

AIA® Document B133® – 2019

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

AGREEMENT made as of the 7th day of April in the year 2025
(In words, indicate day, month and year.)

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

County of El Paso, Texas

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

MNK Architects, Inc.
330 Eubank Court
El Paso, Texas 79902

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

Office of Medical Examiner Facility – Work Order 2025-001
917-3929 State Jail Road
El Paso, Texas 79902

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

TBD

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

Owner and Architect are parties to the "Contract for On-Call Professional Services Between El Paso County & MNK Architects, Inc. dated January 27, 2025, ("2025 On-Call Agreement) attached hereto as Exhibit A. This Agreement constitutes Work Order No. 1 – Medical Examiner Facility of the 2025 On-Call Agreement.

Based on the information provided by the Architect through the selection process, the Architect and its proposed staff have represented that they possess certain relevant experience and capabilities to perform and undertake the obligations of Architect in this Agreement at the stated level of performance with regard to this project type. The Owner is depending on the Architect to perform at or above the level represented during the selection process. The Architect accepts the relationship of trust and confidence established by the Agreement and covenants with the Owner to cooperate with the Owner and its selected Contractor and exercise the Architect's skill and best professional judgement in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform its efforts under this Agreement in an expeditious and economical manner consistent with the Owner's interests. The Architect shall perform its operations in an open book collaborative process during the Project. An open book approach requires the Architect to make available to the Owner, in detail, all correspondence, estimates, documentation and transactions related to the Project, in a timely manner in accordance with this Agreement. All the Architect's subcontractors and consultants shall price and perform their work in connection with the Project in an Open Book manner.

§ 1.1.1 The Owner's program for the Project:

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

The Owner seeks to design and construct a new Medical Examiner's facility as described more fully in paragraph 1.1.2 below. The Owner has previously engaged the Architect under "Work Order No. OME-001 On-Call Architectural Services Contract with MNK Architects, Inc." (2022 Work Order) executed in May 2022 and attached hereto as Exhibit B for reference, to provide design services for this facility at a different location and it is the intent to use portions of the previously developed Building design at the new site. The new design will utilize the programming previously completed by Architect as well as the floor plan adjacencies previously approved in the previous design, as set forth in Floor Plan – Administrative Wing and Floor Plan – Morgue Wing, attached hereto as Exhibit C. Building orientation and configuration modifying the overall building layout is not expected to remain the same. Mechanical, plumbing and electrical systems will require complete redesign. Structural and architectural will require a significant redesign for the building design. Site considerations are as follows:

- a) no street improvements are anticipated
- b) no utility design is anticipated outside the property line; site utility coordination is included
- c) site design is limited to the two acres of land
- d) ponding design is not anticipated within the two acres and anticipate using approximately one acre to the north of the building
- e) staff and visitor parking to meet code

The Owner shall engage a Construction Manager at Risk (CMAR) on or about January 2026.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The County seeks to construct a new Medical Examiner's facility located on County owned land behind the El Paso County Jail Annex off of State Jail Road. The County intends to utilize three parcels of land with a combined area of approximately two acres and an additional one acre for ponding. The facility should include two functioning buildings separated via a breezeway but with controlled access. The primary building shall consist of office spaces, large conference room and multiple smaller breakout rooms, breakroom, kitchen and necessary appurtenances. Estimated floor space should be approximately 10,000 sf. There should be twenty offices that comply with established County standards, grieving centers and access control to separate public space from restricted spaces. The second building should consist of the Medical Lab/Autopsy building. This building shall have a minimum of 10,000 sf space with walk-in freezers and a potential additional 5,000 sf of additional backup walk-in freezers. The second facility shall have two drive in garages with exhaust systems. This space will need to comply with medical grade space requirements, including but not limited to negative air pressure rooms and HEPA purification systems. A third structure shall be located on the facility that would be detached from the facility. This third structure shall contain a Chicago style dock system with access for 6 bays and a 20 foot platform surface. This structure shall be an enclosed canopy structure with a 20 foot height clearance, 6 roll up doors, and connections to power commercial refrigeration trailers and exhaust system. The design must satisfy all applicable regulatory standards, including standards required for accreditation by the National Association of Medical Examiners. The total size of the facility shall be 25,000 sf.

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

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

\$8,300,000.00

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

- .1 Design phase milestone days will be as follows, a Notice to Proceed for each phase will be issued by the Owner before proceeding to each phase:
Programming/Master Planning Phase Completed

Surveying + Geotechnical Investigation 45
consecutive calendar days
Schematic Design Phase 30
consecutive calendar days
Owner Review + Written Comments 15
consecutive calendar days
Design Development Phase 60
consecutive calendar days
Owner Review + Written Comments 15
consecutive calendar days
Construction Document Phase 120
consecutive calendar days
Owner Review + Written Comments 15
consecutive calendar days

.2 Construction commencement date:

March 1, 2026

.3 Substantial Completion date or dates:

March 1, 2027

.4 Other milestone dates:

Within fifteen days from the date of execution, Architect shall provide a scope of services for inclusion in the procurement solicitation for the Construction Manager.

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

- ☒ [X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.
- ☐ [] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

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

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

NA

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

Norma Rivera Palacios
Director of Public Works
800 E. Overland Suite 200
El Paso, Texas 79901

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

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

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

Owner anticipates engaging the Construction Manager in January 2026.

- .2 Land Surveyor:
NA

- .3 Geotechnical Engineer:
NA

- .4 Civil Engineer:
NA

- .5 Other consultants and contractors:
(List any other consultants and contractors retained by the Owner.)
NA

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

Principal Architect
Renee Jimenez, AIA, LEED AP, NCARB
330 Eubank Court

El Paso, Texas 79912
RJimenez@MNKArchitects.com
915-587-8023

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

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Kilo Engineering

.2 Mechanical & Plumbing Engineer:

Cardina Engineering

.3 Electrical Engineer:

DS Engineering

§ 1.1.12.2 Consultants retained under Supplemental Services:

Civil Engineer – CEA Engineering
Surveying Engineer – SLI Engineering
Traffic Study Engineer – CEA Engineering
Re-Platting Engineer – CEA Engineering
Geo-Technical Engineer – CQC Testing and Engineering
IT and Telecommunications – DS Engineering
Landscaping and Irrigation – Desert Elements

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

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

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

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or

contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

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

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

§ 2.6 Insurance. The Architect shall maintain the policies of insurance in accordance with the provisions of Article 13 of the Contract for On-Call Professional Services Between El Paso County and MNK Architects, Inc., dated January 27, 2025, attached hereto as Exhibit A.

