

**CITY OF BETHLEHEM**  
**INTER-DEPARTMENTAL CORRESPONDENCE**

**SUBJECT:** Request for Approval by City Council of Contract Award or Contract Price Increase Pursuant to City Ordinance, Article 121.05 (a)

Project or Contract Reference: Design – Memorial Pool Design & Construction Services

**TO:** City Council, all members, and Council Solicitor

**FROM:** Michael Alkhal, PE, Director of Public Works/City Engineer

**DATE:** May 18, 2018

---

On behalf of the Administration, pursuant to City Ordinances, Article 121.05, I request City Council's approval of the following recommendation of the referenced contract award or price increase.

- Check Type of Contract or Change:

The contract is for over \$50,000 and required to be bid under the Third Class City Code. We have advertised the above referenced project and received qualified bids. We recommend award of the contract to the bidder identified and for the reasons stated below.

The recommendation is for a price increase of 10% or more for an existing contract over \$50,000 that was previously bid and awarded under the Third Class City Code.

The contract is for the engagement of professional services. We have received and reviewed a proposal or proposals for professional services in connection with above referenced project or requirement for professional services. We recommend award of the contract.

- Is the contract appropriation or price increase included in this year's budget?  yes  no

2018 Non-Utility Capital Improvement Program

- Identify contract funding sources (general fund, grants, loans, etc....):

Account #69999-66197 – Memorial Pool Complex

- The name and address of the recommended Professional Service Provider are:

Urban Research and Development Corporation  
28 West Broad Street  
Bethlehem, PA 18018  
Attn: Leonard Policelli

- Term of contract or estimated completion date, subject to standard extensions:

The contract shall run until May 23, 2020.

- Description of project or scope of services to be provided:

This project is for the design of the Memorial Pool Complex improvements including the preparation of detailed plans, specifications, permitting, bidding, and limited construction oversight services. New facilities include three pools, a renovated bathhouse, and related site work. Council will be receiving a memorandum from Jane Persa, Recreation Director, to set up a meeting to present the comprehensive Parks and Pools Study to Council shortly, which details the recommendation for this project. Contracting for these services by early June is critical to meeting a new pool opening for the 2020 season.

- State the actual or estimated price to the City or the proposed Department budget allowance for the initial term; and state payment rate per unit of service if applicable:

\$420,000.00

- Number of renewal term options and duration of each renewal, if any:

None anticipated

- Maximum dollar value of all renewals provided for beyond the original term as if all renewals were exercised:

None anticipated

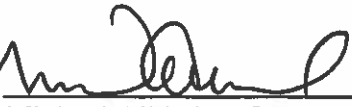
- Reasons for recommendation of Administration and Council approval of contract:

URDC and their subcontractor completed the Monocacy Park Complex Master Site Development & Memorial Pool Feasibility Study. The replacement and upgrade of Memorial Pool was a key component identified in the study. The pool has deteriorated and is currently closed. Concepts were prepared for the new pool complex and we are now

prepared to move forward with detailed design and construction in order to have the new pool open for the 2020 season.

Please approve this recommendation by passing the accompanying resolution. A vote of final approval is requested at the first City Council agenda listing of this matter.

---

By:   
Michael Alkhal, P.E.  
Director of Public Works

Copies To: Mayor  
Director of Administration  
Director of Budget and Finance  
Law Bureau  
Deputy Director of Public Works  
Recreation Administrator  
Purchasing Bureau  
Controller

Attachment: proposed resolution

RESOLUTION NO. \_\_\_\_\_

Authorization for Contract or Amendment under Article 121.05(a)

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Contract or Amendment and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, with the following named contractor, for the uses and purposes indicated in the supporting Recommendation of Award of Bid or Contract dated May 18, 2018:

1. Name of Contractor: Urban Research and Development Corporation
2. Project or Contract Reference: Memorial Pool Design & Construction Services, Project No. MS-18-W02

Sponsored by \_\_\_\_\_  
\_\_\_\_\_

ADOPTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
President of Council

ATTEST:

\_\_\_\_\_  
City Clerk

# **Scope of Work for the City of Bethlehem**

## **Memorial Pool Construction Project**

Expanded from APRIL 26, 2018

May 9, 2018

REVISED May, 18, 2018

### **BACKGROUND**

Our Project Team, Urban Research & Development Corporation (URDC), Spillman Farmer Architects (SFA) and Wallover Architects (WA) is nearing the completion of the Monocacy Park Complex Master Site Development Plan & Memorial Pool Feasibility Study. The primary concern identified in the study is the replacement of the pool. A perspective rendering, a scaled drawing and estimates were provided to the City and refined over several meetings with the Mayor and his staff.

