

COTTONWOOD HEIGHTS

RESOLUTION NO. 2014-47

A RESOLUTION APPROVING ENTRY INTO AN AGREEMENT WITH GSBS, PC D/B/A GSBS ARCHITECTS FOR ARCHITECTURAL SERVICES (MUNICIPAL CENTER PROJECT)

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 8 July 2014 to consider, among other things, approving the City's entry into an AIA Document B101-2007 SP (the "*Agreement*") with GSBS, PC d/b/a GSBS Architects ("*Provider*"), whereunder Provider would provide architectural, engineering and other services in connection with City's municipal center project as described in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2014-47, shall take effect immediately upon passage.

PASSED AND APPROVED effective 8 July 2014.

COTTONWOOD HEIGHTS CITY COUNCIL

ATTEST:



Kory Solorio
Kory Solorio, Recorder

By

Kellyn H. Cullimore, Jr.
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 8th day of July 2014.

RECORDED this 9 day of July 2014.

DRAFT AIA® Document B101™ - 2007 SP

Standard Form of Agreement Between Owner and Architect, for use on a Sustainable Project

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

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

Cottonwood Heights, a Utah municipality
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

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

GSBS, P.C. d/b/a GSBS Architects
375 West 200 South, Suite 100
Salt Lake City, UT 84101

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

Cottonwood Heights Municipal Center
4.7 acres at approximately 2300 East Bengal Blvd.
Cottonwood Heights, UT

The Owner and Architect agree as follows.

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

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

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information: SEE ATTACHED EXHIBIT A.

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, anticipated Sustainable Objective, incentive programs the Owner intends to pursue, and other information relevant to the Project.)

§ 1.2 Subject to amendment by the Owner as provided herein, the Owner's anticipated dates for commencement of construction, and Substantial Completion of the Work as defined in Section 9.8.1 of AIA Document A201™-2007 SP, as modified, are set forth below:

- .1 Commencement of construction date:

1 March 2015

- .2 Substantial Completion date:

1 June 2016

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall, when appropriate, adjust the terms of this Agreement accordingly.

§ 1.4 The Services are subject to the Owner-approved Stated Limitation on Cost of the Work (SLCW) specified in attached Exhibit A. Unless otherwise expressly provided in this Agreement, the Architect shall perform the Services in a manner that will render a Cost of the Work that does not exceed the most current Owner-approved SLCW.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. Such professional services shall include all those necessary for the complete design and construction documentation of the Project. The Architect agrees that the total Fee stated in Article 11 represents adequate and sufficient compensation for its timely provision of all professional services (including those of its consulting structural, mechanical, electrical, plumbing and civil [or other] consulting engineers) necessary to meet this obligation, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being: (a) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (b) the cost of those engineering or consulting Services that become necessary due to Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect).

§ 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. The Architect warrants that it, and the individual architects and engineers it employs on the Project, are licensed to practice Architecture (or Engineering, as the case may be) in the state of Utah. Nothing in this Agreement shall be construed to authorize performance by the Architect at a standard of care that is reduced from the legally-required standard and which is expected of architects practicing under similar circumstances and conditions. Nothing in this Agreement shall be construed to eliminate or diminish the Architect's responsibility for compliance of its design, its Construction Documents, and its Services provided with the foregoing standard of care. In particular, the actions of Owner, as the city with jurisdiction over construction of the Project, or its employees or agents (including its building official) in reviewing and approving Construction Documents prepared by the Architect shall not diminish the Architect's responsibility for assuring that such Construction Documents comply with applicable laws and standards.

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

§ 2.4 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.

§ 2.5 The Architect shall, at its cost, maintain for the duration of this Agreement the insurance coverage specified on attached Exhibit B, which includes, without limitation, the following insurance:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

«\$1,000,000 per claim/\$2,000,000 general aggregate limit »

.2 Automobile Liability

«Included in the General Liability Coverage. The Architect does not own any vehicles. »

.3 Workers' Compensation

As required by applicable law

.4 Professional Liability

\$2.5 Million combined single limit per occurrence

.5 Excess Liability

\$5 Million

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES AND SUSTAINABILITY SERVICES

§ 3.1 The Architect's Basic Services consist of the professional services necessary for the complete design and construction documentation of the Project, including programming; architecture; landscape architecture; interior design (but not furniture selection); lighting design; audio-visual systems design; telecommunications/data systems design; sustainable design; "as constructed" record drawings(based on information provided by others); civil, structural, mechanical, plumbing, electrical and any other necessary engineering; and detailed cost estimating at each phase of design. The Architect's Basic Services also shall include regularly meeting (typically, monthly) with Owner's city council to discuss issues, status and strategy, and participating in no more than four community "open house" events concerning the Project. The Architect agrees that the Basic Services Fee under Article 11 represents adequate compensation for its timely provision of all the Basic Services necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those Services are individually listed or referred to in this Agreement, the only exceptions to this being (a) the cost of those services that are provided by third parties and that are expressly designated herein as being "the Owner's responsibility" or "Owner-provided"; and (b) the cost of those engineering or consulting Services that become necessary due to Owner-directed change in Project scope affecting the Architect (and that are the subject of a written agreement for Additional Services between the Owner and the Architect). The Architect's Sustainability Services consist of those described in Section 3.3. Services not set forth in Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, 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 and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and written information furnished by the Owner 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 Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include 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 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. 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 If the Owner makes a directive or substitution of which the Architect professionally and reasonably disapproves, the Architect shall immediately, directly address such issue with the Owner. If resolution of such disagreement does not occur, then the Architect may promptly register its continuing disapproval of such matter, whereupon the Architect shall not be responsible for such directive or substitution by the Owner made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall prepare designs and documents in compliance with applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

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

§ 3.2 Scope of Architect's Basic Services

§ 3.2.1 Schematic Design Phase Services

§ 3.2.1.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services and shall prepare designs and documents in accordance with the applicable standard of care.

§ 3.2.1.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any

inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

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

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

§ 3.2.1.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for 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, if requested by the Owner, include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.1.5.1 In providing the Sustainability Services under Section 3.3, the Architect shall consider environmentally responsible 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.

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

§ 3.2.1.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3. The Architect shall provide for the Owner's approval a detailed estimate of the Cost of the Work based upon the Schematic Design package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on the Cost of the Work (SLCW) as set forth on attached Exhibit A, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.1.7 The Architect shall submit the Schematic Design Documents, and the Sustainability Plan prepared in accordance with Section 3.3.4.1, to the Owner, and request the Owner's approval.

§ 3.2.2 Design Development Phase Services

§ 3.2.2.1 Based on the Owner's approval of the Schematic Design Documents and the Sustainability Plan, 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 Owner's approval. The Design Development Documents 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 such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.2.2.2 The Architect shall provide for the Owner's approval a detailed estimate of the Cost of the Work based upon the Design Development package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on the Cost of the Work (SLCW), and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.2.3 The Architect shall submit the Design Development Documents to the Owner, including the estimate required under Section 3.2.2.2 above, and request the Owner's approval.