§ 2.7 The Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations orders and other legal requirements including but not limited to all zoning restrictions or requirements of record, building, occupancy, environmental, disabled person accessibility and land use laws, requirements regulations and ordinances relating to the construction use and occupancy of the Project ("Governmental Requirements") existing on the date of this Agreement and which may be enacted prior to Owner's approval of completed Construction Documents. Architect shall use its best efforts to avoid incorporating into the Project design elements that would give rise to code interpretation questions and to discuss in advance all such situations with the Owner.

§ 2.8 The Architect represents to Owner that all Design Documents, Contract Documents and other documents prepared and issued by Architect pursuant to this Agreement will be of good quality, free from substantial defects, and in conformance with and satisfying all applicable federal, state, municipal and local ordinances, codes, and other governmental requirements and shall be fit for the particular purpose intended. Architect shall notify the Owner in a prompt and timely manner of any discovered discrepancies inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Failure to so notify Owner will be considered a breach of the standard of professional practice set forth in this Agreement.

§ 2.9 Notwithstanding any provision of this Article to the contrary, services made necessary as a result of the Architect's failure to timely provide

accurate or complete information, approvals or clarifications, or to timely render a decision, shall be considered Basic Services.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

§ 3.1.3 Within fifteen (15) days after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

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

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

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

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.1.9 Notwithstanding any other provision of the Agreement, the following are Services of the Architect fully compensated under Section 11.1 as Basic Services:

- .1 The time period during which the Architect's duty to provide Basic Services shall include that time necessary to correct any defective work caused by defects, errors or omissions of the Architect during any phase of construction. Such services shall be performed by the Architect at no additional services charges.
- .2 The Architect shall be responsible for retaining all necessary consultants to execute Architect's scope of work. Such consultants shall be professionals licensed by the State of Texas to practice the building discipline for which they are retained on the Project. Consultants required by the Architect shall at a minimum be required to make on-site visits and observations during those periods when work they have designed is being constructed.
- .3 The Architect shall require its subconsultants to maintain a set of record drawings to be furnished to the Owner in reproducible form upon Substantial Completion of the Project.
- .4 The Architect shall cause the Contractor to provide all warranty documents and Owner operation manuals required by the Contract Documents. The Architect shall review the record drawings, warranties, and operation manuals for conformance with the Contract Documents and shall deliver the record drawings, warranties, and operation manuals to the Owner by written transmittal.
- .4 The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one (1) year after the date of Substantial Completion. In addition, the Architect shall monitor the progress of corrections and furnish the Owner with written notification of completed corrections. The one (1) year period shall be extended to portions of the Work first completed after the date of Substantial Completion by the period of time between Substantial Completion and the actual completion of such Work. The obligations under this Section shall survive acceptance of the Work by the Owner.

§ 3.1.10 For new construction, additions, and remodels/expansions, the Architect shall prepare interior finish selections in the form of a digital color board and exterior finish selections for incorporation in a site mockup as described in the specifications for approval by the Owner.

§ 3.1.11 The Architect is not authorized to approve material changes involving major systems previously approved by Owner or Owner's Representative, such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

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

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

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

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

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

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

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

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

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

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

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

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

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

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.1.1 Procedures and meetings in schematic and design development phases allow for adequate interaction between Owner and Architect to minimize oversights in Project requirements. It is incumbent upon the Architect to thoroughly review his work product to detect errors and omissions before they become costly additions to the Project during construction.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

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

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents. The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted.

§ 3.5.6 After Owner's approval of the Construction Documents, the Architect shall not make or approve any change in the Work, except for minor changes in the Work not involving an adjustment in the Contract Sum, expenditure of contingency funds or an extension of the Contract Time, without the prior written consent of the Owner. The Architect shall be liable to the Owner for any damages arising from or caused by any change to the Work made or approved by the Architect without the Owner's prior written consent.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, as revised. If the Owner and Construction Manager modify AIA Document A201–2017 as revised, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement. The term “Contractor” as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect’s responsibility to provide Construction Phase Services commences upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Owner’s approval of the Construction Manager’s Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

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

§ 3.6.1.4 To avoid delay in the Construction Phase, the Architect shall provide the following Services.

- .1 Reviewing a Contractor’s submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .5 Provide field observations as needed to ensure that the project is progressing with construction.
- .6 Evaluation of the qualifications of entities providing bids or proposals;

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will

be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect shall visit the site and observe the Work at appropriate stages of construction no less than weekly. The Architect shall report the results of all observations to the Owner in writing. Any and all observed deficiencies shall immediately be reported to the Owner and Contractor in writing.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

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

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. The Architect shall accept requests by the Owner, and shall review properly-prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly-prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, then the Architect may issue an order for a minor change in the Work, with prior written notice to the Owner, or recommend to the Owner that the requested change be denied. If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, then the Architect shall make a recommendation to approve or deny the requested change to the Owner. Based upon information furnished by the Contractor, if any, the Architect

shall estimate the additional cost and time that might result from such change, including any additional costs attributable to Additional Services of the Architect. If the Architect recommends approval, then the Architect shall incorporate those estimates into a proposed Change Order.

