

AIA® Document C103® – 2015

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

AGREEMENT made as of the 6th day of March in the year 2023
(In words, indicate day, month and year.)

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

Douglas County School District 28-0066, a/k/a Westside Community Schools
A Nebraska public school district and political subdivision
909 S. 76th Street
Omaha, NE 68114
and the Owner's Representative (hereinafter "Consultant"):
(Name, legal status, address, and other information)

Project Advocates, LLC
1313 Cuming Street
Suite 200
Omaha, NE 68102

Consultant's discipline:

Owner's Representative

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

Westside Community Schools – 2023 Bond Projects

The Owner and Consultant agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

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ARTICLE 1 INITIAL INFORMATION

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

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

The Owner anticipates pursuing a bond election by a special election on May 9, 2023, the purpose of which would be to finance certain potential school district facility improvements and upgrades. The Owner desires to engage Consultant to provide professional owner's representative services to the Owner for the purpose of advising and recommending the Owner on pre-bond phase requirements, and, if successful, post-bond phase design and construction requirements.

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

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

- .1 Design phase milestones, if any:
To be determined
- .2 Date for commencement of construction:
To be determined
- .3 Substantial Completion date:
To be determined
- .4 Other milestone dates:
To be determined

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§ 1.4 The Owner and Consultant may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Consultant shall appropriately adjust the schedule, the Consultant's services, and the Consultant's compensation.

§ 1.5 The Owner reserves the right to refuse or limit Consultant's use of any employee or subconsultants and to require Consultant to remove any employee or consultant already engaged in the performance of the services on the Project.

§ 1.6 The term of this Agreement shall be for a period beginning on the Effective Date and shall continue through the occurrence of one of the following events, whichever occurs first in time:

- .1 The completion of all professional services provided by the Consultant under the terms of this Agreement, with the term of this Agreement to extend to twelve (12) months after the issuance to the Owner of the Certificate of Substantial Completion for the last completed Project.
- .2 The termination of this Agreement according to its terms, including termination pursuant to paragraph 7.7 in the event the legal voters of the Owner do not approve the proposed bond issue; provided, the Owner, in its sole discretion, may elect to extend the term of this Agreement.
- .3 **Sixty (60) months** from and after the Effective Date, unless otherwise extended by express, written consent of both parties.

§ 1.7 This Agreement shall not create a continuing contract for professional owner's representative services for future building projects or bond elections beyond the terms of this Agreement.

§ 1.8 Any additional services to be provided by the Consultant not otherwise identified in this Agreement shall be determined by a separate written agreement or addendum to this Agreement signed by both parties.

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:

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

See Appendix A, Scope of Basic Services

§ 2.2 The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances. The Consultant 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 Consultant identifies the following representative who is authorized to act on behalf of the Consultant with respect to the Project.

(List name, address, and other information.)

Rob Zimmerman or Matt Herzog
1313 Cuming Street
Suite 200
Omaha, NE 68102

§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Agreement, or shall cause such services to be performed by appropriately licensed professionals.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Owner and the Owner's other consultants. The Consultant may communicate with the Owner's other consultants for the purposes of performing its services on the Project. The Consultant shall keep the Owner reasonably informed of any such communications. The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the

Owner and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

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

§ 2.7 **Insurance.** The Consultant shall maintain the following insurance for the duration of this Agreement.

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

§ 2.7.2 Automobile Liability covering vehicles owned by the Consultant and non-owned vehicles used by the Consultant with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

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

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

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

§ 2.7.6 The Owner shall be an additional insured on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.7.7 The Consultant shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies.

§ 2.7.8 Excess or Umbrella Liability with policy limits of not less than Five Million Dollars (\$5,000,000).

§ 2.8 **Time.** The Consultant shall provide its services within the time limits established in the Consultant's Schedule, or within the Deliverable(s) Time Limit(s) set forth below. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.

(Check one or both selections below.)

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

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

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

§ 2.9 Owner's Approval Not a Waiver. Approval by the Owner of any plans, studies, designs, specifications, reports, or Instruments of Service furnished by the Consultant under this Agreement shall not constitute and shall not in any way be deemed to be a release of the responsibility and liability of the Consultant, its agents, employees, and subcontractors, for the adequacy of the Consultant's work or for the Instruments of Service, nor shall such approval be deemed to be an assumption of such responsibility and liability by the Owner for any defect in the Instruments of Service prepared by the Consultant, its agents, employees, subcontractors, or consultants. The Owner's approval or acceptance of, or payment for, any of the Consultant's services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement.

§ 3.2 The Consultant shall promptly notify the Owner upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner's written authorization. Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall entitle the Consultant to compensation pursuant to Section 8.2.

ARTICLE 4 OWNER'S RESPONSIBILITIES

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

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

(List name, address, and other information.)

Dr. Mike Lucas, Superintendent of Schools
Westside Community Schools
909 S. 76th Street
Omaha, NE 68114
402-390-2100
lucas.mike@westside66.net

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

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

§ 4.5 The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably required for the Consultant to be able to perform its services.

§ 4.6 The Owner shall provide timely written notice to the Consultant if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's Services; provided however that the Owner's failure or omission to do so shall not relieve the Consultant of its responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation. The Owner shall be entitled to rely on the Consultant's Instruments of Service, services and information furnished by the Consultant. This Section shall not relieve Consultant of any responsibility or liability for the performance of Consultant's contracted services on the Project.

ARTICLE 5 COPYRIGHTS AND LICENSES

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

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

§ 5.3 The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service 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 Consultant's subconsultants.

§ 5.4 Upon execution of this Agreement, the Consultant grants to the Owner a perpetual, world-wide, royalty-free, paid-up nonexclusive license to use the Consultant's Instruments of Service including all drawings and specifications and all electronic source files in whatever format, for any purpose, including the design and/or construction of current or future facility projects of the Owner. The Consultant shall obtain similar nonexclusive licenses from its subconsultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Owner's consultants and contractors to reproduce applicable portions of the Instruments of Service. The Consultant shall incur no liability for the Owner's use or reuse of Instruments of Service other than in connection with the Project unless the Consultant is involved in the reuse project. Prior to the reuse of any Instruments of Service for a project in which the Consultant is not also involved, the Owner shall remove and obliterate from such documents all identification of the original Consultant, including name, address, and professional seal and stamp. If the Consultant rightfully terminates this Agreement for cause as provided in Section 7.4, the license granted in this Section 5.4 shall terminate.

§ 5.4.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Consultant and the Consultant's subconsultants from all claims and causes of action arising from such uses. The terms of this Section 5.4.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 7.4.

§ 5.5 Except for the licenses granted in this Article 5, 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 Consultant. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant and the Consultant's subconsultants.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

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

§ 6.1.12 The Consultant acknowledges that the Owner is a political subdivision of the State of Nebraska, and, as such, may enjoy immunities from suit and/or liability under the Constitution and laws of the State of Nebraska. By entering into this Agreement, the Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§ 6.1.2 Only to the extent damages are covered by property insurance and payment is received from applicable insurance, the Owner and Consultant waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Consultant, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 6.1.3 The Consultant waives consequential damages against the Owner 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 7.7.

