AIA® Document B133™ – 2019

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

AGREEMENT made as of the Sixteenth day of June in the year Two Thousand Twenty.
(In words, indicate day, month and year.)

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

City of Saginaw
333 West McLeroy Boulevard
Saginaw, TX 76179

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

Brown Reynolds Watford Architects, Inc. (BRW)
3535 Travis Street, Suite 250
Dallas, TX 75204

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

Saginaw Central Fire Station

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

Undetermined

The Owner and Architect agree as follows.

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

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

This document 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.

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ARTICLE 1 INITIAL INFORMATION

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

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

BRW understands the project scope is a fire station, fire administration, and Emergency Operations Center (EOC) as allowable within a $11.25 million total construction budget.

BRW understands the Owner has currently adopted the 2018 International Building Code (IBC) and related building codes that will require a storm shelter for the permanent fire station and EOC, as well as minimal building commissioning.

BRW understands the Owner intends to employ a Construction Manager at Risk (CMaR) to construct the project. The CMaR will provide pre-construction cost estimating and scheduling services, in lieu of the Architect. The Architect will prepare one set of Contract Documents, in lieu of "fast-track" construction method with multiple document packages and construction phases.

§ 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 building size and associated site development will be as allowable within the $11.25 million construction budget. The site is located at the Northwest corner of McLeroy Boulevard and Amber Drive. The Owner has provided metes and bounds of two existing lots that will be re-platted as a single lot.

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(Paragraphs deleted)
§ 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.)

Refer to Article 1.1.1

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

.1 Design phase milestone dates, if any:

To be determined.

.2 Construction commencement date:

To be determined.

.3 Substantial Completion date or dates:

To be determined.

.4 Other milestone dates:

To be determined.

§ 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.

(Paragraphs deleted)
§ 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.)

None.

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

Dolph Johnson
Assistant City Manager
City of Saginaw
333 West McLeroy Boulevard
Saginaw, TX 76179
djohnson@saginawtx.org
Phone: 817-230-0325

§ 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.)

Fire Chief Doug Spears

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City of Saginaw
400 S. Saginaw Boulevard
Saginaw, TX 76179
dougspears@saginawfire.us
(817) 230-0412

(Paragraphs deleted)
§ 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)

To be determined.

.2 Land Surveyor:

Owner's vendor, anticipated to be Kimley Horn. The Owner intends to engage this vendor to provide any necessary services for boundary survey, ALTA survey(s), platting, utility easement exhibits, and zoning modifications. The Architect's Civil Engineer, Click Engineering, will provide the topographic survey.

.3 Geotechnical Engineer:

Owner' vendor, anticipated to be CMJ Engineering.

.4 Civil Engineer:

Retained by Architect.

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

The Construction Manager will provide Cost Estimating.

The Owner shall self-perform or retain consultants, vendor or suppliers to furnish the following design services or building systems or authorize the Architect to furnish them as Additional Services, when such services are required to complete the project or desired by the Owner.

- Laboratory construction materials testing / inspections (during construction), including any abatement of hazardous materials.
- 2018 International Energy Conservation Code, Section C408 required building commissioning. MEP Systems to be commissioned include:
  - Lighting controls and daylighting controls.
  - Plumbing service hot water systems.
  - HVAC system components, if the IECC 2018 threshold for requiring commissioning is met.
- Site environmental surveys, assessments and remediation.
- Equipment selection, procurement and installation for AV, computer, telephone and UPS systems.
- Design-build vendor systems, including radio, station alerting, access control, video surveillance, and building distributed antenna system (BDAS) systems. (If additional design services are authorized, then Architect will provide additional design services as indicated in additional services Article 4.1.2.1. below).

