to accept the City Manager's recommendation and authorize the execution of the contract detailed in Exhibit A.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and the City Manager are hereby authorized to execute and deliver said agreement pursuant to the proposal as detailed in Exhibit A; and
2. The proposed fees would utilize funds from a public financing vehicle to be determined by the City Council; and

3. This Ordinance Number 3309 shall become effective immediately upon adoption and approval by the City Council following posting/publication pursuant to Alabama law.

DONE, ORDERED, ADOPTED and APPROVED, this the 22nd day of December, 2025.

Ashley C. Curry
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3309 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 22nd day of December, 2025 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, Vestavia Hills Civic Center and Vestavia Hills New Merkel House this the _____ day of _____, 2025.

Rebecca Leavings
City Clerk

November 12, 2025

Mr. Jeff Downes, City Manager
City of Vestavia Hills
1032 Montgomery Highway, Vestavia Hills, AL 35216
205.978.01695

Re: Vestavia Hills Library in the Park
Proposal for Architectural and Engineering Services

Jeff,

Thank you for the opportunity to continue our working relationship with the City of Vestavia Hills and appreciate the opportunity to submit a fee proposal for the preliminary programming and planning of a new Library in the Park. We understand that as part of a larger master plan for Sicard Hollow, a new branch library is planned to be included in the future park developments. As part of this effort, we will work with the City, Vestavia Hills Library, and Doster to develop goals for the project, a preliminary program, and a conceptual design to communicate the vision, project scope and funding required to make the Library in the Park a realized success.

PROJECT SCOPE
We understand the scope of the new library has not been fully developed and a focus of our services will be to lead an effort to plan and program the new branch library. This effort will develop a list of project goals, functional needs for the site and building, room types and sizes, and a preliminary cost estimate for the project. To help communicate the results of the planning effort, a conceptual vision and capital campaign document will also be developed. This piece will help communicate to the City and constituents the overall scope of the project, including conceptual site plans, building plans, and conceptual rendering(s) to illustrate what the building may look like. A summary of the preliminary planning and programming effort, project goals, library services, and project cost will also be included to outline both the services and amenities planned to be provided to the community, and the capital needed to realize the new branch library.

We propose to structure the project scope in three phases, guiding you through an informed decision-making process.

1. First, we will focus on a Feasibility Study including a brief property and project goals assessment. This initial step allows us to define the project scope at a high level - with various options and corresponding budgets. This phase could also include community engagement forums and surveys to seek input from constituents that may affect programming considerations.
2. The second phase will be a Conceptual Design / Programming stage, aiming at further defining the project scope with a preliminary programming effort and some conceptual designs on how the building may be designed and look. This stage builds upon the initial assessment to provide a refined project budget and visioning materials for fundraising efforts.
3. Finally, the last phase of work will be developing a summary document that can be used to present the project to stakeholders and the community at large. The focus of the document would be to outline the project vision, scope and cost to garner support and aid in fundraising for the project.

A detailed description of the phased work is outlined below in our description of services.

Following the planning phase and the preliminary programming is mostly complete, we could move into Basic Design Services, which would include a final program verification with all stakeholders, full design services, and construction administration. At this point, we would submit a separate proposal based on the established program and project scope.

BUDGET

Based on initial discussions we understand the tentative construction budget has not been identified. We will help you establish an overall project budget as more of the project is defined. Our initial work in the first phase of the planning effort will include development of feasibility options for a better understanding of budget needs and "order of magnitude" cost.

We will also work with you and Doster Construction (Program Manager) to develop an overall project budget that incorporates the construction cost, furniture cost, and other costs necessary for the entire project.

SCHEDULE

Concerning the schedule, we will coordinate with you and your project team to develop an overall schedule for both design and construction phases to meet your needs.

At a high level, based on initial discussions with Doster Construction we anticipate a planning schedule could include:

Phase 1

- Feasibility Study — 4 – 8 weeks — Nov '25 – Jan 2026
  Holiday schedules and stakeholder availability may impact this duration.

Phase 2

- Preliminary Programming — 1 month — Jan '26 – Feb 2026
- Conceptual Design — 1 month — Feb – March

Phase 3

- Summary / Campaign Document — 2 – 4 weeks — March - April

TEAM

We have worked with many consultants and engineers over the years. We understand that Caprine Engineering has been involved and would be utilized for some part of this study.

When more is known about the project and we move into basic design services, we will propose specific team members to fill out the design team as part of the basic services effort.

SCOPE OF SERVICES

Based on our discussions we propose to organize our work as outlined below –

PHASE 1 – Feasibility Study

We will conduct a kickoff meeting to introduce our team and all of the project stakeholders. This meeting will set out to identify the large project goals, identify desired program spaces, amenities, and services to be provided, and the overarching goals for the new branch library. We will take the initial information gathered and begin to analyze the property, discuss your existing challenges, growth goals and plans for future library needs, and assess the site's potential for accommodating a new branch library.

As part of this effort, we can formulate surveys and conduct town hall meetings to seek constituent insight and input. This information will help to create support in the community, a sense that constituents have been heard and offer valuable considerations for the building program and services to be provided in the new branch library.

This will give you different options (high-level concepts) to consider for the overall project, along with estimated square foot costs based on recent project data, to help you decide how to move forward.

We would expect that three initial options could be considered, ranging in size, amenities included, and estimated cost.