§ 3.2.3 Construction Documents Phase Services

§ 3.2.3.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements, the budget for the Cost of the Work and the Sustainability Plan, the Architect shall prepare Construction Documents for 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 materials, systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.2.5.4.

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

§ 3.2.3.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) the Sustainability Plan. The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.2.3.4 Upon completion of the Construction Documents, the Architect shall provide for the Owner's approval a written, itemized estimate of the Cost of the Work, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the initial Owner-provided Stated Limitation on the Cost of the Work (SLCW) as set forth on attached Exhibit A, and any Owner-approved amendments thereto, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Cost of the Work within the then-current SLCW.

§ 3.2.3.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work or the Sustainability Plan, take any action required under Section 6.5, and request the Owner's approval.

§ 3.2.4 Bidding or Negotiation Phase Services

§ 3.2.4.1 General

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

§ 3.2.4.2 Competitive Bidding

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

§ 3.2.4.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.2.4.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.2.4.3 Negotiated Proposals

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

§ 3.2.4.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.2.4.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.2.5 Construction Phase Services

§ 3.2.5.1 General

§ 3.2.5.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201–2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project (as modified). Architect shall actively assist and within its professional expertise, advise Owner in revising and issuing the AIA Document A201–2007 SP, and modifications thereto, in accordance with Owner’s instructions and consistent with the duties of the Architect set forth in the modified A201—2007 SP. The Owner and the Architect shall amend this Agreement to reflect any material changes in the Services required by those instructions.

§ 3.2.5.1.2 The Architect shall advise and consult with the Owner 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 and in the A201—2007 SP, as modified. 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 Contractor’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 Contractor or of any other persons or entities performing portions of the Work, except as provided in Section 3.2.5.2.

§ 3.2.5.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.2.5.2 Evaluations of the Work

§ 3.2.5.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the portion of the Work completed, and to reasonably determine if the Work observed is being performed in a manner indicating that the Work 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Without limiting the generality of the foregoing, the Architect shall keep the Owner informed of the progress and quality of the Work by a written report each month until time of Substantial Completion.

§ 3.2.5.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. If the Architect does not reject non-conforming Work, the Architect shall demand in writing that the Contractor bring the non-conforming Work into compliance with the Contract Documents, and, if the Contractor fails to do so expeditiously, the Architect shall report that failure to the Owner in a writing stating (a) the problem (b) the reasons for the actions taken by the Architect; (c) what, if any, response was received from the Contractor; and (d) what actions by the Owner and/or the Contractor are needed or expected. 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 such 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 Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.2.5.2.3 The Architect shall interpret and advise the Owner of that interpretation concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Nothing in this Agreement or in the A201—2007 SP, as modified, shall make a decision of the Architect binding on the Owner in the absence of the Owner's express written approval thereof.

§ 3.2.5.2.4 Interpretations 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. Where approved in writing by the Owner in advance, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.2.5.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201—2007 SP, as modified, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.2.5.3 Certificates for Payment to Contractor

§ 3.2.5.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.2.5.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.2.5.3.2 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.2.5.4 Submittals

§ 3.2.5.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. 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.

§ 3.2.5.4.2 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals (such as Shop Drawings, Product Data and Samples) as necessary to verify their conformance with the requirements of the Work as indicated in the Contract Documents. The Architect's review of such submittals is not for the purpose of confirming dimensions or quantities in those submittals except to the extent that the Contractor has requested the Architect's assistance to determine certain dimensions because those indicated in the Construction Documents conflict with existing field conditions or because the dimensions in the Construction Documents contain erroneous, inconsistent or incomplete information or dimensions for which clarifications are needed which can be supplied by the Architect. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.2.5.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Nothing in this Agreement shall be construed as authorization by the Owner to the Architect to delegate design responsibility. Except for delegation to consulting engineers who are responsible to, and in privity with, the Architect, any delegation of design responsibility by the Architect must be specifically authorized in writing, in advance, by the Owner, which authorization can be withheld by the Owner for any reason. Notwithstanding the foregoing, the Architect anticipates, and the Owner authorizes delegation of the design through the use of performance specifications for the following: Fire protection, stair structures, guard rails, and curtain wall systems.

§ 3.2.5.4.4 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 shall acknowledge the receipt of each Contractor-generated Request for Information (RFI) within seven days after receiving it. The Architect shall issue a written answer for each RFI simultaneously to the Contractor and the Owner (along with necessary descriptive drawings, specifications, or other documents) with the promptness necessary to avoid unnecessary delay or cost to the Project. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.2.5.5 Changes in the Work

§ 3.2.5.5.1 The Architect may authorize 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. All authorizations for minor change in the Work shall be in writing, or confirmed by the Architect in writing within 24 hours of authorizing the change. Immediately upon authorizing a minor change in the Work, the Architect shall provide written notice to the Owner describing the change and confirming that such change will not affect the Contract Sum or Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.2.5.6 Project Completion

§ 3.2.5.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. Verification that the Project has achieved the Sustainable Objective, or the actual achievement of the Sustainable Objective, shall not be a condition precedent to the Architect's issuance of a Certificate of Substantial Completion.

§ 3.2.5.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.2.5.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.2.5.6.4 The Architect shall forward to the Owner the following information received from the Contractor:
(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 Contractor under the Contract Documents, except for Sustainability Documentation which by its nature must be completed after Substantial Completion.

§ 3.2.5.6.5 Prior to the expiration of ten months from the date of Substantial Completion, the Architect shall, without additional compensation, conduct an inspection with the Owner to review the operations and performance of the Project facilities; record any non-conforming Work; and submit a detailed written report of nonconforming Work to the Contractor, with a copy to the Owner.

§ 3.3 Scope of Architect's Sustainability Services

§ 3.3.1 In conjunction with the services described in Sections 3.1 and 3.2, the Architect shall provide the Sustainability Services described in this Section 3.3.

§ 3.3.2 Sustainability Certification Agreements

If the anticipated Sustainable Objective set forth in the Initial Information includes a Sustainability Certification, the Architect shall provide the Owner with copies of all agreements required by the Certifying Authority to register the Project and pursue the Sustainability Certification. The Owner and Architect will review and confirm that the terms of those agreements are acceptable to the Owner before moving forward with the Sustainability Services under Section 3.3. The Owner agrees to execute all documents required by the Certifying Authority to be executed by the Owner, including any documentation required to establish the authority of the Architect as an agent of the Owner for the limited purpose of pursuing the Sustainability Certification.

§ 3.3.3 Sustainability Workshop

No later than the conclusion of the Schematic Design Phase Services, the Architect shall conduct a Sustainability Workshop with the Owner and, as requested by the Architect, with the Owner's consultants and the Architect's consultants, during which the participants will: review and discuss potential Sustainability Certifications; establish the Sustainable Objective; discuss potential Sustainable Measures to be targeted; examine strategies for implementation of the Sustainable Measures; and discuss the potential impact of the Sustainable Measures on the Project schedule and the Owner's program and budget.

§ 3.3.4 Sustainability Plan Services

§ 3.3.4.1 Following the Sustainability Workshop, the Architect shall prepare a Sustainability Plan based on the Sustainable Objective and targeted Sustainable Measures.