§ 6.1.4 Consultant Indemnity

§ 6.1.4.1 Indemnity / Non-Professional Acts. The Consultant and Consultant's consultants shall indemnify, defend and hold harmless the Owner, and all of its board members, officers, administrators, agents, representatives, and employees, from and against any and all third party losses, damages, liabilities, judgments, or expenses, including reasonable attorney's fees and expenses, on account of damage or destruction to property and personal injuries, including death, to any or all persons, including but not limited to invitees and employees of the Owner, Owner's consultants, the Consultant, and the Consultant's consultants, to the extent caused by the negligent acts, errors or omissions by the Consultant, its employees and its consultants, and for patent, copyright or trademark infringement attributable to the Consultant's services.

§ 6.1.4.2 Indemnity / Professional Acts. The Consultant shall indemnify and hold harmless the Owner, and all of its board members, officers, administrators, agents, representatives, and employees, from and against from any and all third party losses, damages, liabilities, judgments, or expenses, on account of damage or destruction to property and personal injuries, including death, to any or all persons, including but not limited to invitees and employees of the Owner, Owner's consultants, the Consultant, and the Consultant's consultants, but only to the extent caused by the negligent acts, errors or omissions of the Consultant, its employees and its consultants, in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold harmless the Owner does not include a duty to defend. The Architect's duty to indemnify the Owner under this § 6.1.4.2 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 6.1.4.3 The Consultant understands and agrees that the indemnification, defense, and hold harmless obligations of this section constitute a continuing obligation on the part of the Consultant and survive and are enforceable beyond the term of the contract to the fullest extent permitted by law.

§ 6.2 Mediation

§ 6.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement may be submitted to mediation. Provided that mediation shall not be a condition precedent to any other binding dispute resolution, including litigation.

§ 6.2.2 A request for mediation shall be made in writing, delivered to the other party to the Agreement.

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

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

(Check the appropriate box. If the Owner and Consultant do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 6.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

(Paragraphs deleted)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 If the Owner fails to make payments to the Consultant for undisputed sums in accordance with this Agreement and such non-payment is not cured within ten (10) calendar days' after receipt by the Owner of written notice from the Consultant, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all undisputed sums due prior to suspension. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 7.2 If the Owner suspends the Project or the Consultant's services for more than ninety (90) consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project or the Consultant's services are resumed, the Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 7.3 If the Owner suspends the Project or the Consultant's services for more than 90 consecutive days for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

§ 7.4 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.

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

§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§ 7.7 IN THE EVENT THE LEGAL VOTERS OF THE OWNER DO NOT APPROVE A BOND ISSUE TO FINANCE THE PROJECT, THE OWNER MAY ELECT TO TERMINATE THIS AGREEMENT IMMEDIATELY.

§ 7.8 Notwithstanding any other provisions of the Agreement to the contrary, it is expressly understood and agreed that the legal obligation of the Owner to pay the contract sum or any part thereof shall be contingent upon the availability of funds and any formal action of the Board of Education of the Owner. In the event the funding becomes unavailable for any reason, the Owner may terminate this Agreement without cause under the provisions of this Article 7.

ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for services described in Article 2 as follows:

(Insert amount of, or basis for, compensation)

Pre-Bond Election Services lump sum Fee of Sixty Thousand Dollars (\$60,000) (0.05% of proposed \$121M program) to be invoiced per Appendix B.

- Pre-Bond Election Services lump sum Fee to be reduced by Fifteen Thousand Dollars (\$15,000) in the event the legal voters of the Owner do not approve a bond issue to finance the Project.

Post-Bond Election Services lump sum Fee of Two Million Eight Hundred Thousand Dollars (\$2,800,000) (2.31% of proposed \$121M program) to be invoiced per Appendix B.

§ 8.2 The Owner shall compensate the Consultant for Additional Services that may arise during the course of the Project as follows:

(Insert amount of, or basis for, compensation.)

Hourly Basis

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant's subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with the Consultant's and Consultant's subconsultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
Principal	\$180.00 per hour
Project Manager	\$140.00 per hour
Project Support	\$105.00 per hour

§ 8.4 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed in the preceding month. Payments of undisputed invoice amounts are due and payable by the Owner within forty-five (45) calendar days after receipt by the Owner of the Consultant's invoice. If the Owner disputes all or any portion of an invoice of the Consultant, the Owner shall give written notice to the Consultant within forty-five (45) calendar days of the Owner's receipt of the invoice, stating the amounts and reasons for the dispute. Undisputed amounts unpaid forty-five (45) calendar days after the Owner's receives the invoice shall bear interest at the rate entered below. Disputed invoice amounts shall not bear any interest.

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

Twelve percent (12 %) per annum

§ 8.5 The Owner may withhold amounts from the Consultant's compensation or the purpose of reimbursing the Owner for any damages or expenses caused by the Consultant's negligence or inability to uphold the standard of care, or to offset sums requested by or paid to contractors for the cost of changes in the Work as a result of the Consultant's negligence.

§ 8.6 Reimbursable Expenses

§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's professional services and include expenses incurred by the Consultant directly related to the Project and only if requested by and authorized in writing in advance by the Owner, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence; (but not Consultant time), only if requested by and authorized in writing in advance by the Owner;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;

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- .4 Printing, reproductions, plots, standard form documents not otherwise provided or directly paid for by the Owner;
- .5 Postage, handling and delivery;
- .6 [Omit]
- .7 [omit]
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Other similar Project-related expenditures, if authorized in writing in advance by the Owner.

§ 8.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Consultant with no markup.

§ 8.6.3 [omit]

§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times and shall be provided to the Owner upon presentation of the Consultant's progress payment invoices. Records of all reimbursable expenses shall be kept on a generally recognized accounting basis and shall be available for review to the Owner or its authorized representative during business hours at the Consultant's office. Proof of payment of any reimbursable expenses item shall be provided to the Owner with each claim for reimbursement by the Consultant.

(Paragraphs deleted)

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the State of Nebraska. Mandatory and exclusive jurisdiction and venue for any disputes shall be in state or federal courts in Douglas County, Nebraska.

§ 9.2 The Owner and Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Consultant 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.

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

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

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

§ 9.6 Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.6.1.

§ 9.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees,

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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 Confidential Information as set forth in this Agreement.

§ 9.6.2 Notwithstanding the foregoing, the parties expressly understand, acknowledge and agree that because the Owner is a governmental entity subject to public records laws, any information provided by the Consultant to the Owner may be subject to disclosure in accordance with applicable state and federal public records laws.

ARTICLE 10 SPECIAL TERMS AND CONDITIONS

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

§ 10.1 The Consultant shall be responsible for the negligent acts or omissions of the Consultant, its employees, subcontractors, agents and representatives.

§ 10.2 The Consultant agrees that neither the Consultant nor its subconsultants will discriminate against any employee or applicant for employment to be employed in the performance of this contract, with respect to his or her hire, tenure, terms and conditions or privileges of employment, because of his/her race, color, religion, sex, disability, or national origin. The Consultant by execution of this agreement certifies that the Consultant is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants as well as historically underutilized business subcontractors, and does not discriminate against any employee or applicant for employment or subcontractor by reason of race, color, national origin, religion, marital status, sex, age, disability or sexual orientation.