The intent is to follow the predefined, two year project schedule which ends with a ribbon cutting for the new pool complex. Timing is critical. Our team intends to retain all involved personnel in moving forward with the construction drawings, utilizing their knowledge of the project to better compile the drawing sets. URDC will be the project lead with supporting services from Spillman Farmer Architects and Wallover Architects, Inc. Each office has included a description of the work they will perform within this scope. A cost overview and breakdown is provided at the end.

### **I. CONTINUING SCOPE OF SERVICES**

The URDC Team will develop final construction drawings with the City's sign-offs, acquire necessary permits (the City will be responsible for any permit fees), develop specifications and a full bid package, oversee the bidding process, tabulate bid results, attend site construction meetings and provide construction observation (one to two times per week for site and architectural and bi-monthly for pool), develop a final punch list for project completion, and help close out the project.

### **I. DELIVERABLES:**

All necessary construction drawings and specific details for the design and construction of the pool facilities and site development will be created for inclusion in the Contract Documents. All specifications will be furnished in PDF format based upon Microsoft Word 2013. The information to be provided is as follows and includes but is not limited to:

Bid Award and notice to proceed.....	May 2019
Start Construction .....	May 2019
Substantial Completion of Pool .....	November 2019
POOL OPENING .....	May 2020

#### IV. PROFESSIONAL FEES & COSTS

As the lead consultant URDC will be providing the City a point source for billing and payments. The fee for completing the proposed Scope of Work has been determined by a percentage of the budgeted amount as broken down below. Invoicing will be based on actual hours worked and actual reimbursable expenses. The total estimated cost of professional services is \$420,000. This fee will not fluctuate due to actual construction costs. It may be revised if the project scope changes dramatically either smaller or larger as agreed by both parties. Invoicing will be made monthly for work accomplished the preceding month and shall be paid within thirty (30) days. URDC will seek and obtain the City's written permission prior to proceeding with services that would exceed the compensation stated.

	Construction Estimate	Professional Fees
<b>Memorial Pool estimated cost</b>	<b>\$2,990,000</b>	
Wallover Architects Fee		\$205,240
<b>Bathhouse Renovations</b>	<b>\$750,000</b>	
Spillman Farmer Architects Fee		\$67,500
<b>Site Construction</b>	<b>\$460,000</b>	
URDC Fee site		\$71,300
URDC Fee pool site work		\$44,850
Project oversight and administration		\$31,110
<b>Project Total</b>	<b>4,200,000</b>	
Design & Engineering	(10%)	420,000
	<b>Grand Total</b>	<b>4,620,000</b>

**WALLOVER ARCHITECTS *incorporated***  
Wheatland Place  
941 Wheatland Avenue, Suite 304  
Lancaster, Pennsylvania 17603.  
(717) 295-7754 (voice) (717) 295-5577 (fax)  
[ewallover@walloverarchitects.com](mailto:ewallover@walloverarchitects.com) (email)  
[www.walloverarchitects.com](http://www.walloverarchitects.com) (web site address)

**WALLOVER ARCHITECTS *incorporated*** meets all of the criteria established by law as identified by the Commonwealth of Pennsylvania to provide professional design services for aquatic facilities. The firm was established in Canton, Ohio in 1982 and moved its primary operation to Lancaster, Pennsylvania in 1986. As an Architectural Design firm, we maintain no financial involvement with any manufacturers or suppliers of the equipment we select and specify. We are widely known within the aquatics community and maintain the highest ethical standards for the work developed by our firm. Mr. Wallover is a registered architect, licensed in the Commonwealth of Pennsylvania, the States of New York, New Jersey, Maryland, Ohio, South Carolina and Tennessee, certified by the *National Council of Architectural Registration Boards*, and a member in good standing of the *American Institute of Architects*.

Our office will be supporting **URDC, Spillman Farmer Architects**, and the **City of Bethlehem** as the aquatic design consultant to the overall design and development team. The following outline is our normal scope of services that we offer for the development of an intuitional leisure pool and water playground when associated with a Project in the role of Aquatic Consultant. Our work encompasses all pool-related design and documentation, associated consultation with the Consultant of Record, URDC, the Owner and its oversight committee, coordination with the Architect's specific mechanical and electrical consultants and a final review of completed contract documents to assist in coordination of the related trades. We will provide our expertise in reviewing all basic conceptual designs to date, incorporate standardized pool detailing and generate a complete set of competitive bidding and permitting documents for your use in the construction of the above referenced project.