§ 3.3.4.2 The Architect shall perform those Sustainable Measures identified as the responsibility of the Architect in the approved Sustainability Plan and any approved changes to the Sustainability Plan. If the Sustainability Plan requires the Architect to provide services beyond those based on the Initial Information, those services shall be provided pursuant to Section 4.3.1.1.

§ 3.3.4.3 Subject to Section 4.3.3, the Architect shall make adjustments to the Sustainability Plan as the design and construction of the Project progresses to reflect any approved changes.

§ 3.3.5 Design Phases

§ 3.3.5.1 The Architect shall prepare Schematic Design Documents, Design Development Documents and Construction Documents that incorporate the Sustainable Measures identified in the Sustainability Plan, as appropriate.

§ 3.3.5.2 As part of the Sustainable Measures, the Project may require the use of materials and equipment that have had limited testing or verification of performance. The Architect may be unable to determine whether the materials or equipment will perform as represented by the manufacturer or supplier. The Architect shall discuss with the Owner the proposed use of such materials or equipment and potential effects on the Sustainable Objective that may occur if the materials or equipment fail to perform in accordance with the manufacturer's or supplier's representations. The Owner will render a written decision regarding the use of such materials or equipment in a timely manner. In the event the Owner elects to proceed with the use of such materials or equipment, the Architect shall be permitted to reasonably rely on the manufacturer's or supplier's representations and shall not be responsible for any damages arising from failure of the material or equipment to perform in accordance with the manufacturer's or supplier's representations.

§ 3.3.6 Construction Phase

§ 3.3.6.1 The Architect shall advise and consult with the Owner regarding the progress of the Project toward achievement of the Sustainable Measures. Based on site visits performed in accordance with Section 3.2.5.2.1 and other information received from the Contractor, the Architect shall promptly notify the Owner of known deviations from the Contract Documents and defects or deficiencies in the Work that the Architect recognizes will impact achievement of Sustainable Measures. The Architect shall meet with the Owner and Contractor to discuss alternatives to remedy the condition.

§ 3.3.6.2 If the Architect determines that implementation of a proposed change in the Work would materially impact a Sustainable Measure or the Sustainable Objective, the Architect promptly shall notify the Owner, who may authorize further investigation of such change.

§ 3.3.6.3 Subject to Section 4.3.2.2, the Architect shall provide responses to the Contractor's request for information to describe how a product, material or equipment was intended to satisfy the requirements of a Sustainable Measure or contribute toward achievement of the Sustainable Objective.

§ 3.3.7 Project Registration and Submissions of Sustainability Documentation to the Certifying Authority

§ 3.3.7.1 If the Sustainable Objective includes a Sustainability Certification, the Architect, as agent for the Owner, shall perform the services set forth in this Section 3.3.7.

§ 3.3.7.2 The Architect shall register the Project with the Certifying Authority. Registration fees and any other fees charged by the Certifying Authority, and paid by the Architect, shall be a reimbursable expense under Section 11.9.1 of this Agreement and shall be credited against any initial payment received pursuant to Section 11.11.1.1.

§ 3.3.7.3 The Architect shall collect the Sustainability Documentation from the Owner and Contractor; organize and manage the Sustainability Documentation; and, subject to Section 4.3.3, submit the Sustainability Documentation to the Certifying Authority as required for the Sustainability Certification process.

§ 3.3.7.4 Subject to Section 4.3.3, and provided the Architect receives timely notice from the Owner or Certifying Authority, the Architect shall prepare and file necessary documentation with the Certifying Authority to appeal a ruling or other interpretation denying a requirement, prerequisite, credit or point necessary to achieve the Sustainability Certification.

§ 3.3.7.5 Subject to Section 4.3.3, the Architect shall prepare and submit the application for certification of the Project to the Certifying Authority, including any required supporting documentation, in accordance with the Sustainability Plan.

§ 3.3.7.6 Subject to Section 4.3.3, the Architect shall prepare responses to, and submit additional documentation required by, comments or questions received from the Certifying Authority.

§ 3.3.7.7 Any certification, declaration or affirmation the Architect makes to the Certifying Authority shall not constitute a warranty or guarantee to the Owner or the Owner's contractors or consultants.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services or Sustainability Services but may be required for the Project. The Owner may request the following, or other, Additional Services of the Architect. Additional Services (whether or not listed below in this Section 4.1) requested by the Owner will be confirmed in writing. If the Owner requests any services that the Architect believes to be outside the scope of Basic Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the requested services are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing those requested Services. If the Owner then agrees in writing to direct the Architect to perform such Additional Services, then the Owner shall compensate the Architect as provided in Section 11.4. For those Additional Services specifically designated in the table below as the Architect's responsibility, the Owner shall compensate the Architect as provided in Section 11.3.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Architect	4.2.1
§ 4.1.2 Multiple preliminary designs	not provided	
§ 4.1.3 Measured drawings	not provided	
§ 4.1.4 Existing facilities surveys	not provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	not provided	
§ 4.1.6 Building Information Modeling (E203™-2012)	Architect	4.2.2
§ 4.1.7 Civil engineering	Architect	4.2.3
§ 4.1.8 Landscape design	Architect	4.2.4
§ 4.1.9 Architectural Interior Design	Architect	4.2.5
§ 4.1.10 Value Analysis (B204™-2007)	not provided	
§ 4.1.11 Detailed cost estimating	Architect	4.2.6
§ 4.1.12 On-site project representation (B207™-2008)	not provided	
§ 4.1.13 Conformed construction documents	not provided	
§ 4.1.14 As-Designed Record drawings	Not provided	
§ 4.1.15 As-Constructed Record drawings	Architect	4.2.7
§ 4.1.16 Post occupancy evaluation	not provided	
§ 4.1.17 Facility Support Services (B210™-2007)	not provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner's consultants	Architect	4.2.8
§ 4.1.20 Telecommunications/data design	Architect	4.2.9
§ 4.1.21 Security Evaluation and Planning	Architect	4.2.10
§ 4.1.22 Commissioning (B211™-2007)	Not Provided	
§ 4.1.23 Fast-track design services	Not Provided	
§ 4.1.24 Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.25 Furniture, Furnishings, and Equipment Design (B253™-2007)	Owner	
§ 4.1.26 Regional or Urban Planning (B212™-2010)	Not Provided	
§ 4.1.27 Owner-requested traffic consulting	Additional Service	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§4.2.1 The Architect shall review the space list provided by the Owner and provide recommendations based on its professional expertise. The Architect shall meet with the Owner to conduct a visioning workshop and to review the space list and discuss any recommendations and adjustments. The Architect shall prepare a revised space list, including net square footages, circulation and net to gross factors to arrive at an overall projected gross square footage for the Project. Architect will provide evaluation of space needs and participate in a benchmarking tour. On the basis of these activities, Architect will develop a building program for the Project that includes required spaces, space sizes and space characteristics; site utility and functional requirements.

§4.2.2 (INTENTIONALLY OMITTED).