§ 3.6.5.3 The Architect shall prepare a set of reproducible record drawings in digital format acceptable to the Owner showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

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

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

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.6.6.6 As a condition to the Project being considered Substantially Complete, the Architect shall obtain the certification of the Contractor on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in Section 3.6.6.6 above.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|--|---|
| § 4.1.1.1 Assistance with Selection of Construction Manager | Architect – Basic Services |
| § 4.1.1.2 Programming | Owner |
| § 4.1.1.3 Multiple Preliminary Designs | Not Required |
| § 4.1.1.4 Measured drawings | Architect – Basic Services |
| § 4.1.1.5 Existing facilities surveys | Not Required |
| § 4.1.1.6 Site evaluation and planning | Architect – Basic Services |
| § 4.1.1.7 Building Information Model management responsibilities | Not Required |
| § 4.1.1.8 Development of Building Information Models for post construction use | Not Required |
| § 4.1.1.9 Civil engineering | Architect – Basic Services |
| § 4.1.1.10 Landscape design | Architect – Basic Services |
| § 4.1.1.11 Architectural interior design | Architect – Basic Services |
| § 4.1.1.12 Value analysis | Architect – Basic Services |
| § 4.1.1.13 Detailed cost estimating beyond that required in Section 6.3 | Architect – Additional Services |
| § 4.1.1.14 On-site project representation | Not Required |
| § 4.1.1.15 Conformed documents for construction | Architect – Basic Services |
| § 4.1.1.16 As-designed record drawings | Architect – Basic Services |
| § 4.1.1.17 As-constructed record drawings | Architect – Basic Services |
| § 4.1.1.18 Post-occupancy evaluation | Not Required |
| § 4.1.1.19 Facility support services | Not Required |
| § 4.1.1.20 Tenant-related services | Not Required |
| § 4.1.1.21 Architect’s coordination of the Owner’s consultants | Not Required |
| § 4.1.1.22 Telecommunications/data design | Architect – Additional Services |
| § 4.1.1.23 Security evaluation and planning | Architect – Additional Services |
| § 4.1.1.24 Commissioning | Owner |
| § 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3 | Not Required |
| § 4.1.1.26 Historic preservation | Not Required |
| § 4.1.1.27 Furniture, furnishings, and equipment design | Architect – Additional Services |
| § 4.1.1.28 Geo-Technical Engineering | Architect – Additional Services |
| § 4.1.1.29 Traffic Study | Architect – Additional Services |
| § 4.1.1.30 Platting | Architect – Additional Services |
| § 4.1.1.31 Surveys | Architect – Additional Services |
| § 4.1.1.32 Acoustic Consultant | Not Required |
| § 4.1.1.33 Roofing Consultant | Not Required |

§ 4.1.2 Description of Supplemental Services

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

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

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

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

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

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

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

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

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

- .1** Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2** Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3** Services necessitated by the enactment or revision of codes, laws, or regulations, including

- changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 [omitted]
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

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

- .1 [omitted]
- .2 [omitted]
- .3 [omitted]
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 [omitted]
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion
- .5 The Architect shall visit the site and observe the Work at appropriate stages of construction no less than weekly. The Architect shall report the results of all observations to the Owner in writing. Any and all observed deficiencies shall immediately be reported to the Owner and Contractor in writing.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

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

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

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

§ 5.5 [Omitted]

§ 5.6 [Omitted]

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

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

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

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

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

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

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

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

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

ARTICLE 6 COST OF THE WORK

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

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

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

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

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

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

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget

for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the

Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

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

§ 8.2 Mediation

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

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

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for

suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

§ 9.7 [Omitted]

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

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

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

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)

\$698,860.00 less deduction of \$259,217.00 for previous design work for a stipulated sum of \$439,643.00
- .2 Percentage Basis
(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3 Other
(Describe the method of compensation)

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

| | |
|--|-------------|
| Geo-Technical Studies | \$35,000.00 |
| Improvement and Topographical Surveying 2 acre | \$35,000.00 |
| Improvement and Topographical Surveying 2 acre | \$15,000.00 |
| Civil Site Planning and Design | \$83,000.00 |
| Platting Process | \$55,000.00 |
| Zoning Changes | \$25,000.00 |
| Traffic Study | \$42,000.00 |
| Special Systems Design | \$10,250.00 |
| Cost Estimate 2: Schematic Design | \$11,258.00 |
| Cost Estimate 3: Design Development | \$16,132.00 |
| Cost Estimate 5: 100% CDs – In Original PO | \$12,450.90 |
| Accessibility Submission to TDLR | \$1,955.00 |
| FF+E Plan Development | \$30,000.00 |

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

Based on the hourly rates as set forth in Exhibit D for time spent.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus fifteen percent (15 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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

| | |
|------------------------------|---------------------------------|
| Schematic Design Phase | Twenty percent (20 %) |
| Design Development Phase | Twenty five percent (25 %) |
| Construction Documents Phase | Forty percent (40 %) |
| Construction Phase | Fifteen percent (15 %) |
| <hr/> | |
| Total Basic Compensation | one hundred percent (100.00 %) |

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

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The

rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

The hourly billing rates for services of the Architect are set forth in Exhibit D, attached hereto,

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 [Subsection Deleted]
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 [Subsection Deleted]
- .9 [Subsection Deleted]
- .10 [Subsection Deleted]
- .11 [Subsection Deleted]
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus fifteen percent (15 %) of the expenses incurred.

§ 11.9 [Subsection Deleted]

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 00.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 [Subsection Deleted]

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice and in accordance with Texas Government Code Chapter 2251.

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

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

§ 11.10.2.4 The Owner shall make final payment for services upon receipt of the Architect's undisputed final invoice. Acceptance of the Owner's final

payment shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which the Architect, its consultants or successors have or may have against the Owner under the provisions of the Agreement, except those previously made in writing and identified by the Architect as unsettled at the time of the final request for payment.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code section 1051.251: “The Texas Board of Architectural Examiners (333 Guadalupe Suite 2-350, Austin, Texas 78701 Telephone: 512-305-9000) has jurisdiction over individuals licensed to practice architecture in the State of Texas.