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- Selection, specification and procurement of furniture, office equipment, fitness equipment, fire station equipment, kitchen appliances, laundry equipment and shelving. (If additional services as listed below are authorized, then Architect will provide a furniture selection package as indicated in additional services Article 4.1.2.1. below)

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

Gary DeVries, AIA
Principal
Brown Reynolds Watford Architects, Inc.
3535 Travis Street, Suite 250
Dallas, TX 75204

§ 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:

Click Engineering
325 N. Saint Paul Street, Suite 2850
Dallas, TX 75201
Contact: Jacob Click, PE, Principal

.2 Mechanical Engineer:

M.E.P. Consulting Engineers, Inc.
2928 Story Road West
Irving, TX 75038
Contact: Adam Nemati, P.E., LEED AP, Principal

.3 Electrical Engineer:

M.E.P. Consulting Engineers, Inc.
2928 Story Road West
Irving, TX 75038
Contact: Adam Nemati, P.E., LEED AP, Principal

§ 1.1.12.2 Consultants retained under Additional Services:

Civil Engineer
Click Engineering
325 North St. Paul St., Ste. 2850
Dallas, TX 75201
Contact: Jacob Click, PE, Principal

Landscape Architects
Valley Quest Design
212 Elm Street
Denton, TX 76201
Contact: Andrew Cousins, RLA, Principal

3rd Party Storm Shelter Design Review

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WGI
8144 Walnut Hill Lane, Suite 903
Dallas, TX 75231
Contact: Mike Oler, PE, Structural Market Leader

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

Scope of Basic Services
Basic Services includes architectural, structural and mechanical/electrical/plumbing services as described below:
• Architectural programming and design.
• EOC design and ICC-500 Storm Shelter design. The EOC is anticipated to consist of a training room with an area or separate room for always running computer stations, MDF, electrical closet, and restroom(s). The training room and associated storage room(s) may or may not be within the storm shelter structure.
• Interior design, including all interior finishes and lighting, along with generic furniture plans to assist with locating electrical and communication outlets.
• Site signage, building signage and interior room signage, including specifications for the dedication plaque, and design for a masonry monument sign if applicable.
• Structural engineering, including structural design criteria, slab-on-grade foundation and structural framing design, and ICC-500 storm shelter design. Cold-formed framing shall be a performance specification.
• Mechanical, electrical, and plumbing engineering, including mechanical HVAC and controls, electrical power, emergency generator, interior and exterior lighting, plumbing domestic water, sanitary, and natural gas. Fire sprinkler and fire alarm system, along with mechanical test and balance requirements shall be performance specifications.
• Anticipated design team submittals and Owner review meetings:
  - 50% Schematic Design
  - 100% Schematic Design
  - 50% Design Development
  - 100% Design Development
  - 50% Construction Documents
  - 95% Construction Documents
  - 100% Construction Documents (no Owner review meeting or CMaR pricing update)
• Other basic services design phase meetings shall include the following, as required:
  - Tour of City of Saginaw's existing fire stations (1 afternoon or morning)
  - Tour of other selected BRW nearby fire stations (1 afternoon or morning)
  - Pre-Development meeting with Owner departments
  - Meeting with Owner Facilities and I.T. departments for coordination of standards
  - Systems coordination meeting with Fire Department and Owner vendors
  - One (1) Public forum or council presentation, prepared and led by BRW. (Additional presentations as may be required will by hourly or negotiated additional services)
  - BRW attendance of other City Council meetings to answer questions, as may be required for the Owner's standard approval processes is included.
• Compliance with applicable codes and ordinances, including a pre-development meeting with Owner departments related to site and building development.
• BRW will provide the Contractor with the Revit model (upon execution of BRW's waiver form) for their use in preparing shop drawing submittals, and BRW's consultants may release their drawings or Revit model upon their similar conditions. BRW will not prepare background drawings for the Contractor.
• TDLR TAS (Texas Accessibility Standards) response to plan review comments. Also, coordination of the site inspection at the completion of construction. TDLR fees paid by BRW shall be a reimbursable expense.
• The design team has included the below average number of site observation visits during construction to become generally familiar with the progress and quality of the work completed.
  - Architect 2 times per month
  - Civil Engineer up to 5 times total
  - Landscape Architect up to 3 times total
  - Structural Engineer up to 6 times total
  - MEP Engineer up to 6 times total (counted per engineer-visit)
• Record digital drawings reflecting contract changes from accepted contingency expenditures or change orders. Excludes as-built record documents to incorporate the Contractor's field changes into the digital documents. Incorporating the Contractor's field changes into the contract documents is an Additional Service.