§ 10.3 It is understood and agreed that the relationship of Consultant to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: (1) make Consultant the agent, servant or employee of the Owner; or (2) create any partnership, joint venture, or other association between Owner and Consultant. Any direction or instruction by Owner or any of its authorized representatives in respect to the Consultant's services shall relate to the results the Owner desires to obtain from the Consultant, and shall in no way affect the Consultant's independent contractor status. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by Consultant in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement.

§ 10.4 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 10.5 Criminal History Record Checks

§ 10.5.1 The Consultant shall obtain all criminal history information regarding its "covered employees", as defined below. Upon request by Owner, Consultant will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history recommended information on the covered employees. Consultant shall assume all expenses associated with obtaining criminal history record information.

§ 10.5.2 Consultant will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Consultant receives information that a covered employee has a reported disqualifying criminal history, then Consultant will immediately remove the covered employee from the Project and notify the Owner in writing within three business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Consultant agrees to discontinue using that covered employee to provide services on Owner's Project. If Consultant has taken precautions or imposed conditions to ensure that the employees of Consultant and any of its consultant will not become covered employees, Consultant will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.5.3 For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Consultant or any of Consultant's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner, or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Nebraska Revised Statutes, Chapter 28, Article 3; an offense for which a defendant is required to register as a sex offender under Nebraska law; or an equivalent offense under federal law or the laws of another state.

§ 10.6 The Consultant agrees to use the federal immigration verification system to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska. The federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. This requirement applies to all subcontractors of the Consultant. The Consultant shall, by written agreement, require compliance with the federal immigration verification system by all subcontractors. If the Consultant is an individual or sole proprietorship, the following applies:

- .1 The Consultant must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
- .2 If the Consultant indicates on such attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify the Consultant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- .3 The Consultant understands and agrees that lawful presence in the United States is required and the Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

§ 10.7 The Owner does not waive governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns.

§ 10.8 Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

§ 10.9 The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Consultant breaches or violates this warranty, the Owner may, at its discretion, terminate this Agreement without liability to the Owner, or deduct from the Agreement price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

§ 10.10 The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

ARTICLE 11 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C103™–2015, Standard Form of Agreement Between Owner and Consultant.
- .2 [omit]
- .3 Scope of Basic Services listed in section 2.1, Appendix A
- .4 Other documents:
(List other documents hereby incorporated into the Agreement.)

Appendix B – Fee Schedule

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



OWNER (Signature)

Mike Lucas, Superintendent
(Printed name and title)



CONSULTANT (Signature)

Rob Zimmerman Principal
(Printed name and title)

Additions and Deletions Report for AIA® Document C103® – 2015

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:00:14 ET on 02/28/2023.

PAGE 1

AGREEMENT made as of the 6th day of March in the year 2023

...

Douglas County School District 28-0066, a/k/a Westside Community Schools
A Nebraska public school district and political subdivision
909 S. 76th Street
Omaha, NE 68114
and the ~~Consultant~~Owner's Representative (hereinafter "Consultant"):

...

Project Advocates, LLC
1313 Cuming Street
Suite 200
Omaha, NE 68102

...

Owner's Representative

...

Westside Community Schools – 2023 Bond Projects
PAGE 2

The Owner anticipates pursuing a bond election by a special election on May 9, 2023, the purpose of which would be to finance certain potential school district facility improvements and upgrades. The Owner desires to engage Consultant to provide professional owner's representative services to the Owner for the purpose of advising and recommending the Owner on pre-bond phase requirements, and, if successful, post-bond phase design and construction requirements.

...

To be determined

...

To be determined

...

To be determined

...

To be determined

PAGE 3

§ 1.5 The Owner reserves the right to refuse or limit Consultant's use of any employee or subconsultants and to require Consultant to remove any employee or consultant already engaged in the performance of the services on the Project.

§ 1.6 The term of this Agreement shall be for a period beginning on the Effective Date and shall continue through the occurrence of one of the following events, whichever occurs first in time:

- .1 The completion of all professional services provided by the Consultant under the terms of this Agreement, with the term of this Agreement to extend to twelve (12) months after the issuance to the Owner of the Certificate of Substantial Completion for the last completed Project.
- .2 The termination of this Agreement according to its terms, including termination pursuant to paragraph 7.7 in the event the legal voters of the Owner do not approve the proposed bond issue; provided, the Owner, in its sole discretion, may elect to extend the term of this Agreement.
- .3 Sixty (60) months from and after the Effective Date, unless otherwise extended by express, written consent of both parties.

§ 1.7 This Agreement shall not create a continuing contract for professional owner's representative services for future building projects or bond elections beyond the terms of this Agreement.

§ 1.8 Any additional services to be provided by the Consultant not otherwise identified in this Agreement shall be determined by a separate written agreement or addendum to this Agreement signed by both parties.

...

See Appendix A, Scope of Basic Services

...

Rob Zimmerman or Matt Herzog
1313 Cuming Street
Suite 200
Omaha, NE 68102

PAGE 4

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

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

§ 2.7.2 Automobile Liability covering vehicles owned by the Consultant and non-owned vehicles used by the Consultant with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

...

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

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

...

§ 2.7.8 Excess or Umbrella Liability with policy limits of not less than Five Million Dollars (\$ 5,000,000).

...

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

PAGE 5

§ 2.9 Owner's Approval Not a Waiver. Approval by the Owner of any plans, studies, designs, specifications, reports, or Instruments of Service furnished by the Consultant under this Agreement shall not constitute and shall not in any way be deemed to be a release of the responsibility and liability of the Consultant, its agents, employees, and subcontractors, for the adequacy of the Consultant's work or for the Instruments of Service, nor shall such approval be deemed to be an assumption of such responsibility and liability by the Owner for any defect in the Instruments of Service prepared by the Consultant, its agents, employees, subcontractors, or consultants. The Owner's approval or acceptance of, or payment for, any of the Consultant's services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

...

Dr. Mike Lucas, Superintendent of Schools
Westside Community Schools
909 S. 76th Street
Omaha, NE 68114
402-390-2100
lucas.mike@westside66.net

PAGE 6

§ 4.6 The Owner shall provide prompt timely written notice to the Consultant if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's Services. Services: provided however that the Owner's failure or omission to do so shall not relieve the Consultant of its responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation. The Owner shall be entitled to rely on the Consultant's Instruments of Service, services and information furnished by the Consultant. This Section shall not relieve Consultant of any responsibility or liability for the performance of Consultant's contracted services on the Project.

...