§ 12.1 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ARCHITECT SHALL AND DOES AGREE TO INDEMNIFY, PROTECT AND HOLD HARMLESS OWNER, OWNER’S REPRESENTATIVE, OWNER’S PROJECT MANAGER (IF ANY), AND EACH OF THE AFOREMENTIONED PARTIES’ RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, TRUSTEES, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY “INDEMNITEES”) FOR, FROM AND AGAINST ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, LIENS, FINES, PENALTIES, COSTS, CAUSES OF ACTION, SUITS, JUDGEMENTS AND EXPENSES (INCLUDING COURT COSTS, REASONABLE ATTORNEY FEES, AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER BY ARCHITECT, ANY OUTSIDE CONSULTANT OR SUBCONTRACTOR (OF ANY TIER) OF ARCHITECT, ANYONE EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY “LIABILITIES”), EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED IN PART TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS’ COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 12.2 COMMUNICATIONS. All communication and documentation from the Architect to the Owner must flow through the Owner’s Representative, except as specifically stated herein, or when the Architect has reasonable belief that an issue of material, design, construction, safety or similar significance has not been adequately conveyed to the Owner by the Owner’s Representative. The Owner’s Representative and Architect will each have a single point-of-contact. Each point-of-contact may designate secondary points of contact for specific issues to expedite the flow of technical information. Communications by the Architect or its consultants outside this established channel are not acceptable, and individuals who are identified as repeatedly bypassing the Owner’s Representative shall be removed from the Project upon the request of the Owner.

§ 12.3 SBE / MINORITY / WOMAN-OWNED BUSINESS INITIATIVE. The Owner encourages and supports the participation of small business enterprises and minority and woman-owned businesses in its Projects. The Architect shall endeavor to provide opportunities for qualified small, minority and/or woman-owned companies when developing its subconsultant design team members.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 Building Information Modeling Exhibit, if completed:

NA

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

☒ [X] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.
(Insert the date of the E234-2019 incorporated into this agreement.)

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

Exhibit A - “Contract for On-Call Professional Services Between El Paso County & MNK Architects, Inc. dated January 27, 2025, (“2025 On-Call Agreement)”

Exhibit B - “Work Order No. OME-001 On-Call Architectural Services Contract with MNK Architects, Inc.” (2022 Work Order)

Exhibit C - Floor Plan – Administrative Wing and Floor Plan – Morgue Wing

Exhibit D – 2025 MNK Architects Hourly Rates

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

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

OWNER (Signature)

BY: Hon. Ricardo A. Samaniego, El Paso
County Judge

(Printed name and title)

ARCHITECT (Signature)

BY: Renee Jimenez, AIA, LEED AP,
NCARB, President/CEO of MNK
Architects

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



Additions and Deletions Report for AIA® Document B133® – 2019

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 12:28:20 MDT on 04/01/2025.

Changes to original AIA text

PAGE 1

AGREEMENT made as of the 7th day of April in the year 2025

PAGE 2

Owner and Architect are parties to the “Contract for On-Call Professional Services Between El Paso County & MNK Architects, Inc. dated January 27, 2025, (“2025 On-Call Agreement) attached hereto as Exhibit A. This Agreement constitutes Work Order No. 1 – Medical Examiner Facility of the 2025 On-Call Agreement.

Based on the information provided by the Architect through the selection process, the Architect and its proposed staff have represented that they possess certain relevant experience and capabilities to perform and undertake the obligations of Architect in this Agreement at the stated level of performance with regard to this project type. The Owner is depending on the Architect to perform at or above the level represented during the selection process. The Architect accepts the relationship of trust and confidence established by the Agreement and covenants with the Owner to cooperate with the Owner and its selected Contractor and exercise the Architect’s skill and best professional judgement in furthering the interests of the Owner; to furnish efficient business administration and supervision;-to furnish at all times an adequate supply of workers and materials; and to perform its efforts under this Agreement in an expeditious and economical manner consistent with the Owner’s interests. The Architect shall perform its operations in an open book collaborative process during the Project. An open book approach requires the Architect to make available to the Owner, in detail, all correspondence, estimates, documentation and transactions related to the Project, in a timely manner in accordance with this Agreement. All the Architect’s subcontractors and consultants shall price and perform their work in connection with the Project in an Open Book manner.

PAGE 3

- .1 Design phase milestone dates, if any, will be as follows, a Notice to Proceed for each phase will be issued by the Owner before proceeding to each phase:

| | |
|---|-------------------------------------|
| <u>Programming/Master Planning Phase</u> | <u>Completed</u> |
| <u>Surveying + Geotechnical Investigation</u> | <u>45 consecutive calendar days</u> |
| <u>Schematic Design Phase</u> | <u>30 consecutive calendar days</u> |
| <u>Owner Review + Written Comments</u> | <u>15 consecutive calendar days</u> |

| | |
|--|--------------------------------------|
| <u>Design Development Phase</u> | <u>60 consecutive calendar days</u> |
| <u>Owner Review + Written Comments</u> | <u>15 consecutive calendar days</u> |
| <u>Construction Document Phase</u> | <u>120 consecutive calendar days</u> |
| <u>Owner Review + Written Comments</u> | <u>15 consecutive calendar days</u> |

PAGE 6

.2 Mechanical & Plumbing Engineer:

PAGE 7

§ 2.6 Insurance. The Architect shall maintain the following policies of insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9 in accordance with the provisions of Article 13 of the Contract for On-Call Professional Services Between El Paso County and MNK Architects, Inc., dated January 27, 2025, attached hereto as Exhibit A.

§ 2.6.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage.

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

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.

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

§ 2.6.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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

§ 2.7 The Architect shall provide a design which when constructed in accordance with the Contract Documents will comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations orders and other legal requirements including but not limited to all zoning restrictions or requirements of record, building, occupancy, environmental, disabled person accessibility and land use laws, requirements regulations and ordinances relating to

the construction use and occupancy of the Project (“Governmental Requirements”) existing on the date of this Agreement and which may be enacted prior to Owner’s approval

of completed Construction Documents. Architect shall use its best efforts to avoid incorporating into the Project design elements that would give rise to code interpretation questions and to discuss in advance all such situations with the Owner.