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

(Paragraphs deleted)

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

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars ($ 1,000,000.00) for each occurrence and Five Million Dollars ($ 5,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars ($ 1,000,000.00)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 One Million Dollars ($ 1,000,000.00) each accident, One Million Dollars ($ 1,000,000.00) each employee, and One Million Dollars ($ 1,000,000.00) 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 One Million Dollars ($ 1,000,000.00) per claim and Two Million Dollars ($ 2,000,000.00)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 polices for Commercial General Liability and Automobile Liability to include the Owner as an

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additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to reasonably 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 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. 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.

§ 3.2 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

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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 reasonably rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

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§ 3.4 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.

§ 3.5.2 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.

§ 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. If the Owner and Construction Manager modify AIA Document A201–2017, 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

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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.

§ 3.6.2 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.

§ 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 shall consult with Owner on matters relating to aesthetic effect and Owner's decision 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

(Paragraph deleted)

§ 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.

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§ 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 reasonably 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.

§ 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;

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.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 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.

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.)

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Additional Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Assistance with Selection of Construction Manager	Architect
§ 4.1.1.2 Programming	Architect
§ 4.1.1.3 Multiple Preliminary Designs	Not Provided
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Not Provided
§ 4.1.1.7 Building Information Model management responsibilities	Architect
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Architect – Section 1.1.12.2
§ 4.1.1.10 Landscape design	Architect – Section 1.1.12.2
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	CM At Risk
§ 4.1.1.13 Cost estimating	CM At Risk
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Not Provided
§ 4.1.1.16 As-designed record drawings	Architect
§ 4.1.1.17 As-constructed record drawings	CM At Risk
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22 Telecommunications/data design	Architect – Sections 1.1.13 and 4.1.2.1
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Owner (Or Architect Optional Service)
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Owner (or Architect Optional Services)
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	Not Provided

(Paragraphs deleted)

§ 4.1.2 Description of Additional and Optional Services

§ 4.1.2.1 A description of each Additional 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.)

Scope of Additional Services:

The Architect will provide the following Additional Services as required to complete the project.

- Civil engineering, including paving, grading, drainage, water and sanitary sewer plan, dimension control, and erosion control.

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• Planning and Engineering Department civil, landscape and site plan submittals (included in Civil Engineering and Landscaping and Irrigation)

• Topographic Survey: Site boundary and topographic survey, including permanent improvements, existing trees over 6" caliper on and immediately adjacent to the site, spot elevations on a 50-foot grid, contours on one-foot intervals, top of pavement elevations for paving on and immediately adjacent to the site, location of visible site improvements, utilities and appurtenances, and locations and sizes of underground utilities based on available record information, and elevations of inverts at potential nearby sewer connections. Survey shall include portions of adjacent rights of way and locations of utilities on the opposite side of the street where necessary to obtain service, as well as topography 20' onto adjacent properties where the adjacent properties are accessible for topographic survey.

• On-Site Storm Water Detention Pond Design (if required): Design to incorporate best management practices into the grading and storm water drainage design in accordance with Owner-provided design criteria.
  - Exclusion: Design of detention pond for the adjacent developer's site. Refer to Optional Services.

• Landscape and Irrigation Design that meets Owner's zoning landscape ordinance and Owner's design standards. Includes full irrigation design as well as incorporating any standard details that may be adopted and provided by the Owner onto the construction drawings.

• Structural (on carton forms) Slab Design, if required by the geotechnical survey.

• Storm Shelter 3rd party design review, including:
  - Architectural, structural, mechanical, electrical and plumbing construction documents for compliance.
  - Interim review at 50% CD phase.
  - Final Review will be done at the 95% or 100% CD phase.
  - Written report will be produced to show items that are not incorporated into the documents at the end of each review.
  - Letter of compliance at the end of design.