§4.2.3 The Architect will provide civil engineering for the Project. Services of the civil engineer are limited to the design of service connections to existing utilities within or directly adjacent to the Project site, grading and on-site improvements.

§4.2.4 The Architect will provide landscape architecture for the Project, limited to the design of planting, irrigation and hardscape on the Project site.

§4.2.5 The Architect will provide architectural interior design services limited to the design, selection and specification of materials and finishes for the Project.

§4.2.6 The Architect will provide estimates of the Cost of the Work at the completion of Programming, Schematic Design, Design Development and Construction Documents phases. The estimates for Programming and Schematic Design will utilize square footage basis methodology. The estimates for Design Development and Construction documents will utilize quantity surveyed, CSI 16 Division format.

§4.2.7 The Architect will prepare as-constructed record drawings from unverified information provided by others. The Architect will not warrant or be responsible for the completeness of said information. The Architect will provide the record drawings in one (1) digital form and one (1) paper copy.

§4.2.8 The Architect will coordinate its services with the services provided by the Owner and the Owner's consultants.

§4.2.9 The Architect will provide the design of telecommunication/data design limited to the design of raceway and termination for cabling. The Owner will provide the design of telecommunication and data equipment and service.

§4.2.10 The Architect will provide security planning appropriate for a facility of this type, including consideration of physical assault, access control and video surveillance systems.

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.4 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform 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, or any other, Additional Services until the Architect receives the Owner's written authorization.

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .3 Services necessitated by decisions of the Owner 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;
- .4 (Intentionally Omitted)
- .5 (Intentionally Omitted)
- .6 (Intentionally Omitted)
- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .8 (Intentionally Omitted)
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .10 (Intentionally Omitted)
- .11 Changing or editing previously prepared Instruments of Service, including the Sustainability Plan, necessitated by the Certifying Authority's changes in the requirements necessary to achieve the Sustainability Certification; or
- .12 Assistance to the Owner or Contractor with preparation of Sustainability Documentation for which the Owner or Contractor is responsible pursuant to the Sustainability Plan,
- .13 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .14 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

- .15 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.2 (INTENTIONALLY OMITTED).

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

- .1 «Three» («3») reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 «Seventy-five» («75») visits to the site by the Architect over the duration of the Project during construction
- .3 «Four» («4») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «Two» («2») inspections for any portion of the Work to determine final completion
- .5 «Two» («2») adjustments to the Sustainability Plan
- .6 «Six» («6») meetings during the Design and Construction Phases required to define, develop and incorporate the Sustainable Measures into the Contract Documents
- .7 «Three» («3») submittals to the Certifying Authority
- .8 «Three» («3») responses to the Certifying Authority's comments and questions
- .9 «Two» («2») appeals to the Certifying Authority pursuant to Section 3.3.7.4
- .10 «Five» («5») meetings with the Owner and Contractor, pursuant to Section 3.3.6.1, to discuss alternatives to remedy deviations from the Contract Documents or defects or deficiencies in the Contractor's Work
- .11 «Twenty-four» («24») meetings with City council to report on the progress of the project.

§ 4.3.4 Except as otherwise provided in Section 4.3.5, if the services covered by this Agreement have not been completed within «Thirty-three» («33») 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.

§ 4.3.5 If the Sustainability Services required of the Architect by Section 3.3 have not been completed within «Twelve» («12 ») months after the date of Substantial Completion, through no fault of the Architect, extension of the Architect's services under Section 3.3 beyond that time shall be compensated as Additional Services.

§ 4.3.6 The Architect shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement, in the Contract for Construction and in the General Conditions of the Contract for Construction.

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. 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 any statutory lien rights.

§ 5.2 The Owner shall establish and periodically update 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. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality. Nothing in this §5.2 shall diminish the Architect's duty to prepare designs and Construction Documents so that the Project can be built within the Stated Limitation on Cost of the Work (SLCW) specified on Exhibit A.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner may change its designated representative upon written notice to the Architect, and the Owner may limit or modify the scope of authority of its designated representative in like manner. 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.

§ 5.4 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 necessary data with respect to existing buildings, other improvements and trees (of 3" or greater caliper); 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.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Architect shall coordinate its Services and those of its Consultants with services provided by the Owner, and the Owner shall require its consultants to cooperate with such coordination. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 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, where needed for performance of the Work and where the need is not the result of the Architect's negligence or failure to perform.

§ 5.8 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.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service; provided, however, that nothing in this Agreement shall be construed to require the Owner to investigate for the purpose of becoming aware of any faults or defects, or to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall endeavor to promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.13 Based on the Owner's approval of the Sustainability Plan and any approved changes to the Sustainability Plan, the Owner shall perform those Sustainable Measures identified as the responsibility of the Owner in the Sustainability Plan, or as otherwise required by the Contract Documents. The Owner shall require that each of its contractors and consultants performs the contractor's or consultant's services in accordance with the Sustainability Plan.

§ 5.14 The Owner shall provide to the Architect any information requested by the Architect that is relevant and necessary for achievement of the Sustainable Objective, including: design drawings; construction documents; record drawings; shop drawings and other submittals; operation and maintenance manuals; master plans; building operation

costs; building operation budgets; pertinent records relative to historical building data, building equipment and furnishings; and repair records.

§ 5.15 The Owner shall comply with the requirements of the Certifying Authority as they relate to the ownership, operation and maintenance of the Project both during construction and after completion of the Project.

§ 5.16 The Owner shall be responsible for preparing, filing, and prosecuting appeals to the Certifying Authority, or taking any other actions determined by the Owner to be necessary or desirable, arising from the revocation or reduction of an awarded Sustainability Certification.

§ 5.17 Unless the Architect is to provide commissioning services pursuant to Section 4.1.22, the Owner shall provide the services of a commissioning agent that shall be responsible for commissioning of the Project.

ARTICLE 6 COST OF THE WORK

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

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect and its consultants as part of the Basic Services, represent the Architect's judgment as a design professional familiar with the construction industry.

§ 6.3 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work.

§ 6.4 The Architect's Estimate of the Cost of the Work shall be projected to the scheduled date for completion of the Bidding or Negotiation Phase of Services.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's Stated Limitation on the Cost of the Work (SLCW), the Architect shall analyze its design and inform the Owner of more cost-effective ways to build and of any related compromises to quality of construction. However, when those conditions occur at the end of the Construction Documents Phase of Services (or if the Contractor's Guaranteed Maximum Price for the Work exceeds the SLCW) as a result, in whole or in part, of some negligence by the Architect, the Owner may compel one or more of the following measures: (a) approve an increased SLCW, in which case the Architect's compensation shall be fixed at the previously approved SLCW or the Architect's most recent Estimate of the Cost of the Work, whichever is less; (b) reject the design and/or Construction Documents, in which case the Owner's reproduction and delivery costs and other costs related to the rejected bidding or negotiations shall be deducted from the Architect's compensation; (c) direct the Architect to revise the design and/or the Construction Documents in a manner that is agreeable to the Owner and that conforms to the SLCW, in which case those Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents shall be borne solely by the Architect; (d) revise the program or the Scope of Work, in which case those Services shall be provided by the Architect at no cost to the Owner and the cost of reissuance of documents (and resulting damages suffered by the Owner) shall be borne solely by the Architect; or (5) terminate this Agreement, in which case the Architect shall be compensated as otherwise provided herein for Services properly performed through the date of termination and reimbursable expenses less the Owner's reproduction and delivery costs and other costs and damages related to the Architect's failure to design in accordance with the SLCW. If amounts remaining within fees due to the Architect are insufficient to cover the Owner's costs and damages resulting from the Architect's negligent provision of Services or other failure to perform, then the Architect shall immediately compensate the Owner for the difference.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal for reasons not related in whole or in part to the Architect's fault, the Owner shall, at the Owner's discretion:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work;
- .5 instruct the Architect to modify its design and the Construction Documents so the Cost of the Work will fall within the Owner-designated Stated Limitation on the Cost of the Work; or
- .6 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, as an Additional Service pursuant to §4.3, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