PAGE 8

§ 2.8 The Architect represents to Owner that all Design Documents, Contract Documents and other documents prepared and issued by Architect pursuant to this Agreement will be of good quality, free from substantial defects, and in conformance with and satisfying all applicable federal, state, municipal and local ordinances, codes, and other governmental requirements and shall be fit for the particular purpose intended. Architect shall notify the Owner in a prompt and timely manner of any discovered discrepancies inconsistencies or missing information necessary to provide reasonably accurate and complete documents. Failure to so notify Owner will be considered a breach of the standard of professional practice set forth in this Agreement.

§ 2.9 Notwithstanding any provision of this Article to the contrary, services made necessary as a result of the Architect’s failure to timely provide accurate or complete information, approvals or clarifications, or to timely render a decision, shall be considered Basic Services.

§ 3.1.3 As soon as practicable Within fifteen (15) days after the date of this Agreement, the Architect shall submit, for the Construction Manager’s review and the Owner’s approval, a schedule for the performance of the Architect’s services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner’s review, for the Construction Manager’s review, for the performance of the Construction Manager’s Preconstruction Phase services, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner’s approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

PAGE 9

§ 3.1.9 Notwithstanding any other provision of the Agreement, the following are Services of the Architect fully compensated under Section 11.1 as Basic Services:

- .1 The time period during which the Architect’s duty to provide Basic Services shall include that time necessary to correct any defective work caused by defects, errors or omissions of the Architect during any phase of construction. Such services shall be performed by the Architect at no additional services charges.
- .2 The Architect shall be responsible for retaining all necessary consultants to execute Architect’s scope of work. Such consultants shall be professionals licensed by the State of Texas to practice the building discipline for which they are retained on the Project. Consultants required by the Architect shall at a minimum be required to make on-site visits and observations during those periods when work they have designed is being constructed.
- .3 The Architect shall require its subconsultants to maintain a set of record drawings to be furnished to the Owner in reproducible form upon Substantial Completion of the Project.
- .4 The Architect shall cause the Contractor to provide all warranty documents and Owner operation manuals required by the Contract Documents. The Architect shall review the record drawings,

warranties, and operation manuals for conformance with the Contract Documents and shall deliver the record drawings, warranties, and operation manuals to the Owner by written transmittal.

- .4 The Architect shall be responsible for reporting all known building deficiencies to the Contractor for a period of one (1) year after the date of Substantial Completion. In addition, the Architect shall monitor the progress of corrections and furnish the Owner with written notification of completed corrections. The one (1) year period shall be extended to portions of the Work first completed after the date of Substantial Completion by the period of time between Substantial Completion and the actual completion of such Work. The obligations under this Section shall survive acceptance of the Work by the Owner.

§ 3.1.10 For new construction, additions, and remodels/expansions, the Architect shall prepare interior finish selections in the form of a digital color board and exterior finish selections for incorporation in a site mockup as described in the specifications for approval by the Owner.

§ 3.1.11 The Architect is not authorized to approve material changes involving major systems previously approved by Owner or Owner's Representative, such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

PAGE 11

§ 3.5.1.1 Procedures and meetings in schematic and design development phases allow for adequate interaction between Owner and Architect to minimize oversights in Project requirements. It is incumbent upon the Architect to thoroughly review his work product to detect errors and omissions before they become costly additions to the Project during construction.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents. The Owner's decisions on matters relating to aesthetic effect shall be final. To the extent that Owner's Contractor or Construction Manager at Risk recommends aesthetic revisions to Owner, Architect shall be consulted.

§ 3.5.6 After Owner's approval of the Construction Documents, the Architect shall not make or approve any change in the Work, except for minor changes in the Work not involving an adjustment in the Contract Sum, expenditure of contingency funds or an extension of the Contract Time, without the prior written consent of the Owner. The Architect shall be liable to the Owner for any damages arising from or caused by any change to the Work made or approved by the Architect without the Owner's prior written consent.

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

PAGE 12

§ 3.6.1.4 To avoid delay in the Construction Phase, the Architect shall provide the following Services.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .5 Provide field observations as needed to ensure that the project is progressing with construction.
- .6 Evaluation of the qualifications of entities providing bids or proposals;

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect shall visit the site and observe the Work at appropriate stages of construction no less than weekly. The Architect shall report the results of all observations to the Owner in writing. Any and all observed deficiencies shall immediately be reported to the Owner and Contractor in writing.

PAGE 13

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work. The Architect shall accept requests by the Owner, and shall review properly-prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly- prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Construction Documents or the Contract Documents, then the Architect may issue an order for a minor change in the Work, with prior written notice to the Owner, or recommend to the Owner that the requested change be denied. If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, then the Architect shall make a recommendation to approve or deny the requested change to the Owner. Based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to Additional Services of the Architect. If the Architect recommends approval, then the Architect shall incorporate those estimates into a proposed Change Order.

PAGE 14

§ 3.6.5.3 The Architect shall prepare a set of reproducible record drawings in digital format acceptable to the Owner showing significant changes made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

§ 3.6.6.6 As a condition to the Project being considered Substantially Complete, the Architect shall obtain the

certification of the Contractor on the Certification of Project Compliance form that the facility has been constructed in general accordance with the Construction Documents set out in Section 3.6.6.6 above.