• Technology Infrastructure and Structured Cabling Design
  - Design of structured cabling for voice, data and cable TV systems that will extend throughout the facility, including the Main Distribution Frame (MDF) room and, if necessary, the Intermediate Distribution Frame (IDF) room.
    - Exclusions: This work does not include design and specification of AV equipment or telephone/computer equipment and networking electronics (i.e., racks, switches, routers, wireless access points, hubs, etc.).
  - Low Voltage Infrastructure Design for Access Control, Video Surveillance, Station Alerting, BDAS, and Radio Systems is included in this item as follows:
    - Through a design-build effort with the Owner's vendor, design of empty-conduit infrastructure and power for a door access control system and a video surveillance system with cameras and monitoring equipment. Exclusion: This work does not include "security consulting," which normally includes review of criminal activity in the project vicinity and threat assessment studies, etc.
    - Through a design-build effort with the Owner's vendor, design of empty-conduit infrastructure and power for an alerting system that includes speakers and other system components, and a radio system with a base station and roof antenna. Also design of a rooftop weather-head and mast for mounting the antenna.
  - MDF / IDF Design: If directed by Owner, this item will include MDF / IDF equipment racks and overhead cable tray racks design, for these items to be provided within the construction contract.
    - Design for UPS system, to include equipment loads as identified by the Owner's technology system vendor.
  - Audio / Visual systems Infrastructure design is included in this item as follows:
    - Through a design-build effort with the Owner's vendor, design of empty-conduit infrastructure and power for audio / visual systems. Includes A/V recessed wall and floor box design built into other construction, in coordination with requirements provided by Owner's vendor, for inclusion in the construction contract.

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- Exclusion: Design for equipment racks and ventilation fans for audio-visual equipment.

Optional Design Services:
The following services may be included upon Owner's authorization:

• Detention Pond Design for Adjacent Site: Optional service in addition to On-Site Detention Pond Design above. This item is to provide detention pond design to include storm water detention both for the Fire Station site and for the adjacent assisted care facility site, in a single detention pond. The detention pond could be entirely on the fire station site if there is space for it, or include area on both sites.

- Exclusions: Calculations for run-off and detention pond capacity requirements shall be provided for the adjacent site by the adjacent site developer's civil engineer. Additional survey work that may be required in order to complete this optional service is excluded at this time, since it is not known whether additional survey work will be required and since there are several unknown variables that could affect the scope and cost of survey work that might be required.

• Security Systems Design: Optional service to include the following:

- Access control and camera systems design and specifications, to be provided either within the construction contract documents, or bid to separate vendors.
- Exclusion: Design will be based on the existing to remain Fire Station No. 2 systems. Design for other Owner facilities to retrofit other facilities to work with the new Central Fire Station, and existing facilities assessment for any facilities other than the new Central Fire station, is excluded.

• Audio / Visual Systems Design: Optional service in addition to Audio / Visual Infrastructure design above, to include both the Audio / Visual infrastructure design, and the following:

- Design and specify Audio / Visual monitors, projectors, equipment racks, and equipment, either within the construction contract or for bid to separate vendors.
- Exclusions: Acoustical consulting services, and design for any speakers shared with station alerting, phone or other systems designed by Owner's separate vendors.

• IECC Minimum Commissioning: Optional service, if allowed by local Authorities Having Jurisdiction, for MEP Consulting Engineers to provide basic commissioning services to comply with the requirements of the 2018 International Energy Conservation Code. Exclusion: Third party energy code inspection.

• Furniture Selection Package: Based upon Owner selection of a preferred vendor line, BRW will work with the vendor to schedule a furniture list for the fire administration and EOC spaces, including selection of finishes. Includes one (1) tour date of vendor showroom(s), and two (2) design phase meetings on furnishings, one to select finishes and style of furnishings, and one to review complete furniture selections. BRW will incorporate 1 round of Owner final comments. Furnishings are to be purchased through a pre-negotiated price structure, and BRW and the vendor will provide a complete report of schedule of the furnishings and a budget cost.

- This item excludes artwork, graphic design, equipment specifications, and any cost estimating other than that provided by the preferred vendor. Bidding, if applicable, will be handled by the Owner's bid procurement website or methods. Fire Station furnishings are also excluded since the Owner has indicated a preference for Owner or Fire Department staff to select the fire station furnishings.

Exclusions from Architect's Services:
The below services are not anticipated at this time, however, the Architect could provide them as Additional Services, if required to complete the project or desired by the Owner.

- Off-site engineering.
- Platting.
- Planning and Zoning Submissions and process for re-zoning or SUP / PD.
- Boundary survey and monumentation.
- ALTA Surveys.
- Tree tagging.
- TxDOT coordination / permitting (not anticipated to be required for this site).
- Separate instrument exhibits for utility and other on-site easements.