§ 5.4 Upon execution of this Agreement, the Consultant grants to the Owner a perpetual, world-wide, royalty-free, paid-up nonexclusive license to use the Consultant's Instruments of Service solely and exclusively for purposes of designing, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially

~~performs its obligations, including prompt payment of all sums when due, under this Agreement, including all drawings and specifications and all electronic source files in whatever format, for any purpose, including the design and/or construction of current or future facility projects of the Owner. The Consultant shall obtain similar nonexclusive licenses from its subconsultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Owner's consultants and contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for the purposes of designing, constructing, using, maintaining, altering and adding to the Project. The Consultant shall incur no liability for the Owner's use or reuse of Instruments of Service other than in connection with the Project unless the Consultant is involved in the reuse project. Prior to the reuse of any Instruments of Service for a project in which the Consultant is not also involved, the Owner shall remove and obliterate from such documents all identification of the original Consultant, including name, address, and professional seal and stamp. If the Consultant rightfully terminates this Agreement for cause as provided in Section 7.4, the license granted in this Section 5.4 shall terminate.~~

§ 5.4.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Consultant and the Consultant's subconsultants 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 Consultant and its subconsultants 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 5.4.1. The terms of this Section 5.4.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 7.4.~~

PAGE 7

§ 6.1.12 ~~The Consultant acknowledges that the Owner is a political subdivision of the State of Nebraska, and, as such, may enjoy immunities from suit and/or liability under the Constitution and laws of the State of Nebraska. By entering into this Agreement, the Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.~~

§ 6.1.2 ~~To Only~~ to the extent damages are covered by property insurance and payment is received from applicable

§ 6.1.3 ~~The Consultant and Owner waive~~ consequential damages against the Owner 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 7.7.

§ 6.1.4 Consultant Indemnity

§ 6.1.4.1 Indemnity / Non-Professional Acts. The Consultant and Consultant's consultants shall indemnify, defend and hold harmless the Owner, and all of its board members, officers, administrators, agents, representatives, and employees, from and against any and all third party losses, damages, liabilities, judgments, or expenses, including reasonable attorney's fees and expenses, on account of damage or destruction to property and personal injuries, including death, to any or all persons, including but not limited to invitees and employees of the Owner, Owner's consultants, the Consultant, and the Consultant's consultants, to the extent caused by the negligent acts, errors or omissions by the Consultant, its employees and its consultants, and for patent, copyright or trademark infringement attributable to the Consultant's services.

§ 6.1.4.2 Indemnity / Professional Acts. The Consultant shall indemnify and hold harmless the Owner, and all of its board members, officers, administrators, agents, representatives, and employees, from and against from any and all third party losses, damages, liabilities, judgments, or expenses, on account of damage or destruction to property and personal injuries, including death, to any or all persons, including but not limited to invitees and employees of the Owner, Owner's consultants, the Consultant, and the Consultant's consultants, but only to the extent caused by the negligent acts, errors or omissions of the Consultant, its employees and its consultants, in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold harmless the Owner does not include a duty to defend. The Architect's duty to indemnify the Owner under this § 6.1.4.2 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 6.1.4.3 The Consultant understands and agrees that the indemnification, defense, and hold harmless obligations of this section constitute a continuing obligation on the part of the Consultant and survive and are enforceable beyond the term of the contract to the fullest extent permitted by law.

§ 6.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution. may be submitted to mediation. Provided that mediation shall not be a condition precedent to any other binding dispute resolution, including litigation.

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

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[☒] Litigation in a court of competent jurisdiction

...

§ 6.3 Arbitration

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

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

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

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

§ 6.3.4 Consolidation or Joinder

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

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

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

~~§ 7.1 If the Owner fails to make payments to the Consultant in accordance with this Agreement, for undisputed sums in accordance with this Agreement and such non-payment is not cured within ten (10) calendar days' after receipt by the Owner of written notice from the Consultant, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. Undisputed sums due prior to suspension. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.~~

~~§ 7.2 If the Owner suspends the Project or the Consultant's services, services for more than ninety (90) consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project or the Consultant's services are resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.~~

~~§ 7.3 If the Owner suspends the Project or the Consultant's services for more than 90 cumulative consecutive days for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice.~~

...

~~§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 7.7 due.~~

~~§ 7.7 Termination Expenses are in addition to compensation for the Consultant's services and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, plus an amount for the Consultant's anticipated profit on the value of the services not performed by the Consultant. IN THE EVENT THE LEGAL VOTERS OF THE OWNER DO NOT APPROVE A BOND ISSUE TO FINANCE THE PROJECT, THE OWNER MAY ELECT TO TERMINATE THIS AGREEMENT IMMEDIATELY.~~

~~§ 7.8 The Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in Article 5 and Section 8.7. Notwithstanding any other provisions of the Agreement to the contrary, it is expressly understood and agreed that the legal obligation of the Owner to pay the contract sum or any part thereof shall be contingent upon the availability of funds and any formal action of the Board of Education of the Owner. In the event the funding becomes unavailable for any reason, the Owner may terminate this Agreement without cause under the provisions of this Article 7.~~

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Pre-Bond Election Services lump sum Fee of Sixty Thousand Dollars (\$60,000) (0.05% of proposed \$121M program) to be invoiced per Appendix B.

- Pre-Bond Election Services lump sum Fee to be reduced by Fifteen Thousand Dollars (\$15,000) in the event the legal voters of the Owner do not approve a bond issue to finance the Project.

Post-Bond Election Services lump sum Fee of Two Million Eight Hundred Thousand Dollars (\$2,800,000) (2.31% of proposed \$121M program) to be invoiced per Appendix B.

...

Hourly Basis

...

<u>Principal</u>	<u>\$180.00 per hour</u>
<u>Project Manager</u>	<u>\$140.00 per hour</u>
<u>Project Support</u>	<u>\$105.00 per hour</u>

§ 8.4 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. ~~Payments are due and payable upon presentation of the Consultant's invoice. Amounts unpaid (—) days after the invoice date performed in the preceding month. Payments of undisputed invoice amounts are due and payable by the Owner within forty-five (45) calendar days after receipt by the Owner of the Consultant's invoice. If the Owner disputes all or any portion of an invoice of the Consultant, the Owner shall give written notice to the Consultant within forty-five (45) calendar days of the Owner's receipt of the invoice, stating the amounts and reasons for the dispute. Undisputed amounts unpaid forty-five (45) calendar days after the Owner's receives the invoice shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Consultant below. Disputed invoice amounts shall not bear any interest.~~

...

~~percent (—%)—~~ Twelve percent (12 %) per annum

§ 8.5 ~~The Owner shall not may withhold amounts from the Consultant's compensation to impose a penalty or liquidated damages on the Consultant, or the purpose of reimbursing the Owner for any damages or expenses caused by the Consultant's negligence or inability to uphold the standard of care, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Consultant agrees or has been found liable for the amounts in a binding dispute resolution proceeding as a result of the Consultant's negligence.~~

...

§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's professional services and include expenses incurred by the Consultant directly related to the Project, ~~Project and only if requested by and authorized in writing in advance by the Owner, as follows:~~

- ~~.1 Transportation and authorized out-of-town travel and subsistence; (but not Consultant time), only if requested by and authorized in writing in advance by the Owner;~~

PAGE 10

- ~~.4 Printing, reproductions, plots, standard form documents; documents not otherwise provided or directly paid for by the Owner;~~

...