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 and to allow the Certifying Authority to publish the Instruments of Service, or any other information, in accordance with the policies and agreements required by the Certifying Authority. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 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, including requirements of a Certifying Authority, in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, 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. Solely for the purpose of obtaining or maintaining the Sustainability Certification, the Architect also grants the Owner a nonexclusive license to submit the Architect's Instruments of Service, directly or through third parties, to the Certifying Authority to comply with the requirements imposed by the Certifying Authority and further grants the Owner a nonexclusive license to allow the Certifying Authority to publish the Instruments of Service in accordance with the policies and agreements required by the Certifying Authority. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The licenses granted under this section permit the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author 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.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement 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. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued, and the applicable statute of limitations shall commence to run, either upon the date of Substantial Completion (for acts or failures to act occurring before Substantial Completion of which the Owner was aware) or upon the Owner's discovery of the acts, omissions, events or circumstances giving rise to delay or damages to the Owner or the Project, whichever occurs later; provided that in no case shall an action be brought more than ten years after the date of Substantial Completion. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007 SP, General Conditions of the Contract for Construction for use on a Sustainable Project, as modified. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Owner waives consequential damages resulting from failure of the Project to achieve the Sustainable Objective, or failure to achieve one or more Sustainable Measures, including unachieved energy savings, unintended operational expenses, lost financial or tax incentives, or unachieved gains in worker productivity.

§ 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 . 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 a mutually-acceptable, qualified mediator. A request for mediation shall be made in writing and delivered to the other party to the Agreement. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 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 litigation in a court of competent jurisdiction.

§ 8.3 through §8.3.3 (INTENTIONALLY OMITTED).

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 The Architect waives all objections to joinder of the Architect as a party to any Project-related mediation or litigation in which the Owner is joined or is otherwise positioned as a party or in which the Architect's conduct or its performance of professional services is in any way relevant to the subject of a dispute. The Architect also agrees to prepare or modify all documents used or prepared by the Architect (including, without limitation, agreements between the Architect and its Consultants and any AIA Document A133 2009 SP, AIA Document A201 2007 SP, or similar) to reflect such waiver.

§ 8.3.4.2 (INTENTIONALLY OMITTED).

§ 8.3.4.3 (INTENTIONALLY OMITTED).

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ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give at least 20 days' prior written notice to the Owner before suspending services, which notice shall detail the Architect's specific reason(s) for its intended termination and shall state with specificity the means by which the Owner may cure the alleged reason(s). If a suspension of services is deemed justified by a court of competent jurisdiction, whether before or after such suspension occurs, 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 following a suspension of services which is then or thereafter deemed justified by a court of competent jurisdiction, the Architect shall be paid 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. Services shall otherwise be performed continuously and expeditiously, including during the pendency of disputes.

§ 9.2 The Owner may suspend the Project at any time for convenience upon at least ten days' prior written notice to the Architect. If the Owner suspends the Project for convenience or otherwise without cause, the Architect shall be compensated for services fully and satisfactorily performed prior to notice of such suspension. When and if the Project is resumed by the Owner, the Architect shall be equitably compensated for the Architect's demonstrated actual costs to remobilize to continue performance when Services are recommenced at the Owner's written request, and 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 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than ten days' prior written notice and opportunity to cure (i.e.—to recommence the Project) to the Owner.

§ 9.4 Either party may terminate this Agreement upon not less than 20 days' prior written notice and opportunity to cure 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. Any such notice of termination shall detail the specific reason(s) for the intended termination and shall state with specificity the means by which the notice recipient may cure the alleged reason(s).

§ 9.5 This Agreement also may be terminated by the Owner, with or without cause, or for the Owner's convenience, upon at least ten days' prior written notice to the Architect. If the Owner purports to terminate this Agreement for cause, but that cause subsequently is found to be insufficient to support termination, such termination shall be deemed one of convenience.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services fully and satisfactorily performed prior to termination, together with Reimbursable Expenses then due.

§ 9.7 (INTENTIONALLY OMITTED).

§ 9.8 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 11.10.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be deemed to be made in, and governed by, the laws of the state of Utah. Venue of any litigation relating to this Agreement shall be the Third District Court of Salt Lake County, Utah. The Architect shall incorporate this forum selection clause into all agreements with consultants, engineers, and other persons or entities (of any tier) providing Project-related services who, as Project participants, are in direct or indirect privity with the Architect.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007 SP, General Conditions of the Contract for Construction, for use on a Sustainable Project, as modified, unless a contrary definition is set forth in, or inferable from, this Agreement.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Architect may not assign its interests or delegate its obligations under this Agreement without the Owner's prior written consent, which the Owner may withhold in its sole, unfettered discretion. The Owner reserves the right, upon written notice to the Architect, to assign and delegate this Agreement to a lender providing financing for the Project or to other persons or entities who are ready and capable of performing the Owner's obligations under this Agreement if the assignee(s) agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.3.1 The Services to be provided by the Architect hereunder are deemed to be personal in nature. The Architect shall appoint to Project leadership those persons listed in Exhibit A hereto (Project Team). The Architect shall not make material changes to the Project Team without the Owner's prior written approval. If circumstances beyond the Architect's reasonable control dictate changes to the Project Team, then the Architect shall submit the credentials of the Architect's proposed replacement Project Team member(s) for Owner's approval, which shall not be unreasonably withheld or delayed. Nothing herein shall, however, be construed to limit the Owner's right to terminate this Agreement due to an unapproved change in the Project team, and any termination by the Owner due to an unapproved change in the Project Team shall be deemed a justifiable Termination for Cause.

§ 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 five business 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 five business 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 the 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 may include in its portfolio or promotional materials photographs and site plans of the Project; provided, however, that images used may not include any confidential or proprietary information (such as floor plans, area and cost information, security apparatus or measures, or other program-specific information) without the Owner's prior written consent, which the Owner may withhold in its sole discretion.

§ 10.8 Except as provided by the Utah Government Records Access and Management Act, Utah Code Ann. 63G-2-101 et seq., if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) the Certifying Authority or such other persons or entities that need to receive such information in order for the Owner or Architect to fulfill their obligations under this Agreement.