PHASE 2 - Initial Space Programming / Concept Design Phase

We propose to conduct this phase to help you develop the project vision, and further define the overall project scope and program, by considering several scope options and functional considerations, options and decisions including –

- New Branch Library – Develop space needs for a new facility currently envisioned as –
  - Library Space Needs – Develop the specific space needs for the library branch.
  - Meeting Rooms – Develop options for meeting space that is available to the library and greater community for organization meetings, public events and functions, and library programs.
  - Administration – Offices for staff.
  - Café / Food Services – Minimal accommodations expected.
  - Outdoor Functions – Study options for outdoor gathering / learning space, future facility expansion, or future courts at the site.
  - Parking – Maximize parking on the site and look at nearby public or shared parking options that could be planned and coordinated.

- Arts and STEM Program(s) – Fully assess inclusion and scope options for a community art and or STEM component to the building program.
  - Gallery Space
  - Meeting / Auditorium Space
  - Studio Space for classes and programs offered to the public.
  - Maker Space
  - Computer Lab

Our work for this phase will include –

1. Stakeholder Input – small group, in-person meetings to discuss and gather input for developing proposed scope of work. Stakeholders will include a variety of library, city, and user representatives. Additional resources such as online surveys could be used to help gather input and further develop the scope for all facility needs and goals.

2. Existing Library Facilities Assessment – We will tour your existing library to understand how you work and function, what aspects should be considered in the branch, what new or improved features should be considered, etc. This effort might also include touring peer facilities for information gathering, we refer to this exercise as "benchmarking."

3. Development Options – Based on the above information we will develop various facility layout options for review and discussion with the library, including –
   i. Concept Layouts – This preliminary phase will include basic layout concepts to convey and understand space size, adjacencies, potential features, and amenity options for each scheme. We will review options (3) and work with you to narrow it down to a preferred concept to be included in final drawings and rendering(s).
   ii. "Order of Magnitude" Cost Estimate – Preliminary budget ranges will be developed to better define feasibility of how to proceed with the initial scope and potential future phases. We will work with Doster to develop this preliminary cost estimate.
   iii. Deliverables – At this preliminary phase we will provide –
      1. Concept layouts for each proposed option.
      2. "Order of Magnitude" budget ranges for each proposed option
      3. Final Option -
      4. Space program summary outlining space needs.
      5. Conceptual floor plan and site plan for selected option.
      6. Concept rendering to help illustrate the facility.
      7. Visioning materials to provide examples of what the facility may look like and include.
      8. Conceptual pricing from a professional cost estimator (this could be Doster).

PHASE 3 – Summary Campaign Document

Once we have completed Phase 2 to help you further develop the project scope and program, we will work with you to develop a professionally composed brochure that outlines the content and data from the planning and programming effort, the conceptual design drawings and renderings, the preliminary cost estimates, and additional information to garner support and encourage a positive engagement with the community on the plans for the project. We have developed several of these documents in collaboration with our clients and could share examples if that is helpful.

FEE

We propose to provide the Phase 1 services at an hourly rate; we have identified an estimate of how much time will be required for the first phase and will notify you if the time is beginning to exceed this estimate.

- **Phase 1 – Feasibility Study** $ 7,500 *(hourly estimate not to exceed)*

We propose to provide the Phase 2 and 3 services as a lump sum fee.

- **Phase 2 - Initial Space Programming / Concept Design Phase**
  - Preliminary Programming $ 11,500
  - Conceptual Design $ 34,000
  - Engineering Assessment $ 5,500
  - Professional Cost Estimate $ 5,500 *(if needed by WBA)*
- **Phase 3 – Summary Campaign Document** **$** 5,000

ADDITIONAL SERVICES

The services outlined below are outside the limits of typical Basic Services and other services already outlined above. We have provided a description of additional services, and their cost if any for this project. If any of these services not currently anticipated need to be added later, we will work with you to develop a detailed scope of the additional services. If necessary and approved by you, these services would be provided at 1.2 times the direct cost of the work.

Additional Services Not Included	*Comment*
• Detailed Professional Cost Estimating	Not anticipated this phase.
• Civil Engineering	Not anticipated this phase.
• Landscape Architecture	Not anticipated this phase.
• Furniture, Fixtures & Equipment	Not anticipated this phase.
• Professional Renderings	Not anticipated this phase.
• Graphic Design, Signage, Wayfinding	Not anticipated this phase.
• Boundary & Topographic Survey	Not anticipated this phase.
• Geotechnical subsurface report & consulting	Not anticipated this phase.
• Site utility infrastructure design	Not anticipated this phase.
• Electrical infrastructure design	Not anticipated this phase.

REIMBURSABLE SERVICES

Reimbursable expenses are in addition to compensation incurred by the Architect and our consultants in the interest of the Project and include drawing reproductions, postage, delivery, outsourced renderings, travel, overnight stays, and cost of advertisement for bids. Reimbursable expenses will be invoiced at 1.1 times direct cost. Mileage for trips exceeding 20 miles will be invoiced at the standard government reimbursable rate.

We are truly honored to be considered for this project and look forward to collaborating with you on a new Library in the Park that will serve the City for many decades to come. If after reviewing this proposal you find the agreement acceptable, please sign below to indicate approval.

If you have any questions, please do not hesitate to call.

Sincerely,



Matt Foley, Partner

Enclosures: Exhibit A - Hourly Rates

Approved by: _____

Date: _____

Exhibit A

2025 HOURLY RATES

WILLIAMS BLACKSTOCK ARCHITECTS

Managing Principal	$295.00
Principal	$245.00
Senior Project Manager	$205.00
Project Manager	$190.00
Assistant Project Manager	$175.00
Staff Arch / Interior Designer – Level 3	$150.00
Staff Arch / Interior Designer – Level 2	$135.00
Staff Arch / Interior Designer – Level 1	$120.00
Senior Graphic Designer	$155.00
Graphic Designer	$145.00
Designer	$130.00
Intern / Draftsmen	$ 75.00
Administrative – Staff	$ 60.00

END – Exhibit B