- ~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; [Omit]~~
- ~~.7 Consultant's subconsultants expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Consultant's subconsultants; [omit]~~

...

- ~~.9 Other similar Project-related expenditures, if authorized in writing in advance by the Owner.~~

§ 8.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Consultant ~~plus an administrative fee of — percent (—%) of the expenses incurred with no markup.~~

~~§ 8.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Consultant normally maintains and the Consultant incurred or will incur additional costs to satisfy such requirements, the Owner shall reimburse the Consultant for such costs as set forth below:[omit]~~

...

~~§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times, times and shall be provided to the Owner upon presentation of the Consultant's progress payment invoices. Records of all reimbursable expenses shall be kept on a generally recognized accounting basis and shall be available for review to the Owner or its authorized representative during business hours at the Consultant's office. Proof of payment of any reimbursable expenses item shall be provided to the Owner with each claim for reimbursement by the Consultant.~~

~~§ 8.7 Compensation for Use of Consultant's Instruments of Service~~

~~If the Owner terminates the Consultant for its convenience under Section 7.5, or the Consultant terminates this Agreement under Section 7.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

~~§ 9.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 6.3. State of Nebraska. Mandatory and exclusive jurisdiction and venue for any disputes shall be in state or federal courts in Douglas County, Nebraska.~~

PAGE 11

~~§ 9.6.2 Notwithstanding the foregoing, the parties expressly understand, acknowledge and agree that because the Owner is a governmental entity subject to public records laws, any information provided by the Consultant to the Owner may be subject to disclosure in accordance with applicable state and federal public records laws.~~

...

~~§ 10.1 The Consultant shall be responsible for the negligent acts or omissions of the Consultant, its employees, subcontractors, agents and representatives.~~

~~§ 10.2 The Consultant agrees that neither the Consultant nor its subconsultants will discriminate against any employee or applicant for employment to be employed in the performance of this contract, with respect to his or her hire, tenure, terms and conditions or privileges of employment, because of his/her race, color, religion, sex, disability, or national origin. The Consultant by execution of this agreement certifies that the Consultant is an equal opportunity employer and actively recruits a well-qualified and diverse staff including minority applicants as well as historically underutilized business subcontractors, and does not discriminate against any employee or applicant for employment or subcontractor by reason of race, color, national origin, religion, marital status, sex, age, disability or sexual orientation.~~

~~§ 10.3 It is understood and agreed that the relationship of Consultant to Owner shall be that of an independent contractor. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: (1) make Consultant the agent, servant or employee of the Owner; or (2) create any partnership, joint venture, or other association between Owner and Consultant. Any direction or instruction by Owner or any of its authorized representatives in respect to the Consultant's services shall relate to the results the Owner desires to obtain from the Consultant, and shall in no way affect the Consultant's independent contractor status. The Consultant shall assume sole responsibility for any debts or liabilities that may be incurred by Consultant in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Agreement.~~

§ 10.4 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§ 10.5 Criminal History Record Checks

§ 10.5.1 The Consultant shall obtain all criminal history information regarding its "covered employees", as defined below. Upon request by Owner, Consultant will provide, in writing: updated certifications and the names and any other requested information regarding covered employees, so that the Owner may obtain criminal history recommended information on the covered employees. Consultant shall assume all expenses associated with obtaining criminal history record information.

§ 10.5.2 Consultant will not assign any "covered employee" with a "disqualifying criminal history", as those terms are defined below, to work on the Project. If Consultant receives information that a covered employee has a reported disqualifying criminal history, then Consultant will immediately remove the covered employee from the Project and notify the Owner in writing within three business days. If the Owner objects to the assignment of any covered employee on the basis of the covered employee's criminal history record information, then Consultant agrees to discontinue using that covered employee to provide services on Owner's Project. If Consultant has taken precautions or imposed conditions to ensure that the employees of Consultant and any of its consultant will not become covered employees, Consultant will ensure that these precautions or conditions continue throughout the time the contracted services are provided.

§ 10.5.3 For the purposes of this Section, "covered employees" means employees, agents or subcontractors of Consultant or any of Consultant's consultants who has or will have continuing duties related to the services to be performed on Owner's Project and has or will have direct contact with Owner's students. The Owner will decide what constitutes direct contact with Owner's students. "Disqualifying criminal history" means any conviction or other criminal history information designated by the Owner, or one of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: a felony offense under Nebraska Revised Statutes, Chapter 28, Article 3; an offense for which a defendant is required to register as a sex offender under Nebraska law; or an equivalent offense under federal law or the laws of another state.

§ 10.6 The Consultant agrees to use the federal immigration verification system to determine the work eligibility status of new employees physically performing services on the Project within the State of Nebraska. The federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee. This requirement applies to all subcontractors of the Consultant. The Consultant shall, by written agreement, require compliance with the federal immigration verification system by all subcontractors. If the Consultant is an individual or sole proprietorship, the following applies:

- .1 The Consultant must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
- .2 If the Consultant indicates on such attestation form that he or she is a qualified alien, the Consultant agrees to provide the US Citizenship and Immigration Services documentation required to verify the Consultant's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- .3 The Consultant understands and agrees that lawful presence in the United States is required and the Consultant may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

§ 10.7 The Owner does not waive governmental immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns.

§ 10.8 Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include,

but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

§ 10.9 The Consultant certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Consultant breaches or violates this warranty, the Owner may, at its discretion, terminate this Agreement without liability to the Owner, or deduct from the Agreement price or consideration, or otherwise recover the full amount of any commission, percentage, brokerage, or contingency fee.

§ 10.10 The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach.

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.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

[omit]

.3 Scope of Basic Services Exhibit(s) listed in section 2.12.1, Appendix A

...

Appendix B – Fee Schedule

...

Rob Zimmerman Principal

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Matt Herzog, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:00:14 ET on 02/28/2023 under Order No. 2114397963 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document C103™ – 2015, Standard Form of Agreement Between Owner and Consultant without a Predefined Scope of Consultant's Services, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

PRINCIPAL

(Title)

3/6/2023

(Dated)

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Consultant (Owner's Representative)
Scope of Basic Services