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- Retention Pond Design. Also excluded is any calculation and design for run-off and detention pond capacity requirements to serve the adjacent site.
- Storm Water Pollution Prevention Plan. (to be provided by Contractor)
- Storm Water Quality Management Plan / Design (including bio-swale and other filtration systems).
- Subsurface utility engineering (SUE).
- Traffic analysis and/or traffic signal design.
- Underfloor and building perimeter drainage systems.
- Retaining wall design over three feet (3') high. (such walls are not anticipated to be needed).
- Leadership in Energy and Environmental Design (LEED) design, registration, and certification.
- Fueling and canopy systems design.
- Fire training facilities.
- Communication tower design.
- Data Center design.
- Acoustical consulting.
- Coordination with a public Art program, including foundation design, electrical power and lighting, etc. as applicable. Also excludes all aspects of the artist selection process and design reviews.
- Food service / commercial kitchen consulting and design services.
- Fountain or water feature design.
- Graphic design.
- Preparation or assistance with multiple or fast track drawing/bid packages.
- Enhanced photo-quality architectural renderings and architectural models, virtual reality, animations, etc. beyond BRW's typical renderings produced in-house.
- Construction site observation visits beyond the number listed herein.
- Public presentations, other than City Council meetings and public presentation specifically authorized as additional services.

§ 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.)

Supplemental Services Provided by Owner:

• CMaR Selection: The Owner will write the CMaR selection Request for Proposals (RFP) and conduct the CMaR selection process. (BRW will, at Owner's request, participate in the evaluation process as part of basic services in an advisory role which may include attending (1) CMaR proposal evaluation meeting and interviews of short listed proposers on (1) day.)

• Commissioning: Unless authorized as an additional service, Owner will provide commissioning as may be required by the 2018 International Energy Conservation Code.

• Furniture, furnishings, and equipment design: Except where authorized as an additional service, Owner will select and procure furnishings and equipment.

• Geotechnical, Plat, Survey, and adjacent property development coordination: Except where authorized as an additional service, all Services necessary for completion of the project shall be provided by Owner through separate vendors.

§ 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.

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

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

.10 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 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;

.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;

.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;

.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.

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§ 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 Two (2) times monthly visits to the site by the Architect during construction

.3 One (1) 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 One(1) inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services beyond thirty (30) calendar days after the Substantial Completion date established in the original Construction Contract. In such cases, the Architect shall receive a monthly lump sum Additional Services fee equal to the Architect's construction phase services fee divided by the total number of construction months in the original construction contract.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-four(24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground

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corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document 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.

The Construction Manager at Risk shall furnish the following services or the Owner shall furnish them or the Owner shall authorize the Architect to furnish them as Additional Services, when such services are required to complete the project.

- Pre-construction cost estimates at a minimum of the following phases:
  50 % SD, 100% SD, 50 % DD, 100% DD, and 50% CD phases.
- Energy code site inspections.
- Storm water pollution prevention plan (SWPPP).
- Trench safety design.
- Record Drawings consisting of construction and contract changes on the CMaR's field set drawings and specifications.

§ 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

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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 reasonably 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.

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§ 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 Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

(Paragraph deleted)

§ 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.

§ 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

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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.)

[ ]

[**X**] 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.

(Paragraphs deleted)

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, and Reimbursable Expenses incurred.

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(Paragraphs deleted)

§ 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 The Agreement shall be governed by the laws of the State of Texas, and mandatory and exclusive venue for any dispute shall be in state district court in the county in which the Owner's main administrative office is located.

§ 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, including such amendments attached hereto, 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. Notwithstanding the above, Architect understands that Owner is a municipality and subject to the requirements of the Texas Public Information Act ("the Act"). Prior to any disclosure of Confidential Information under the Act, Owner shall give Architect prompt written notice of such request, Architect shall have seven (7) days from the date it receives such notice to provide evidence of a statutory exemption under applicable law sufficient to protect the information or obtain a protective order or equivalent from a court of competent jurisdiction. If Confidential Information is disclosed pursuant to a request under the Act, Owner will take reasonable steps to limit any such provision of Confidential Information to the specific information requested. The Parties understand and agree that the failure by Architect to timely respond to the notice provided by Owner may result in the disclosure of the requested information pursuant to the Act.

§ 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

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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.