PAGE 15

| Supplemental Services | Responsibility (Architect, Owner, or not provided) |
|--|---|
| § 4.1.1.1 Assistance with Selection of Construction Manager | <u>Architect – Basic Services</u> |
| § 4.1.1.2 Programming | <u>Owner</u> |
| § 4.1.1.3 Multiple Preliminary Designs | <u>Not Required</u> |
| § 4.1.1.4 Measured drawings | <u>Architect – Basic Services</u> |
| § 4.1.1.5 Existing facilities surveys | <u>Not Required</u> |
| § 4.1.1.6 Site evaluation and planning | <u>Architect – Basic Services</u> |
| § 4.1.1.7 Building Information Model management responsibilities | <u>Not Required</u> |
| § 4.1.1.8 Development of Building Information Models for post construction use | <u>Not Required</u> |
| § 4.1.1.9 Civil engineering | <u>Architect – Basic Services</u> |
| § 4.1.1.10 Landscape design | <u>Architect – Basic Services</u> |
| § 4.1.1.11 Architectural interior design | <u>Architect – Basic Services</u> |
| § 4.1.1.12 Value analysis | <u>Architect – Basic Services</u> |
| § 4.1.1.13 Cost Detailed cost estimating beyond that required in Section 6.3 | <u>Architect – Additional Services</u> |
| § 4.1.1.14 On-site project representation | <u>Not Required</u> |
| § 4.1.1.15 Conformed documents for construction | <u>Architect – Basic Services</u> |
| § 4.1.1.16 As-designed record drawings | <u>Architect – Basic Services</u> |
| § 4.1.1.17 As-constructed record drawings | <u>Architect – Basic Services</u> |
| § 4.1.1.18 Post-occupancy evaluation | <u>Not Required</u> |
| § 4.1.1.19 Facility support services | <u>Not Required</u> |
| § 4.1.1.20 Tenant-related services | <u>Not Required</u> |
| § 4.1.1.21 Architect's coordination of the Owner's consultants | <u>Not Required</u> |
| § 4.1.1.22 Telecommunications/data design | <u>Architect – Additional Services</u> |
| § 4.1.1.23 Security evaluation and planning | <u>Architect – Additional Services</u> |
| § 4.1.1.24 Commissioning | <u>Owner</u> |
| § 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3 | <u>Not Required</u> |
| § 4.1.1.26 Historic preservation | <u>Not Required</u> |
| § 4.1.1.27 Furniture, furnishings, and equipment design | <u>Architect – Additional Services</u> |
| § 4.1.1.28 Other services provided by specialty Consultants Geo-Technical Engineering | <u>Architect – Additional Services</u> |
| § 4.1.1.29 Other Supplemental Services Traffic Study | <u>Architect – Additional Services</u> |
| § 4.1.1.30 Platting | <u>Architect – Additional Services</u> |
| § 4.1.1.31 Surveys | <u>Architect – Additional Services</u> |
| § 4.1.1.32 Acoustic Consultant | <u>Not Required</u> |
| § 4.1.1.33 Roofing Consultant | <u>Not Required</u> |
| § 4.1.1.34 Zoning | <u>Architect – Additional Services</u> |

PAGE 16

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

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

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

PAGE 17

.1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect; [omitted]

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

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

.2 () visits to the site by the Architect during construction

.3 (

.2 [omitted]

.3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

.5 The Architect shall visit the site and observe the Work at appropriate stages of construction no less than weekly. The Architect shall report the results of all observations to the Owner in writing. Any and all observed deficiencies shall immediately be reported to the Owner and Contractor in writing.

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

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

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

~~§ 8.3 Arbitration~~

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

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

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

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

~~§ 8.3.4 Consolidation or Joinder~~

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

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

question not described in the written consent.

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

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

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

PAGE 23

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

- ~~.1 Termination Fee:~~
- ~~.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:~~

PAGE 24

| | |
|---|--------------------|
| <u>Geo-Technical Studies</u> | <u>\$35,000.00</u> |
| <u>Improvement and Topographical Surveying 2 acre</u> | <u>\$35,000.00</u> |
| <u>Improvement and Topographical Surveying 2 acre</u> | <u>\$15,000.00</u> |
| <u>Civil Site Planning and Design</u> | <u>\$83,000.00</u> |
| <u>Platting Process</u> | <u>\$55,000.00</u> |
| <u>Zoning Changes</u> | <u>\$25,000.00</u> |
| <u>Traffic Study</u> | <u>\$42,000.00</u> |
| <u>Special Systems Design</u> | <u>\$10,250.00</u> |
| <u>Cost Estimate 2: Schematic Design</u> | <u>\$11,258.00</u> |
| <u>Cost Estimate 3: Design Development</u> | <u>\$16,132.00</u> |
| <u>Cost Estimate 5: 100% CDs – In Original PO</u> | <u>\$12,450.90</u> |
| <u>Accessibility Submission to TDLR</u> | <u>\$1,955.00</u> |
| <u>FF+E Plan Development</u> | <u>\$30,000.00</u> |

PAGE 25

- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project web-~~

sites, and extranets;[Subsection Deleted]

.8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;[Subsection Deleted]

.9 All taxes levied on professional services and on reimbursable expenses;[Subsection Deleted]

PAGE 26

.10 Site office expenses;[Subsection Deleted]

.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and[Subsection Deleted]

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below: [Subsection Deleted]

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

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

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made ~~monthly~~ in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. ~~Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect, and in accordance with Texas Government Code Chapter 2251.~~

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

§ 11.10.2.4 The Owner shall make final payment for services upon receipt of the Architect's undisputed final invoice. Acceptance of the Owner's final payment shall constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever which the Architect, its consultants or successors have or may have against the Owner under the provisions of the Agreement, except those previously made in writing and identified by the Architect as unsettled at the time of the final request for payment.

LICENSING AUTHORITY: The following information is included in this agreement as required by Texas Occupations Code section 1051.251: "The Texas Board of Architectural Examiners (333 Guadalupe Suite 2-350, Austin, Texas 78701 Telephone: 512-305-9000) has jurisdiction over individuals licensed to practice architecture in the State of Texas."