1. Fiduciary Capacity. The Consultant will serve in a fiduciary capacity as the Owner's professional consultant and advocate in those phases of the Project to which this Agreement applies and will give consultation and advice to, and representation of, the Owner during performance of the Consultant's services hereunder.
2. Assigned and Dedicated Personnel. The Consultant has been selected based upon the firm's qualifications, which qualifications relate specifically to the unique and special skills and professional consulting and management experience of the personnel of the Consultant assigned and dedicated to the Owner's projects. A material consideration in the selection of the Consultant was the representation by the Consultant as to the personnel identified during the selection process as assigned and dedicated to the Owner's projects that will be available and assigned to the projects through the completion of all Consultant services required under this Agreement. The Consultant's personnel assigned and dedicated to the Owner's projects shall not be removed or replaced without the Owner's consent. The failure of the Consultant to obtain such consent of the Owner to remove or replace assigned and dedicated personnel may be deemed by the Owner to constitute a material breach of this Agreement. The Owner shall have the right to direct the Consultant to remove or replace any personnel whose performance becomes unsatisfactory to the Owner.
3. The Consultant's professional services may be provided in one or more phases as outlined below. Portions of each phase may commence before the previous phase is completed, in which case both phases may proceed concurrently.
4. General Responsibilities. The Consultant's general responsibilities include, but are not limited to, the following:
 - 4.1 Assist the Owner in communications with the Owner's Architect(s), specialty consultant(s), General Contractor(s), and Construction Manager(s) at Risk.
 - 4.2 Maintain a copy of all Project documents and contract documents, including change orders, construction change directives, request for information, schedule of values, meeting minutes, shop drawings, submittals, drawings and specifications, product data and applications for payment.
 - 4.3 Perform on-site observations of the progress and quality of the work on each Project; report to the Owner on the progress and quality of the work being performed and the services provided by all Project participants.
 - 4.4 Attend Project meetings and report to the Owner on the proceedings.
5. Pre-Bond Phase. The Consultant's Pre-Bond Phase Services include, but are not limited to, the following:
 - 5.1 Assist the Owner, and other Owner consultants, in developing and prioritizing separate potential facility improvement Projects for purposes of a potential bond-financing.
 - 5.2 Assist the Owner in developing the scopes of work on each potential facility improvement Project.

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- 5.3 Assist the Owner, and its Architect(s) and/or Construction Manager(s), in developing preliminary cost estimates and construction budgets for each potential facility improvement Project.
 - 5.4 Assist the Owner, and its municipal advisor, on the total financing requirements necessary for potential bond financing.
 - 5.5 Attend Owner board meeting and any community meetings sponsored by the Owner to assist and make factual presentations to the Owner and community on the potential needs and requirements of each potential facility improvement Project and the bond finance asking.
 - 5.6 Assist the Owner, and its Architect(s) and/or Construction Manager(s), in evaluating current site capacities for each potential facility improvement Project and, if necessary, the possible selection of new site(s).
 - 5.7 Assist the Owner, and its Architect(s) and/or Construction Manager(s), in developing design and construction schedules for each potential facility improvement Project and sequencing of design and construction activities for all bond-financed Projects.
 - 5.8 Assist the Owner in the selecting one or more Architects for each of the potential facility improvement Projects.
 - 5.9 Assist the Owner in selecting one or more consultants necessary for each of the potential facility improvement Projects.
 - 5.10 Assist the Owner in issuing a request for proposals for potential construction manager at risk services for one or more of the Projects; provide assistance to the Owner in selecting one or more Construction Managers at Risk for potential Projects.
 - 5.11 Review with each Project Architect the scope of work on each potential facility improvement Project.
6. Design-Preconstruction Phase. Upon successful passage of a bond election and approval by the Owner to proceed, the Consultant's Design-Preconstruction Phase Services include, but are not limited to, the following:
- 6.1 Assist the Owner and selected Project Architect in the determining and confirming the scope, quality parameters, design guideline parameters, construction budget, construction delivery method, and construction schedule for the Project.
 - 6.2 Review the Architect's schematic design, design development and construction documents for the Project and provide recommendations to the Owner concerning these documents.
 - 6.3 Review errors or omissions discovered in the drawings and specifications, review such with the Architect and provide recommendations to the Owner.
 - 6.4 Review recommendations from the Architect concerning constructability issues, material availability or value engineering and provide recommendations to the Owner.
 - 6.5 Review legal requirements for design, including requirements under the Americans with Disabilities Act, life safety code, energy code, and other legal requirements under federal, state or local laws, regulations or ordinances, and provide recommendations and guidance to the Owner.
 - 6.6 Review Project periodic budget and schedule updates prepared by the Project Architect, General Contractor and/or Construction Manager and provide recommendations to the Owner.

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- 6.7 Review the schedule for procurement of long-lead time items and provide recommendations to the Owner.
 - 6.8 Assist the Owner and/or Architect in developing of bid strategies, strategies to engage general contractor interest, and in any prequalification criteria for contracting with a General Contractor.
 - 6.9 Assist the Owner in issuing a request for proposals for potential construction manager at risk services for one or more of the Projects; provide assistance to the Owner in selecting one or more Construction Managers at Risk for potential Projects.
 - 6.10 Assist the Owner and Project Architect with preparing bidding documents, attend pre-bid meetings, reviewing bids received from General Contractors, and provide recommendations to the Owner on bidder responsibility and low responsible bidder.
 - 6.11 Review a General Contractor's a list of possible subcontractors and material suppliers for a Project and provide recommendations to the Owner.
 - 6.12 Review a General Contractor's proposed site superintendent(s), site foreman, and project manager and provide a recommendation to the Owner.
 - 6.13 Assist the Project Architect when necessary to value engineer construction documents in the event the lowest bona fide bid exceeds the Project budget.
 - 6.14 Review the General Contractor's insurance and bonding. Verify the receipt by the Owner from each contractor the performance and payment bonds with a well rated surety company and verify that the contractor has all required insurance with the specified levels of coverage as set forth in the contract documents for each such contract, and assure that the Owner have a copy of the certificate of insurance from each General Contractor or Construction Manager at Risk on file for the term of the contract.
 - 6.15 Assist the Owner in the preparing the General Contractor agreement.
7. Construction Phase. Upon successful passage of a bond election and approval by the Owner to proceed, the Consultant's Construction Phase Services include, but are not limited to, the following:
- 7.1 Assist the Owner with filing required documents with governmental authorities having jurisdiction over the Project, including necessary permits.
 - 7.2 Assist the Owner with issuing notices to proceed with work.
 - 7.3 Assist the Owner and Project Architect in reviewing the General Contractor's schedule of values.
 - 7.4 Organize and schedule advance construction progress meetings with the Owner, Project Architect, and the General Contractor or Construction Manager at Risk for the work or portion of the work on the Project to (a) educate all parties regarding the schedule, budget, quality requirements, and sequencing of the work; (b) establish and monitor mutual project goals, and generate understanding of the entire project; (c) establish effective issue resolution procedures; and, (d) facilitate information flow to and from the Project Architect using requests for information from the General Contractor or Construction Manager at Risk and the routing of inquiries for interpretation of the contract documents.
 - 7.5 Review the Project Architect's recommendations regarding the General Contractor's or Construction Manager at Risk's submittals, shop drawings, product data and samples and provide recommendations to the Owner.

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7.6 In collaboration with the Project Architect, review the procedures established by the Project Architect for expediting the processing and approval of shop drawings, product data, samples and other submittals by the Project Architect. The Consultant may as deemed appropriate and necessary review Shop Drawings, Product Data, RFI's, ASI's, and samples and other submittals from the contractors. The Consultant shall coordinate submittals with information contained in related documents and transmit to the Project Architect those which have been approved by the Consultant.