§ 10.9 The Owner and Architect acknowledge that achieving the Sustainable Objective is dependent on many factors beyond the Architect's control, such as the Owner's use and operation of the Project; the Work provided by the Contractor or the work or services provided by the Owner's other contractors or consultants; or interpretation of credit requirements by a Certifying Authority. Accordingly, although the Architect shall diligently the appropriate standard of care to assure that the Project will achieve the Sustainable Objective, the Architect does not warrant or guarantee that the Project will achieve the Sustainable Objective.

§ 10.10 Time is the essence of this Agreement.

§ 10.11 No action or failure to act by the Owner or the Architect shall constitute a waiver of any right or duty afforded under this Agreement, nor shall any such action or failure to act constitute any approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

§ 10.12 This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§ 10.13 If any one or more of the provisions (or any part thereof) contained in this Agreement are for any reason held to be illegal, invalid or otherwise unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision (or part thereof) of this Agreement.

§ 10.14 In the event of any conflict or inconsistency between this Agreement and the AIA Document A201—2007 SP that is referred to in this Agreement, the provisions of this Agreement shall control.

§ 10.15 This Agreement may be executed and delivered by facsimile, by email, or by other electronic means, with the same legal effect as manual execution and physical delivery.

ARTICLE 11 COMPENSATION

§ 11.1 For full and satisfactory performance of the Architect's Services described under Sections 3.1, 3.2 and 4.1, the Owner shall compensate the Architect the total sum of six percent (6.0%) of the Cost of the Work (i.e., the construction cost). For example, if the Cost of the Work is \$7.0 Million, then the total compensation to be paid by the Owner for the Architect's Basic Services would be \$420,000.

§ 11.2 For the Architect's Sustainability Services described under Section 3.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Included in the amount described in §11.1.

§ 11.3 For Additional Services designated in Section 4.1, 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.)

Included in the amount described in §11.1.

Any Owner-requested traffic consulting shall be provided by the Architect for a fixed fee of \$9,000 to \$13,000, depending on scope.

§ 11.4 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

The Architect's fees for any Additional Services that may arise during the course of the Project shall not exceed the reasonable and customary fees then charged in Salt Lake County, Utah for similar services, and shall be negotiated in good faith by the parties before the Architect commences performing any such Additional Services. Subject to the foregoing, Architect's fees for any additional service shall be based on the Architect's current hourly rate schedule, attached to this Agreement as Exhibit C. The hourly rate schedule is subject to annual adjustment in accordance with Architect's normal practices.

§ 11.5 Compensation for Additional Services of the Architect's consultants when not included in Section 11.3 or 11.4, shall be the amount invoiced to the Architect plus zero percent (0%), or as otherwise stated below:

§ 11.6 Where compensation for Basic Services described in Sections 3.1 and 3.2 is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Programming Phase:	seven and one-half	Percent (7.5	%)
Schematic Design Phase:	fourteen	percent (14	%)
Design Development Phase:	eighteen and one-half	percent (18.5	%)
Construction Documents	thirty-three	percent (33	%)

Phase:				
Bidding or Negotiation Phase:	four	percent (4	%)
Construction Phase:	twenty-three	percent (23	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6.1 Where compensation for the Sustainability Services described in Section 3.3 is also based on a stipulated sum or percentage of the Cost of the Work, the Sustainability Services shall be compensated in accordance with the schedule set forth in Section 11.6 unless otherwise provided below:
(If different than Section 11.6, insert the compensation schedule for Sustainability Services based on a stipulated sum or percentage of the Cost of the Work.)

§ 11.7 When compensation is based on a percentage of the Cost of the Work 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, in accordance with the schedule set forth in Section 11.6 based on (1) the lowest bona fide bid or negotiated proposal falling within the Owner's Stated Limitation of the Cost of the Work, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work approved by the Owner for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed by the Architect in accordance with this Agreement whether or not the Construction Phase is commenced.

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

« »

Employee or Category

Rate

§ 11.9 Compensation for Reimbursable Expenses

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

- .1 Authorized out-of-town travel and subsistence;
- .2 Authorized Project websites and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Expedited delivery services (i.e., FedEx or courier services);
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings (over two), models, mock-ups, professional photography, and presentation materials requested by the Owner and not included in any Basic, Additional or Expanded Fee under this Agreement;
- .8 (INTENTIONALLY OMITTED);
- .9 All sales taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Additional expenses for Project specific software or other equipment or materials necessary to achieve, or directly related to, the Sustainable Objective, with prior written approval from the Owner;
- .12 Registration fees and any other fees charged by the Certifying Authority; and
- .13 Presentation materials required for submission to the Certifying Authority or as otherwise necessary to achieve the Sustainable Objective, with prior written approval from the Owner.

§ 11.9.2 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.

§ 11.10 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner's payment to the Architect for the Services provided by the Architect up to the date of termination shall be deemed to grant to the Owner from the Architect and its Consultants a non-exclusive license for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using, maintaining, altering and adding to the Project.

§ 11.11 Payments to the Architect

§ 11.11.1 (INTENTIONALLY OMITTED).

§ 11.11.1.1 If a Sustainability Certification is part of the Sustainable Objective, the Owner shall pay when due any registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect shall give the Owner at least ten business days' prior written notice of the due date and amount of any such payments to the Certifying Authority.

§ 11.11.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed and as described in Section 11.6. Payments are due and payable within 30 days after the Owner's receipt of an accurate, adequately documented and approved invoice from the Architect. Interest on any amounts due from the Owner to the Architect, or from the Architect to the Owner, as applicable, shall bear interest from the due date until paid at a rate equal to the lesser of (a) six percent (6%) per annum, or (b) that fluctuating rate of interest announced from time to time by Zions Bank, N.A. (or its successor) as its "prime" or "reference" commercial lending rate of interest.

§ 11.11.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 11.11.4 The Architect shall present to the Owner each month a statement of Additional Services and Reimbursable Expenses incurred for the preceding month. The Architect expressly waives any right to payment for (a) Additional Services which are not billed by the Final Completion Date; and (b) Reimbursable Expenses when (i) the expense was incurred over 90 days before the Owner receives the Architect's invoice initially requesting reimbursement of the expense, or (ii) the invoice for that expense is not accompanied by detailed documentation establishing the Project-related nature of the expense. Unless otherwise expressly authorized by the Owner, all monthly bills for Basic Services, Reimbursable Expenses and Additional Services shall be delivered to the Owner in a consolidated, monthly itemized statement. Records of Reimbursable Expenses, expenses pertaining to 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:

§ 12.1 The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any defect or omission in the design of the Project or in the Construction Documents, including, without limitation, errors, omissions, or inconsistencies in the Architect's Instruments of Service.