§ 10.10 As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

§ 10.11 Notwithstanding anything to the contrary in this Agreement, or in any document forming a part hereof or of the Contract Documents, there shall be no mandatory arbitration for any dispute arising hereunder.

§ 10.12 The Architect may not assign its responsibilities, duties, obligations, and rights under this Agreement, without the express written consent of the Owner. This does not prevent Architect from engaging subcontractors to perform various phases of the Project, but Architect shall be fully responsible to Owner for the work, actions, and omissions of all such subcontractors.

§ 10.13 This Agreement, in its entirety, shall be binding upon all the parties hereto, their respective successors, heirs, executors, administrators or assigns.

§ 10.14 Execution of this Agreement shall constitute approval and acceptance of all terms, covenants, and conditions as modified and contained in the Contract Documents.

§ 10.15 This Agreement and the Architect are subject to all applicable federal and state laws, rules, and regulations. Invalidity of any portion of this Agreement under the laws of the State of Texas or of the United States shall not affect the validity of the remainder of this Agreement.

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

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

§ 10.18 Notwithstanding any other provisions herein, the parties acknowledge that the Architect, as the Owner's representative, works on behalf of the Owner and in the best interests of the Owner on the Project.

§ 10.19 By approving the design documents, the Owner does not waive any claim against the Architect for any design defect reflected in the Contract Documents or the Architect's Instruments of Service. Architect acknowledges that the Owner is not a design professional, is not responsible for any design defects, and relies upon the professional judgment of the Architect as to the design.

§ 10.20 Notwithstanding any other provisions herein, the Architect is required to conduct regular visits to the construction site as defined in article 1.1.13 and article 3.6 to observe the site to evaluate and determine whether the Contractor's work is on track with the Project schedule and calendar and to determine for the Owner's benefit, that the work is proceeding in substantial accordance with the intent and the schedule set out in the Contract Documents. The Architect and/or the Architect's consulting engineer(s) shall visit the site prior to all critical stages, such as concrete pours, steps contributory

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to the integrity of the structures, and covering interior work, such as plumbing, wiring, and mechanical systems. The number of site visits included in basic services shall be as defined in Article 1.1.13. Additional site visits may be provided as requested by Owner at hourly rates or as a negotiated additional service. The Architect shall provide the Owner with written notice whenever the Architect determines that the Contractor is falling behind the Project schedule or that the work is not in conformity with the Contract Documents.

§ 10.21 Where the Work does not conform to the Contract Documents or the Architect's Instruments of Service, the Architect is required to promptly notify the Owner in writing of the Architect's intention to reject the Work unless the Owner excuses the Work in writing within 24 hours of being notified.

§ 10.22 The Architect, rather than the Owner, has the primary responsibility to interpret and evaluate matters relating to the performance of the Contractor in the construction process.

§ 10.23 Notwithstanding any other provisions herein, the Architect shall review the Contractor's applications for payment and shall certify, to the best of the Architect's knowledge, information, and belief, that the amounts claimed to be due are valid and correct. Such certification constitutes a representation by the Architect to the Owner, based on the Architect's observations at the site, that the Work has progressed to the point indicated by the Contractor and that the quality of the work is in substantial accordance with the Contract Documents.

§ 10.24 Notwithstanding any other provisions herein, Owner's City Council is the only representative of Owner, a municipality, having the power to enter into or amend a contract, to approve changes in the Scope of the Work, to approve and execute a Change Order or Construction Change Directive modifying the Contract Sum or Guaranteed Maximum Price, agree to an extension of the dates of Substantial Completion or Final Completion, or approve changes in the Architect's compensation. Owner's City Council may designate one or more representatives with authority to sign documents after City Council approval and/or to advise and consult with Architect for day-to-day operations under the agreement.

§ 10.25 It is distinctly agreed that by virtue of this Agreement, that the Architect and the Architect's consultants shall not ever, in any manner have, claim or acquire any lien upon the Project of whatever nature or kind so erected or to be erected by virtue of this Agreement, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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)

.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)

Basic Services Lump Sum Fee **$1,012,500.00**

The above fees are based on an $11.25 million construction contract (GMP) amount. Should the Owner's final approved GMP exceed the $11.25 million amount, the Architect's basic services fee shall be increased by an amount commensurate with the additional scope and budget that was added to the design contract, not to exceed 9.0% of the difference between the original $11.25 million budget and the approved GMP amount. Any separate vendor contracts that may be assigned under the Construction Manager within the GMP will be excluded for the purpose of calculation of these design fees.