7.7 Ensure that the General Contractor or Construction Manager at Risk creating, implementing, and maintaining a detailed submittal schedule, issuing it at each weekly meeting for review and comment by all team members. The General Contractor or Construction Manager at Risk, and each subcontractor from which a submittal is required, the Project Architect, the structural, mechanical, or electrical engineer, and the Owner should all be entered into a resource table by the General Contractor or Construction Manager at Risk. Using such resource table, the submittal schedule shall be resource-loaded, and the activity- within-resource report generated by the General Contractor or Construction Manager at Risk, which will serve to simplify the accountability in each team meeting for the timely issuance and approval of submittals.

7.8 The Consultant shall ensure that the General Contractor or Construction Manager at Risk is maintaining a log of all submittals for the Project, which shows where each submittal is among the possible team members, and when each such submittal is due. In the event the General Contractor or Construction Manager at Risk, any subcontractor, the Project Architect, or any design consultant fails to perform in accordance with the submittal schedule, the log prepared hereunder will be used to resolve any impasse in the submittal process. The Consultant's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner or contractors.

7.9 Observe and evaluate the adequacy of the General Contractor's or Construction Manager at Risk's, including all subcontractors, personnel and equipment, and the availability of materials and supplies to meet the schedule for each Project. In consultation with the Owner and Project Architect, the Consultant shall recommend to the Owner necessary corrective actions when requirements of a Contract or a contractor's schedule are not being met at no cost to the Owner.

7.10 In conjunction with the Project Architect, develop and implement a system for the preparation, review and processing of change orders and construction change directives. Without assuming any of the Project Architect's responsibilities for design, the Consultant shall review all change orders presented by the General Contractor or Construction Manager at Risk, reviewing them for detail of information provided, compliance with industry standards, and accuracy of pricing. In addition, each change order's impact on the overall Project budget and sequencing of the Work shall be reviewed and the master Project schedule and critical path schedule updated to reflect accepted changes. In addition, the Consultant shall ensure that the General Contractor or Construction Manager at Risk prepares and maintains a change order log showing each change order by number and containing a description with the "As Submitted" and "As-Approved" amounts set forth therein, and the current status of the progress of the Work resulting from such change order. Upon request by the Owner, the Consultant shall

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review the Project a “contingency log” to ensure that the log is properly prepared and maintained.

7.11 Visit the Project job site, with or without the Project Architect, as required by the General Contractor or Construction Manager at Risk agreement; review the Project Architect’s jobsite visit reports; provide recommendations to the Owner.

7.12 Review the critical path schedule developed by the General Contractor or Construction Manager at Risk.

7.13 Establish procedures for coordination meetings, and schedule such meetings, among the Owner, Project Architect, General Contractors or Construction Managers at Risk, and Consultant with respect to all aspects of the work on the Project. Consult with the Project Architect and the General Contractor or Construction Manager at Risk with regard to the requirements of the plans and specifications and master Project schedule and critical path schedule for the Project as may be necessary to properly coordinate the work of the various subcontractors and report to the Owner any issues or concerns regarding such coordination.

7.14 Review and monitor the Project schedule of the work and report to Owner on any adjustments or slippage in the Project schedule.

7.15 Attend all weekly or other regularly scheduled meetings and/or conference calls with the Project Architect and the General Contractor or Construction Manager at Risk and represent the interests of the Owner during these meetings, as well as document and report to the Owner any and all pending challenges to the Project’s quality of construction or materials and on time and under budget completion that arise.

7.16 Review all updates to the master Project schedule and critical path schedule by the General Contractor or Construction Manager at Risk as the construction phase of the Project progresses. Provide the current master Project schedule and critical path schedule on a regular basis to the General Contractor or Construction Manager at Risk. The Consultant shall not be responsible for sequencing of the work, but shall review the progress of the work to verify that the General Contractor or Construction Manager at Risk is adhering to the Project schedule.

7.17 Attend monthly board meetings (or as otherwise requested by the Owner) to provide an update of the progress of the work and the payments made to the General Contractor or Construction Manager at Risk, along with updates concerning issued and pending change orders.

7.18 Review the General Contractor’s or Construction Manager at Risk’s written notice of delays in the progress of the work and any General Contractor or Construction Manager at Risk’s delay claims, and provide recommendations to Owner.

7.19 Review the quality control of the construction of the Work by the General Contractor or Construction Manager at Risk. The Consultant shall consult with the General Contractor or Construction Manager at Risk on the means and methods employed by the General Contractor or Construction Manager at Risk to assure that the work of each General Contractor or Construction Manager at Risk, and all subcontractors, is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the Owner against defects and deficiencies in the Work.

7.20 Review all notices of defects in the work on a project and provide recommendations to the Owner.

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- 7.21 Assist the Project Architect and Owner in advising the General Contractor or Construction Manager at Risk on defective work to be corrected.
- 7.22 Advise the Owner on the need for additional inspection or testing of the work by the General Contractor or Construction Manager at Risk in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed, for purposes of determining whether the work conforms to the requirements of the Contract Documents.
- 7.23 Review all stages of construction to become familiar with the progress and quality of the completed work and to determine in general if the work is being performed in a manner indicating that the work, when completed, will be in accordance with the Contract Documents.
- 7.24 Review with the General Contractor or Construction Manager at Risk in charge of the work the safety programs developed by each of the contractors or subcontractors for purposes of coordinating the safety programs with those of the other contractors or subcontractors, and provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the contractors;
- 7.25 Make on-site inspections to check quality or quantity of the work and, keep the Owner informed of progress of the work and guard the Owner against defects and deficiencies in the Work.
- 7.26 Monitor and document the performance of each contractor or subcontractor, and the General Contractor or Construction Manager at Risk. During weekly meetings, the Consultant shall discuss any performance issues with these parties. With respect to performance issues that are not timely addressed or resolved by the applicable party, the Consultant shall confer with the Owner regarding remedial measures to be taken to address the performance issue.
- 7.27 Review the performance of the Project Architect and provide the Owner with feedback concerning the Project Architect's performance.
- 7.28 Review the Project Architect's recommendations regarding special testing or inspection procedures for the work and provide recommendations to the Owner.
- 7.29 Review the General Contractor's or Construction Manager at Risk's change order requests and consult with the Owner and Project Architect.
- 7.30 Review the Project Architect's or Owner's change orders and/or construction change directives and consult with the Owner.
- 7.31 Review and monitor the cost of the work as the Project progresses.
- 7.32 Monitor the approved estimate of construction cost, and chart actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.
- 7.33 Identify variances between actual and budgeted or estimated costs, and confer with the Owner and Project Architect as to strategies and options to make changes in the plans and specifications or delivery of the contracts to bring the Project within the budget parameters.
- 7.34 Consult with the Owner on any reports of safety violations on the Project worksite.
- 7.35 Review the safety programs developed by the General Contractor or Construction Manager at Risk for each of the contractors or subcontractors for purposes of coordinating the safety programs with those of the other contractors checking for

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coordination of safety programs, compliance with job site security requirements in the construction documents, receipt of and review of certificates of insurance, and delivery, storage and protection of Owner purchased materials.

7.36 Consult with the Owner on any reports of hazardous material discovered at the Project worksite.

7.37 Consult with the Owner on any other matters or requirements of the General Contractor or Construction Manager at Risk agreement.