**WAI** has reviewed the information presented to date and suggest the following course of action. Our best service to you will be to expand work to date and move directly into the abbreviated Schematic Design Phase in order to rapidly generate the bidding and permitting set for inclusion in your overall documents package. If we move promptly into the preparation of the Schematic Design and Design Development documents, we can help maintain your schedule. In addition, we will provide our technical expertise for the Design Team's use in developing all filter room and support systems. This work will include the following specific and general Specification Sections under Divisions 2 through 12, Division 13, and appropriate mechanical and electrical technical specifications. The information will be provided and updated through key meetings and e-mail.

#### DELIVERABLES:

All necessary construction drawings and specific details for the design and construction of a State of Pennsylvania compliant outdoor municipal aquatic center and all related filter room facilities will be provided in a Revit Ver. 2017 file incorporating AIA layering and **WAI's** CAD Standards (*WAI is has recently transitioned to the Revit based BIM delivery software but AutoCAD documentation is still readily available*) for inclusion in the Contract Documents. All specifications will be furnished in PDF format based upon Microsoft Word 2013. The information to be provided is as follows and includes but is not limited to:

Continued on the next page

Development of indoor and outdoor aquatic facility projects normally involves the following phases including, **Schematic Design, Design Development, Construction Documentation, Bidding and Negotiation, and Construction Administration**. This organizational structure, widely accepted by the construction industry, is the standard and customary method for providing comprehensive professional architectural services as defined by the *American Institute of Architects*. The following is a brief outline of the five phases of the Scope of Work customarily provided by our office and necessary for a Project of this scope.

Schematic Design Phase: (15% of fee - a discount for WAI design work performed in the study will be provided)

The Architect shall review the program furnished by the Owner and utilizing this program, establish design concepts and approach to the Project, and prepare drawings and other documents that illustrate the scale and relationships to the site. Ongoing review of all programmatic requirements, including functional and budgetary constraints, occurs throughout this phase of the Work. One (1) kick-off meeting with the Owner and Architect recommended in this phase including one on-site design to confirm Owner's design intent and satisfaction with the proposed design and to review proposed pool components.

Design Development Phase: (20% of fee)

On the basis of the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare a Design Development package for approval of the Architect of Record and Owner. This package will consist of drawings and documents that describe the size and character of the Project as to architectural, structural, mechanical and electrical systems and other areas as deemed appropriate to the program. All functional and budgetary constraints of the program are updated and reviewed appropriately. Two (2) meetings with the lead Consultant and Owner and Architect recommended in this phase.

Construction Documents Phase: (40% of fee)

On the basis of the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare Construction Documents, consisting of drawings and specifications for the Project. These Drawings and Specifications will set forth, in detail, the requirements for the construction of the Project. The Architect also assists the Architect of Record in the preparation of all bidding information and pool related documents required to initiate the Project. These forms and documents, where appropriate, will be included as a part of the Specifications for the Project. The Architect will also assist the Architect of Record in connection with the Owner's responsibility for filing documents required for jurisdiction approval on behalf of the Project. Two (2) meetings with the Owner and Architect recommended in this phase.

Bidding and Negotiation Phase: (5% of fee)

The Architect answers all questions of bidding contractors and issues any addenda that are necessary. Upon receipt of bids, the Architect reviews and evaluates the bids with the Architect of Record. The Architect assists the Architect of Record in awarding and preparation of all contracts for construction as may be required for swimming pool construction. One (1) meeting with the Owner and Architect recommended in this phase - Pre bid meeting.

Continued on the next page



expenses. Mileage and travel time costs for the 18 proposed meetings are included in the fixed professional fee. Additional charges will only be billed when incurred for Owner requested and approved additional meetings (other than the 18 scheduled meetings) and will be billed as a reimbursable expense. We are not available until early to mid-November to initiate production work on this Project as we are currently finalizing two sets of Project documents for bidding. However the initial design review meeting(s) can be held prior to the start date to initiate product and material selections and confirm the Owner's Project expectations.