PAGE 27

§ 12.1 INDEMNIFICATION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ARCHITECT SHALL AND DOES AGREE TO INDEMNIFY, PROTECT AND HOLD HARMLESS OWNER, OWNER'S REPRESENTATIVE, OWNER'S PROJECT MANAGER (IF ANY), AND EACH OF THE AFOREMENTIONED PARTIES' RESPECTIVE AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, TRUSTEES, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITEES") FOR, FROM AND AGAINST ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, LIENS, FINES, PENALTIES, COSTS, CAUSES OF ACTION, SUITS, JUDGEMENTS AND EXPENSES (INCLUDING COURT COSTS, REASONABLE ATTORNEY FEES, AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM ANY NEGLIGENT ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER BY ARCHITECT, ANY OUTSIDE CONSULTANT OR SUBCONTRACTOR (OF ANY TIER) OF ARCHITECT, ANYONE EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL OR EXERCISE CONTROL OVER (COLLECTIVELY "LIABILITIES"), EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED IN PART TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

§ 12.2 COMMUNICATIONS. All communication and documentation from the Architect to the Owner must flow through the Owner's Representative, except as specifically stated herein, or when the Architect has reasonable belief that an issue of material, design, construction, safety or similar significance has not been adequately conveyed to the Owner by the Owner's Representative. The Owner's Representative and Architect will each have a single point-of-contact. Each point-of-contact may designate secondary points of contact for specific issues to expedite the flow of technical information. Communications by the Architect or its consultants outside this established channel are not acceptable, and individuals who are identified as repeatedly bypassing the Owner's Representative shall be removed from the Project upon the request of the Owner.

§ 12.3 SBE / MINORITY / WOMAN-OWNED BUSINESS INITIATIVE. The Owner encourages and supports the participation of small business enterprises and minority and woman-owned businesses in its Projects. The Architect shall endeavor to provide opportunities for qualified small, minority and/or woman-owned companies when developing its subconsultant design team members.

[NA] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.

-Exhibit A - "Contract for On-Call Professional Services Between El Paso County & MNK Architects, Inc. dated January 27, 2025, ("2025 On-Call Agreement")

Variable Information

PAGE 1

AGREEMENT made as of the 7th day of April in the year 2025

County of El Paso, Texas

MNK Architects, Inc.

330 Eubank Court

El Paso, Texas 79902

Office of Medical Examiner Facility – Work Order 2025-001

917-3929 State Jail Road

El Paso, Texas 79902

TBD

PAGE 3

The Owner seeks to design and construct a new Medical Examiner's facility as described more fully in paragraph 1.1.2 below. The Owner has previously engaged the Architect under "Work Order No. OME-001 On-Call Architectural Services Contract with MNK Architects, Inc." (2022 Work Order) executed in May 2022 and attached hereto as Exhibit B for reference, to provide design services for this facility at a different location and it is the intent to use portions of the previously developed Building design at the new site. The new design will utilize the programming previously completed by Architect as well as the floor plan adjacencies previously approved in the previous design, as set forth in Floor Plan – Administrative Wing and Floor Plan – Morgue Wing, attached hereto as Exhibit C. Building orientation and configuration modifying the overall building layout is not expected to remain the same. Mechanical, plumbing and electrical systems will require complete redesign. Structural and architectural will require a significant redesign for the building design. Site considerations are as follows:

- a) no street improvements are anticipated
- b) no utility design is anticipated outside the property line; site utility coordination is included
- c) site design is limited to the two acres of land
- d) ponding design is not anticipated within the two acres and anticipate using approximately one acre to the north of the building
- e) staff and visitor parking to meet code

The Owner shall engage a Construction Manager at Risk (CMAR) on or about January 2026.

The County seeks to construct a new Medical Examiner's facility located on County owned land behind the El Paso County Jail Annex off of State Jail Road. The County intends to utilize three parcels of land with a combined area of approximately two acres and an additional one acre for ponding. The facility should include two functioning buildings separated via a breezeway but with controlled access. The primary building shall consist of office spaces, large conference room and multiple smaller breakout rooms, breakroom, kitchen and necessary appurtenances. Estimated floor space should be approximately 10,000 sf. There should be twenty offices that comply with established County standards, grieving centers and access control to separate public space from restricted spaces. The second building should consist of the Medical Lab/Autopsy building. This building shall have a minimum of 10,000 sf space with walk-in freezers and a potential additional 5,000 sf of additional backup walk-in freezers. The second facility shall have two drive in garages with exhaust systems. This space will need to comply with medical grade space requirements, including but not limited to negative air pressure rooms and HEPA purification systems. A third structure shall be located on the facility that would be detached from the facility. This third structure shall contain a Chicago style dock system with access for 6 bays and a 20 foot platform surface. This structure shall be an enclosed canopy structure with a 20 foot height clearance, 6 roll up doors, and connections to power commercial refrigeration trailers and exhaust system. The design must satisfy all applicable regulatory standards, including standards required for accreditation by the National Association of Medical Examiners. The total size of the facility shall be 25,000 sf.

\$8,300,000.00

Programming/Master Planning Phase Completed

Surveying + Geotechnical Investigation 45 consecutive calendar days

Schematic Design Phase 30 consecutive calendar days

Owner Review + Written Comments 15 consecutive calendar days

Design Development Phase 60 consecutive calendar days

Owner Review + Written Comments 15 consecutive calendar days

Construction Document Phase 120 consecutive calendar days

Owner Review + Written Comments 15 consecutive calendar days

PAGE 4

March 1, 2026

March 1, 2027

Within fifteen days from the date of execution, Architect shall provide a scope of services for inclusion in the procurement solicitation for the Construction Manager.

[X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

NA

Norma Rivera Palacios

Director of Public Works

800 E. Overland Suite 200

El Paso, Texas 79901

PAGE 5

Owner anticipates engaging the Construction Manager in January 2026.