7.38 Review General Contractor or Construction Manager at Risk applications for payment and the Architect's certificate for payment and provide a recommendation to the Owner.

7.39 Review and verify the amounts due the respective contractors through the issuance of a certification of payment. Upon receipt of an application for payment, the Consultant shall obtain and review the supporting information provided by the General Contractor or Construction Manager at Risk, or subcontractor, and verify its mathematical and contractual correctness, as well as verifying the status of the completion of the project in relation to these items. The Consultant shall use an earned value concept that is based upon a cost-loaded schedule showing completion by percent in each of the numerous activities that are verified by on-site review, and shall also carefully scrutinize the job-cost-coded labor reports of the General Contractor or Construction Manager at Risk for all self performed work for reasonableness and compliance with the plans and specifications and industry standards.

7.40 Confirm with the Project Architect and General Contractor or Construction Manager at Risk that all third-party testing and inspections required by law or regulation or the contract documents has been performed according to the process and procedures required by governmental authorities or the plans and specifications, and provide assistance to the Project Team with the retention of such third-party testing and inspection providers and confirming the number of tests or inspections required.

8. Closeout. The Consultant's Closeout Phase Services include, but are not limited to, the following:

8.1 Assist the Owner in applying for and receiving a Certificate of Occupancy.

8.2 With the Project Architect and the Owner's maintenance personnel, the Consultant shall observe the General Contractor's or Construction Manager at Risk's final testing and start-up of utilities, operational systems and equipment, and observe training sessions of the Owner's personnel on all new mechanical/electrical or other equipment ensuring proper documentation of the training and videography of the training for future use, and that the Owner's operations and maintenance manuals for the facility are properly distributed and in compliance with industry standards.

8.3 Assist the Owner in obtaining third-party commissioning services.

8.4 When the Consultant has been advised by the General Contractor or the Construction Manager at Risk that the Work or a designated portion thereof is substantially complete, meet with the General Contractor or Construction Manager at Risk, and subcontractors, to check the conformance of the work with the plans and specifications, and shall then prepare for the Project Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Consultant shall assist the

Project Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

8.5 Work with the Project Architect to supervise final inspections and acceptance of the Project by the Owner, and determine the date or dates of Substantial Completion and the date of final completion for each contractor. In conjunction with the Project Architect verify for the Owner the issuance of Certificates of Substantial Completion; and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by each contractor; and issue a final Certificate for Payment for each contract based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

Schedule staff move-in, and start up of normal operations in the building, coordinating the transition from the General Contractor or Construction Manager at Risk possession of the building to the Owner's occupancy and beneficial use of the building.

8.6 Work with the Owner through their respective staff personnel, to develop a final punch list, producing a schedule with the General Contractor or Construction Manager at Risk for completion of each of the punch list items, work with the General Contractor or Construction Manager at Risk and Project Architect to develop a weekly program to validate the implementation of the punch list schedule, estimate the remaining cost to complete the punch list items for withholding that amount from the General Contractor or Construction Manager at Risk application for payment over and above any required retainage, and facilitate the sign-off on all of the punch list items by the Owner and the Project Architect.

8.7 Secure written warranties, guarantees, operating and maintenance instruction books, keys, diagrams, charts, record drawings, and technical specifications required of the construction contractor and ensure delivery and explanation of such documents to the Owner.

8.8 When the Work is found to be substantially complete, the Consultant shall inform the Owner about the balance of the contract sum remaining to be paid to the Contractor or Construction Manager at Risk, and shall make suggestions to the Project Architect concerning the amount to be retained from the contract sum, if any, for final completion or correction of the Work.

8.9 Review the final Project cost and inform the Owner and the bond oversight committee of the final cost versus the budgeted cost and, upon request shall provide the Owner and the bond oversight committee of any other information requested by the Owner to aid it in determining the success of the Project.

8.10 Prior to submittal of As-Built Drawings to the Owner, the Consultant will coordinate with the Project Architect to review and comment on the As-Built Drawings prepared by the Project Architect. To assist in completion of the As-Built Drawings, the Consultant may require the General Contractor or Construction Manager at Risk to maintain and update throughout the construction period a set of construction plans and specifications noting as-built conditions; the Consultant shall be entitled rely on the accuracy of these documents in its review of the As-built drawings for submittal to the Owner. The Consultant shall on behalf of the Owner work with contractors and suppliers with regard to the preparation of operating and maintenance manuals, extensive assistance in utilization of any equipment or system (such as initial start- up, testing, adjusting and balancing); and training personnel for operation and maintenance.

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8.11 Upon request of the Owner, and prior to the expiration of one (1) year from the date of Substantial Completion, the Consultant shall, without additional compensation, conduct a meeting with the Owner and Project Architect to review the facility operations and performance.

8.12 Participate in any dispute resolution proceedings instituted by the Architect, General Contractor or Construction Manager at Risk.



Pre-Bond Fee	
Month	Amount
Mar-23	\$ 22,500
Apr-23	\$ 22,500
May-23	\$ 15,000
Prebond Fee	\$ 60,000

Post-Bond Fee			
Month	Amount	Month	Amount
May-23	\$ 10,000	Sep-25	\$ 79,000
Jun-23	\$ 18,000	Oct-25	\$ 79,000
Jul-23	\$ 18,000	Nov-25	\$ 79,000
Aug-23	\$ 31,000	Dec-25	\$ 79,000
Sep-23	\$ 31,000	Jan-26	\$ 79,000
Oct-23	\$ 31,000	Feb-26	\$ 79,000
Nov-23	\$ 31,000	Mar-26	\$ 67,000
Dec-23	\$ 31,000	Apr-26	\$ 67,000
Jan-24	\$ 37,000	May-26	\$ 67,000
Feb-24	\$ 37,000	Jun-26	\$ 67,000
Mar-24	\$ 37,000	Jul-26	\$ 67,000
Apr-24	\$ 56,000	Aug-26	\$ 55,000
May-24	\$ 62,000	Sep-26	\$ 44,000
Jun-24	\$ 62,000	Oct-26	\$ 29,000
Jul-24	\$ 62,000	Nov-26	\$ 24,000
Aug-24	\$ 62,000	Dec-26	\$ 24,000
Sep-24	\$ 62,000	Jan-27	\$ 24,000
Oct-24	\$ 62,000	Feb-27	\$ 24,000
Nov-24	\$ 62,000	Mar-27	\$ 24,000
Dec-24	\$ 62,000	Apr-27	\$ 24,000
Jan-25	\$ 62,000	May-27	\$ 32,000
Feb-25	\$ 62,000	Jun-27	\$ 32,000
Mar-25	\$ 62,000	Jul-27	\$ 32,000
Apr-25	\$ 79,000	Aug-27	\$ 32,000
May-25	\$ 79,000	Sep-27	\$ 25,000
Jun-25	\$ 79,000	Oct-27	\$ 25,000
Jul-25	\$ 79,000	Nov-27	\$ 24,000
Aug-25	\$ 79,000	Dec-27	\$ 24,000
		Jan-28	\$ 24,000
		Feb-28	\$ 24,000
Total Bond Fee			\$ 2,800,000