Construction Administration meetings will be only as required by URDC and the Owner at appropriate stages of construction for the pools and related construction. We normally provide as a minimum, monthly construction administration meetings for the duration of the pool-related construction phase. *Twelve (12) construction meetings* are scheduled during the construction phase of the Project including one (1) kickoff-pre-construction meeting, eight months of construction (9 meetings) and two (2) meetings for Substantial/Final Completion. Commissioning meetings would be considered an additional expense and handled on a per diem basis. We recommend our site visitations be no less than one (1) per month during the pool construction period.

**HOURLY RATE SCHEDULES:**

<b>WALLOVER ARCHITECTS <i>incorporated</i></b>	
<b>Classification:</b>	<b>Hourly Rate:</b>
Principals: Edwin M. Wallover, III AIA	\$175.00/Hour
Registered Architects:	\$135.00/Hour
Technical Level I: (Senior Designer, Graduate Architect)	\$110.00/Hour
Technical Level II: (Intern Architect, Senior Draftsman)	\$100.00/Hour
Technical Level III: (Draftsman)	\$80.00/Hour
Clerical:	\$60.00/Hour

**REIMBURSABLE EXPENSES:**

It should be noted that the customary Reimbursable Expenses of mileage @ \$.545/Mile or current reimbursement per mile under Federal guidelines, long-distance communications, mailings, and reproductions expensed on behalf of the Project are included in the lump sum professional fee. The billing for additional Owner requested reimbursable expenses will be according to the Architect's normal and customary billing cycle. The following fees are our normal billing rates for stated reimbursable expenses:

<b>REIMBURSABLE EXPENSES: STANDARD</b>	
<b>Classification:</b>	<b>Rate</b>
Computer generated check plots:	included
Computer generated final plots:	included
Prints/Photocopies: B & W	included
Prints/Photocopies: Color	included
Mailing/Postage:	included
Telephone/fax:	Included
Specification Manuals:	@ cost (no multiplier)
Contract Documents:	@ cost (no multiplier)
Travel Time: flat rate for one or more employees	\$75.00/Hr. (additional meetings only)
Meals: per diem	\$40.00/Day
Lodging: (if required)	@ cost (no multiplier)
Mileage plus tolls, parking and etc.	\$0.545 / mile + cost

For all additional requested professional services, the published hourly rate schedules for the Architect shall apply. If requested and authorized by URDC or the City of Bethlehem, the Principal

# DRAFT AIA® Document B104™ - 2017

## Standard Abbreviated Form of Agreement Between Owner and Architect

AGREEMENT made as of the «twentieth» day of «May» in the year «Two Thousand Eighteen»  
(In words, indicate day, month and year.)

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

«Spillman Farmer Architects»  
«1720 Spillman Drive Suite 200»  
«Bethlehem, PA 18015»

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

«Spillman Farmer Architects»  
«1720 Spillman Drive Suite 200»  
«Bethlehem, PA 18015»

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

«Bethlehem Memorial Pool Bath House Renovation»

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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.

§ 2.2 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 11.8:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

« Reference Exhibit A »

.2 Automobile Liability

« Reference Exhibit A »

.3 Workers' Compensation

« Reference Exhibit A »

.4 Professional Liability

« Reference Exhibit A »

### 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 coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. 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.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. 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.

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

#### § 3.2 Design Phase Services

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

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

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

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

#### § 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

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

#### § 3.4.4 Submittals

§ 3.4.4.1 The Architect shall review and approve, or take other appropriate action, upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The 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.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

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

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 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 require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.5 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.

§ 5.6 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.

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

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

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

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program

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 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 A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

### § 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 Mediation, 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. 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.

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

*(Check the appropriate box.)*

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

§ 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 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all 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:

~~« \$1,000.00 »~~

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

~~« \$1,000.00 »~~

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

#### 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 A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

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

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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.

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

Design Phase	« thirty five »	percent (	« 35 »	%)
Construction Documents Phase	« fifty five »	percent (	« 55 »	%)
Construction Phase	« ten »	percent (	« 10 »	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

§ 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, if any, 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.)*

« Reference Exhibit B »

Employee or Category

Rate

§ 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 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 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 « five » percent ( « 5 » %) of the expenses incurred.

§ 11.9 Payments to the Architect

§ 11.9.1 Initial Payment



OWNER (Signature)

« »

(Printed name and title)

ARCHITECT (Signature)

« Daniel L. Harrigan AIA » « President »

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

D  
L  
H  
A  
R  
R  
I  
G  
A  
N