NA

NA

NA

NA

Principal Architect

Renee Jimenez, AIA, LEED AP, NCARB

330 Eubank Court

El Paso, Texas 79912

RJimenez@MNKArchitects.com

915-587-8023

PAGE 6

Kilo Engineering

Cardina Engineering

DS Engineering

Civil Engineer – CEA Engineering

Surveying Engineer – SLI Engineering

Traffic Study Engineer – CEA Engineering

Re-Platting Engineer – CEA Engineering

Geo-Technical Engineer – CQC Testing and Engineering

IT and Telecommunications – DS Engineering

Landscaping and Irrigation – Desert Elements

PAGE 15

| Supplemental Services | Responsibility (Architect, Owner, or not provided) |
|--|---|
| § 4.1.1.1 Assistance with Selection of Construction Manager | <u>Architect – Basic Services</u> |
| § 4.1.1.2 Programming | <u>Owner</u> |
| § 4.1.1.3 Multiple Preliminary Designs | <u>Not Required</u> |
| § 4.1.1.4 Measured drawings | <u>Architect – Basic Services</u> |
| § 4.1.1.5 Existing facilities surveys | <u>Not Required</u> |
| § 4.1.1.6 Site evaluation and planning | <u>Architect – Basic Services</u> |
| § 4.1.1.7 Building Information Model management responsibilities | <u>Not Required</u> |
| § 4.1.1.8 Development of Building Information Models for post construction use | <u>Not Required</u> |
| § 4.1.1.9 Civil engineering | <u>Architect – Basic Services</u> |
| § 4.1.1.10 Landscape design | <u>Architect – Basic Services</u> |
| § 4.1.1.11 Architectural interior design | <u>Architect – Basic Services</u> |
| § 4.1.1.12 Value analysis | <u>Architect – Basic Services</u> |
| § 4.1.1.13 Cost Detailed cost estimating beyond that required in Section 6.3 | <u>Architect – Additional Services</u> |
| § 4.1.1.14 On-site project representation | <u>Not Required</u> |
| § 4.1.1.15 Conformed documents for construction | <u>Architect – Basic Services</u> |
| § 4.1.1.16 As-designed record drawings | <u>Architect – Basic Services</u> |
| § 4.1.1.17 As-constructed record drawings | <u>Architect – Basic Services</u> |
| § 4.1.1.18 Post-occupancy evaluation | <u>Not Required</u> |
| § 4.1.1.19 Facility support services | <u>Not Required</u> |
| § 4.1.1.20 Tenant-related services | <u>Not Required</u> |
| § 4.1.1.21 Architect's coordination of the Owner's consultants | <u>Not Required</u> |
| § 4.1.1.22 Telecommunications/data design | <u>Architect – Additional Services</u> |
| § 4.1.1.23 Security evaluation and planning | <u>Architect – Additional Services</u> |
| § 4.1.1.24 Commissioning | <u>Owner</u> |
| § 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3 | <u>Not Required</u> |
| § 4.1.1.26 Historic preservation | <u>Not Required</u> |
| § 4.1.1.27 Furniture, furnishings, and equipment design | <u>Architect – Additional Services</u> |
| § 4.1.1.28 Other services provided by specialty Consultants Geo-Technical Engineering | <u>Architect – Additional Services</u> |
| § 4.1.1.29 Other Supplemental Services Traffic Study | <u>Architect – Additional Services</u> |
| § 4.1.1.30 Platting | <u>Architect – Additional Services</u> |
| § 4.1.1.31 Surveys | <u>Architect – Additional Services</u> |
| § 4.1.1.32 Acoustic Consultant | <u>Not Required</u> |
| § 4.1.1.33 Roofing Consultant | <u>Not Required</u> |
| § 4.1.1.34 Zoning | <u>Architect – Additional Services</u> |

PAGE 17

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 Two (2) inspections for any portion of the Work to determine final completion

PAGE 21

[X] Litigation in a court of competent jurisdiction

PAGE 24

\$698,860.00 less deduction of \$259,217.00 for previous design work for a stipulated sum of \$439,643.00

| | |
|---|--------------------|
| <u>Geo-Technical Studies</u> | <u>\$35,000.00</u> |
| <u>Improvement and Topographical Surveying 2 acre</u> | <u>\$35,000.00</u> |
| <u>Improvement and Topographical Surveying 2 acre</u> | <u>\$15,000.00</u> |
| <u>Civil Site Planning and Design</u> | <u>\$83,000.00</u> |
| <u>Platting Process</u> | <u>\$55,000.00</u> |
| <u>Zoning Changes</u> | <u>\$25,000.00</u> |
| <u>Traffic Study</u> | <u>\$42,000.00</u> |
| <u>Special Systems Design</u> | <u>\$10,250.00</u> |
| <u>Cost Estimate 2: Schematic Design</u> | <u>\$11,258.00</u> |
| <u>Cost Estimate 3: Design Development</u> | <u>\$16,132.00</u> |
| <u>Cost Estimate 5: 100% CDs – In Original PO</u> | <u>\$12,450.90</u> |
| <u>Accessibility Submission to TDLR</u> | <u>\$1,955.00</u> |
| <u>FF+E Plan Development</u> | <u>\$30,000.00</u> |

Based on the hourly rates as set forth in Exhibit D for time spent.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus fifteen percent (15 %), or as follows:

PAGE 25

| | |
|------------------------------|---|
| Schematic Design Phase | <u>Twenty</u> percent (<u>20</u> %) |
| Design Development Phase | <u>Twenty five</u> percent (<u>25</u> %) |
| Construction Documents Phase | <u>Forty</u> percent (<u>40</u> %) |
| Construction Phase | <u>Fifteen</u> percent (<u>15</u> %) |

Total Basic Compensation

one hundred percent (100.00 %)

The hourly billing rates for services of the Architect are set forth in Exhibit D, attached hereto.

PAGE 26

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus fifteen percent (15 %) of the expenses incurred.

§ 11.10.1.1 An initial payment of Zero (\$ 00.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

PAGE 27

NA

Exhibit A - "Contract for On-Call Professional Services Between El Paso County & MNK Architects, Inc. dated January 27, 2025, ("2025 On-Call Agreement)

PAGE 28

Exhibit B - "Work Order No. OME-001 On-Call Architectural Services Contract with MNK Architects, Inc." (2022 Work Order)

Exhibit C - Floor Plan – Administrative Wing and Floor Plan – Morgue Wing

Exhibit D – 2025 MNK Architects Hourly Rates

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , 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 12:28:20 MDT on 04/01/2025 under Order No. 20250103645 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ - 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)