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§ 11.2 For the Architect's Additional and Optional 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.)

Additional Services Fees

• Civil Engineering	$ 41,000.00
• Topographic Survey	$ 4,200.00
• On-Site Storm Water Detention Pond Design	$ 4,500.00
• Landscape and Irrigation Design	$ 16,000.00
• Storm shelter 3rd party design review	$ 11,700.00
• Structural Slab Design	$ 10,000.00
• Technology Infrastructure and Structured Cabling Design	$ 9,500.00
Total Additional Services Fee	**$ 96,900.00**

Optional Additional Services (if authorized by Owner):

• Detention Pond Design for Adjacent Site	$ 6,500.00
• Security System Design	$ 5,000.00
• Audio / Visual Systems Design (in lieu of Infrastructure only above)	$ 4,500.00
• IECC Minimum Commissioning	$ 9,500.00
• Furniture Selection Package	$ 17,500.00
Total Optional Services Fee	**$ 43,000.00**
Total of Additional and Optional Services Fees	**$139,900.00**
Reimbursable Expenses Allowance (per Article 11.8)	**$ 25,000.00**

§ 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.)

As negotiated lump sum fee, or hourly rates per Section 11.7

§ 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 Ten percent(10%), 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:
(Row deleted)

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents	Thirty-Five	percent (	35	%)
Bidding and Negotiation	Five	percent (	5	%)
Construction Administration	Twenty	percent (	20	%)
(Rows deleted)				
Total Basic Compensation	One hundred	percent (	100	%)

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

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simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

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

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

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

Employee or Category	Rate ($0.00)
BRW Architects, Inc.	
Project Principal	$270.00 per hour
Sr. Project Director	$240.00 per hour
Project Director	$230.00 per hour
Sr. Project Manager	$195.00 per hour
Sr. Project Designer / Planner	$195.00 per hour
Project Manager	$175.00 per hour
Interior Designer	$175.00 per hour
Sr. Project Architect	$160.00 per hour
Project Designer	$155.00 per hour
Project Architect	$145.00 per hour
Architect	$130.00 per hour
Sr. Project Coordinator	$120.00 per hour
Project Coordinator	$110.00 per hour
Architect-in-Training II	$100.00 per hour
Architect-in-Training I	$ 85.00 per hour
Administration Staff	$ 75.00 per hour
Click Engineering - Structural / Civil	
Principal	$220.00 per hour
Project Manager	$180.00 per hour
Project Engineer	$150.00 per hour
Staff Engineer	$115.00 per hour
Draftsman	$105.00 per hour
Junior Draftsman	$ 90.00 per hour
Administrative Support	$ 80.00 per hour
M.E.P. Consulting Engineers, Inc. - MEP	
Principal	$250.00 per hour
Project Manager	$185.00 per hour
QA / QC Manager	$175.00 per hour
Lead Engineer	$160.00 per hour
Design Engineer	$135.00 per hour
Technical Support	$100.00 per hour
Valley Quest Design	

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Managing Principal	$160.00 per hour
Principal	$140.00 per hour
Landscape Designer	$ 85.00 per hour
CAD Operator	$ 80.00 per hour
Administrative	$ 50.00 per hour

§ 11.8 Compensation for Reimbursable Expenses

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

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

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0%)of the expenses incurred.

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

Not Applicable.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero($0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero ($0) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty(30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

Prevailing rate%

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Owner and the Architect will, in good faith, attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision.

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas:

Texas Board of Architectural Examiners (TBAE)
P.O. Box 12337
Austin, Texas 78711
512.305.9000

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

[ ] 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.)

Not Applicable.

[ ] 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.)

Not Applicable.

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

Agreed Amendments to AIA Document A201-2017 – General Conditions of the Contract for Construction.

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



OWNER *(Signature)*	**ARCHITECT** *(Signature)*
City of Saginaw	Gary DeVries, AIA, Principal Brown Reynolds Watford Architects, Inc.
(Printed name and title)	*(Printed name, title, and license number, if required)*

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