§ 12.2 The Architect shall indemnify and hold harmless the Owner for, from and against any and all damages, losses, claims, demands, suits, actions, proceedings, obligations, debts, liabilities, costs and fees (including, without limitation, attorney's fees, costs of suit and defense costs) that are attributable to, based on, or arise as a result of, in whole or in part, the negligent performance of, or the negligent omission or failure to perform, professional services by the Architect, its employees, its agents or its Consultants. The Architect further shall indemnify and hold harmless the Owner from any damages, fees, expenses and costs (including, without limitation, attorney's fees and costs of court or mediation) incurred by the Owner in defending against claims against the Owner by the Contractor or others asserting that such claims arose or resulted, in whole or in part, from the wrongful conduct, actions or failures to act of the Architect, its employees, its agents, or its Consultants.

§ 12.3 The Architect acknowledges that the Project will serve as the Owner's city hall/municipal center; that the Owner's lease of its current city hall/municipal center will expire on 30 June 2016; and that the Owner will incur substantial economic damages, loss of productivity and disruption if the Architect does not perform the Services in a timely manner and otherwise in accordance with the terms of this Agreement.

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 Owner and Architect, unless such amendment by unilateral action of the Owner is expressly provided for in this Agreement or is self-executing by the terms of this Agreement. Individual handwritten modifications of this Agreement shall be ineffective unless each such modification is initialed by the Owner and the Architect.

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

- .1 AIA Document B101™–2007 SP, Standard Form Agreement Between Owner and Architect, for use on a Sustainable Project, as modified.
- .2 (INTENTIONALLY OMITTED).
- .3 Other documents: Exhibit A, Initial Information, and Exhibit B, Insurance Requirements, Exhibit C, Architect’s current hourly rate schedule.

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

OWNER:

COTTONWOOD HEIGHTS, a Utah municipality

ARCHITECT:

GSBS, P.C., a Utah corporation d/b/a GSBS ARCHITECTS

Kelvyn H. Cullimore, Jr., Mayor

Kevin B. Miller, President

ATTEST:

By: _____
Kory Solorio, Recorder

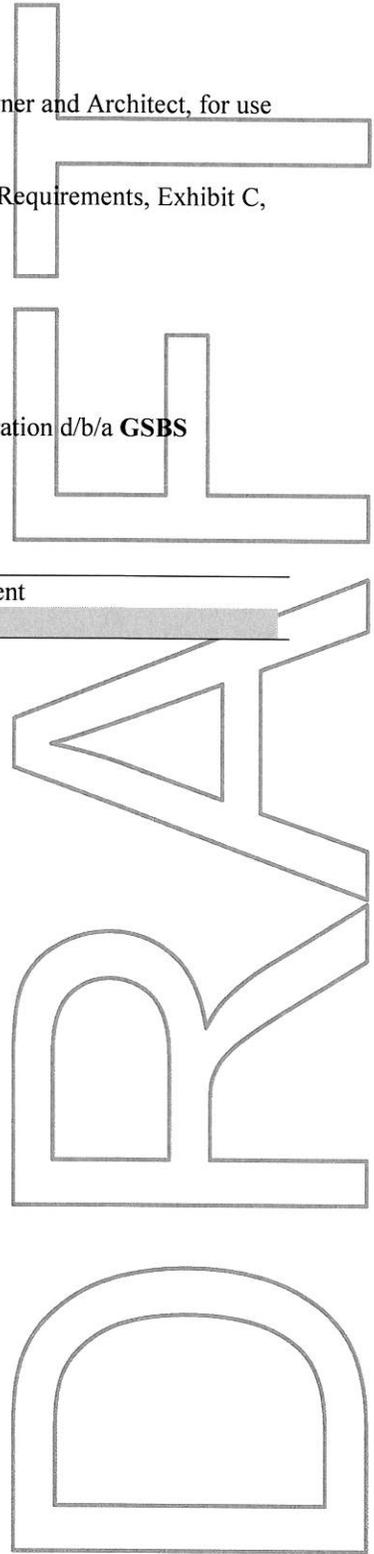


Exhibit "A"
to AIA Document B101—2007 SP

PROJECT:

Cottonwood Heights Municipal Center
4.7 acres at approximately 2300 East Bengal Blvd.
Cottonwood Heights, UT

OWNER:

Cottonwood Heights, a Utah municipality
1265 East Fort Union Blvd., Suite 250
Cottonwood Heights, UT 84047

ARCHITECT:

GSBS, P.C., d/b/a GSBS Architects
375 West 200 South, Suite 100
Salt Lake City, UT 84101

**ARTICLE A.1
PROJECT INFORMATION**

§A.1.1 Program. The Project is the Owner's municipal center/city hall, to be constructed on approximately 4.7 acres of ground located on the Northwest corner of the intersection of 2300 East and Bengal Blvd. in Cottonwood Heights, Salt Lake County, Utah. The Project will include a building containing approximately 45,000 square feet and all necessary site improvements (including parking areas, sidewalks, lighting, landscaping, irrigation, etc.). The Project must incorporate a 50-year minimum design life, and will be evaluated both on form and function.

The parties acknowledge that the foregoing information is preliminary, is subject to change during the course of the Project, and should not be construed as limiting the Architect's Services under this Agreement.

§A.1.2 Physical characteristics.

§A.1.3 Budget. The Owner's initial Stated Limitation on Cost of the Work (the "SLCW") is \$ 9.5 million. The SLCW may be adjusted during the course of design and construction of the Project as specified in the AIA Document B101—2007 SP (the "B101") to which this exhibit (this "Exhibit") is attached.

§A.1.4 Scheduling.

Programming	1 to 2 months (May 6 - June 30, 2014)
Schematic Design	1.5 to 2 months (July 1 – August 15, 2014)

Design Development	2.5 months (August 16 – October 31, 2014)
Construction Documents	3 months (November 1, 2014 – January 31, 2015)
Bidding	1 month (February 1 – February 28, 2015)
Construction	12-14 months (March 1, 2015 – June 1, 2016)

§A.1.5 Delivery Method. The Owner intends to use the CM/GC approach as the procurement or delivery method for the Project.

§A.1.5.1 The parties do not contemplate a Project delivery scheme in which the Owner engages multiple prime contractors and in which the Scope of Work is subdivided into multiple independent packages for the purpose of bidding, negotiation, or construction. The Services, if any, of the Architect that are required to subdivide the Scope of Work into independent packages of Contract Documents for bidding or negotiation purposes or as a basis for the Owner’s engagement of multiple prime contractors shall be considered Additional Services if pre-approved by the Owner as provided in the B101. When, however, the Scope of Work is subdivided for bidding and construction purposes by a construction manager or another contractor or professional consultant engaged by the Owner, and the Architect is not required to prepare independent packages of Construction Documents, any Services incidental to such subdivision shall be considered Basic Services of the Architect.

§A.1.5.2 Nothing in this Article shall reduce the applicable standard of care or the completeness of the Construction Documents merely because a Contractor is selected by a process of negotiation as opposed to competitive bidding, or for any other reason.

§A.1.6 Sustainable Objective. Either LEED “Certified” or LEED “Silver,” provided that Owner may, at its sole option, decide to not seek LEED certification of any type, in which event Architect shall, throughout the planning and design process, advise Owner concerning the sustainability/efficiency materials, techniques and processes that likely would be required for LEED certification at those levels, and to incorporate into the Project such of those items as Owner may direct, as part of Architect’s Basic Services. The goal of such an approach would be for the completed Project to have similar sustainability/efficiency as a LEED certified project, while avoiding the delay and additional cost (estimated at \$30,000 - \$40,000) of actual LEED certification.

§A.1.7 Incentive Programs. None currently identified.

§A.1.8 Other Information.

ARTICLE A.2 PROJECT TEAM

§A.2.1 Owner’s Representative. The Owner designates John W. Park, City Manager, or his designee in writing, as the Owner’s representative in accordance with Section 5.3 of the B101. The Manager is not authorized to increase the SLCW by over \$5,000.00 without prior approval or ratification by Owner’s city council.

§A.2.2 Owner’s Additional Reviewers. To be decided by the Owner.

§A.2.3 **Owner's Consultants.** To be decided by the Owner.

§A.2.4 **Architect's Representative.** The Architect designates D. Scott Henriksen, or his designee in writing, as the Architect's representative in accordance with Section 2.3 of the B101.

§A.2.5 **Architect's Consultants and Team.** The Architect will retain the consultants identified in Sections A2.5.1 through A2.5.3, and will utilize the key team identified in Section A.2.5.4:

§A.2.5.1 Architect's Consultants for Basic Services (*insert list*):

.1 Structural Engineer:

Calder Richards Consulting Engineers

634 South 400 West

Suite 100

Salt Lake City, UT 84101

.2 Mechanical Engineer:

Colvin Engineering Associates

244 West 300 North

Suite 200

Salt Lake City, UT 84103

.3 Electrical Engineer:

Spectrum Engineers

324 South State Street

Suite 400

Salt Lake City, UT 84111

.4 Other:

Parametrix

7186 South Highland Drive

Salt Lake City, UT 84121

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§A.2.5.2 Architect's Consultants for Additional Services (*insert list*):

Audio/Visual – Spectrum Engineers

§A.2.5.3 Architect's Consultants for Sustainability Services (*insert list*):

None

§A.2.5.4 The following persons are designated by the Architect as key members of the Architect's Project Team (*insert list*):

D. Scott Henriksen, AIA, PIC

Valerie Nagasawa, AIA, PM

David Brems, FAIA, Project Designer

Jesse Allen, AIA, Landscape Architect

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Exhibit "B" to AIA Document B101

Insurance Requirements

The Architect shall procure and maintain for the duration of this Agreement (or longer, if specified) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Architect, its agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Architect and is not to be charged back to the Owner as an additional service.

A. MINIMUM LIMITS OF INSURANCE.

The Architect shall maintain limits no less than:

1. Professional Liability: covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than \$2,500,000 per claim and in the aggregate. The Architect shall maintain this coverage until the later of (a) expiration of any warranty period covering the Project, or (b) 36 months after the date of Termination of this Agreement.

2. Automobile Liability: None, based on the Architect's representation that it owns no vehicles.

3. Worker's Compensation: Worker's compensation limits as required by applicable law for all employees and other persons.

4. Commercial General Liability: \$1,000,000.00 combined single limit per occurrence for personal injury and property damage; \$2,000,000.00 annual aggregate. Broad Form Commercial General Liability is required (ISO 1993 or better). Personal injury, premises-operations, products-completed operation, independent contractors and subcontractors fire legal liability and, when appropriate, coverages for explosion, collapse and underground (XCU) hazards.

5. Excess Liability. \$5,000,000.00.

B. DEDUCTIBLES AND SELF-INSURED RETENTIONS.

Any deductibles, self-insured programs or retentions must be declared to and approved by the Owner. If the Architect desires to provide self-insurance, or if there is any deductible, in excess of ten percent (10%) of the required coverage amount, then the Architect shall either (a) cause the insurer to reduce or eliminate such deductible or self-insured retention as respect to the Owner, its officers, officials and employees; or (b) procure a bond acceptable to the Owner guaranteeing payment of losses and related investigations, claim distribution and defense expenses.

C. NOTICE OF INCIDENT OR ACCIDENT.

The Architect shall agree to promptly disclose to the Owner all incidents or occurrences of accident, injury, and/or property damage covered by the insurance policy or policies.

D. OTHER INSURANCE PROVISIONS.

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

(a) The Owner, its officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Architect; products and completed operations of the Architect; premises owned, leased, hired or borrowed by the Architect. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officers, officials, employees or volunteers.

(b) The Architect's insurance coverage shall be a primary insurance as respects to the Owner, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees or volunteers shall be in excess of the Architect's insurance and shall not contribute with it.

(c) The Architect's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

2. Worker's Compensation and Employer's Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the Owner, its officers, officials, employees and volunteers for losses arising from work performed by the Architect for the Owner.

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (from the insurer) by first class U.S. mail, postage prepaid, has been given to the Owner.

E. ACCEPTABILITY OF INSURERS.

Insurance is to be placed with insurers with a Bests' rating of no less than A:VII, unless approved by the Manager.

F. VERIFICATION OF COVERAGE.

The Architect shall furnish the Owner with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies, with all endorsements, at any time.

G. SUBCONTRACTORS.

The Architect shall include all subcontractors as insureds under its policy or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

STANDARD HOURLY BILLING RATES

May 1, 2011



ARCHITECT	Architect 1	\$225.00
	Architect 2	\$145.00
	Architect 3	\$115.00
	Architect 4	\$95.00
SUSTAINABILITY & ENERGY CONSULTING SERVICES	Sustainability Services/Energy Specialist 1	\$145.00
	Sustainability Services/Energy Specialist 2	\$125.00
	Sustainability Services/Energy Specialist 3	\$95.00
	Sustainability Services/Energy Specialist 4	\$80.00
ILLUSTRATOR/ GRAPHIC DESIGNER	Architectural Illustrator *	\$125.00
	Graphic Designer 1 *	\$115.00
	Graphic Designer 2 *	\$75.00
ARCHITECTURAL TECHNICIAN	Architectural Technician 1	\$95.00
	Architectural Technician 2	\$85.00
	Architectural Technician 3	\$65.00
	Architectural Technician 4	\$55.00
	Architectural Technician 5	\$45.00
LANDSCAPE ARCHITECT	Landscape Architect 1	\$145.00
	Landscape Architect 2	\$115.00
	Landscape Architect 3	\$95.00
	Landscape Architect 4	\$65.00
INTERIOR DESIGNER	Interior Designer 1	\$90.00
	Interior Designer 2	\$75.00
	Interior Designer 3	\$55.00
	Interior Designer 4	\$45.00
OFFICE TECHNICIAN	Office Technician 1	\$55.00
	Office Technician 2	\$45.00
	Office Technician 3	\$35.00

** A surcharge will be billed in addition to Standard Hourly Rate for computer renderings, models, mock-ups & graphic presentations. Charge to be determined at the time of the request for specific services.*

Hourly rates are subject to periodic adjustment.

375 WEST 200 SOUTH
SALT LAKE CITY, UT 84101

7291 GLENVIEW DRIVE
FORT WORTH, TX 76180

P. 801.521.8600
F. 801.521.7913

P. 817.589.1722
F. 817.595.2916

