

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 5 day of July in the year Two Thousand Twelve
(In words, indicate day, month and year)

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

City of Grand Junction Colorado
c/o Public Works and Planning
250 North Fifth Street
Grand Junction, Colorado 81501

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

Westlake Reed Leskosky
One East Camelback, Suite 690
Phoenix, AZ 85012

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

Avalon Theatre Addition and Renovation

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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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:

(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, and other information relevant to the Project.)

Refer to Exhibit A – Initial Information AIA Document B201-2007

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:
To be determined
- .2 Substantial Completion (synonymous with Beneficial Occupancy) date:
To be determined
- .3 Refer to Attachment A.6 – Preliminary Project Schedule.
- .4 Provision of items identified in clauses 5.4 and 5.5 (surveys and geotechnical services) is required prior to commencement of Design Development.
- .5 Actual Substantial Completion date is subject to Owner's acceptance of design, actual construction schedule, and procurement of funding.

§ 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 appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 STANDARD OF CARE

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. . Regardless of any other term or condition of this Agreement, Architect makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

§ 2.2.1 The Owner and the Architect acknowledge that the Architect's standard of care is one of reasonable professional diligence and that certain increased costs and changes may be required because of possible ambiguities and inconsistencies in the drawings and specifications prepared by the Architect or its consultants. In recognition of the foregoing, the Owner shall set aside in the Project budget a contingency equal to 2% of the Construction Cost of the Work as a contingency to be used, as required, to pay for the increased or additional costs relating to any ambiguities or inconsistencies in the drawings and specifications (the "Contingency"). The Contingency is in addition to any construction contingency or other separate owner contingencies and may not be used to fund costs that are typically funded by such other contingencies (such as, changed site conditions, subcontractor default or acceleration costs). The Owner shall make no claim against the Architect or its consultants for any costs, expenses or damages to the extent that such costs, expenses or damages are equal to or less than 2% of the Cost of the Work. It is well-recognized that an architect is not liable to an owner for costs incurred to install an omitted item. In no event shall the Architect or the Architect's consultants be responsible for any cost or expense that provides a betterment, upgrade or enhancement of the Project, as these costs or expenses would have been part of the Project construction costs in the first instance.

§ 2.2.2 If the Owner elects to implement a project scheduling system that utilizes a fast track process or any other process in which the Architect's design services overlap commencement of construction or are out of sequence with the traditional design-bid-build project delivery method, then the Owner agrees to waive all claims against the Architect for design changes and modifications of portions of the Work already procured or constructed by the Contractor due to the Owner's desire to employ such a process. The Owner agrees to compensate the Architect for all Changes in Services required to modify, correct or adjust Construction Documents and coordinate them in order to meet the Owner's program requirements because of the Owner's decision to construct the Project in an accelerated, phased or fast track or other out of sequence manner.

§ 2.3 The Architect shall identify 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 maintain the following insurance **types and limits** for the duration of this Agreement. **If the Owner requires types or limits in excess of those indicated below**, the Owner shall reimburse the Architect for any additional cost:

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

- .1 General Liability

\$1,000,000	each occurrence
\$2,000,000	aggregate

- .2 Automobile Liability

\$1,000,000

- .3 Workers' Compensation

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\$1,000,000

.4 Professional Liability

\$1,000,000 per claim

\$1,000,000 aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in Article 3 or indicated as **Basic Services or Designated Additional Services in Exhibit B – Table of Services** 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 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 or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 Release and Indemnification for Owner Directed Revisions

The Architect shall not be responsible for an Owner's, Contractor's or Vendor's directive, revision or substitution made without the Architect's approval, knowledge, or consent. In the event that the Owner chooses to accept, and directs the Architect to make revisions to the Construction Documents to include revisions, value engineering, value reduction, or material substitution proposals made by the Owner, Owner's Contractors, or Owner's vendors, Owner's consultants, or others, and the Architect does not recommend acceptance of such proposed revisions, the Owner shall release, and to the extent authorized by law indemnify, and defend the Architect, and its consultants, called indemnitees, from and against all damages, losses, liabilities, costs, and Attorney's fees called damages are caused by the sole or comparative negligence, strict liability, or other fault of any indemnitee.

Where the Owner causes the Architect to provide consultation to implement such directives, revisions, or substitutions, the Architect shall be compensated as an Additional Service.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities, including the Owner required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.5.1 The Architect shall use reasonable professional effort and judgment in interpreting and advising the Owner as to the necessary requirements for the Project to comply with the Americans with Disabilities Act (ADA). The Architect shall rely on the local building department for interpretations of the ADA at the time service is rendered.

§ 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.

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§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

§ 3.2.2 The Architect shall 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. **The Architect shall not be required to prepare a Program of Requirements, extensive pre design investigations, studies, or planning options without compensation for a Contingent Additional Service in accordance with Article 11.3.**

§ 3.2.3 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, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 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.

§ 3.2.5 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 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.

§ 3.2.5.1 The Sustainability Goals for the Project are as set forth in Contract Exhibit B.3 – Sustainability Services.

§ 3.2.5.2 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.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the 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.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the

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further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in customary detail the quality levels of materials and 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 3.6.4.

§ 3.4.1.1 This Agreement assumes the preparation of bid package(s) Exhibit B – Table of Services. The preparation of additional bid packages shall be considered a Contingent Additional Service, and the Architect’s compensation shall be adjusted per Clause 11.3. The Project Schedule shall also be concomitantly adjusted.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project, including the Owner.

§ 3.4.3 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; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). 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.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 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, take any action required under Section 6.5, and request the Owner’s approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 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.

§ 3.5.2 COMPETITIVE BIDDING

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

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project as follows and as indicated in Exhibit B.1 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.

§ 3.5.2.3 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.

§ 3.5.3 NEGOTIATED PROPOSALS

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

§ 3.5.3.2 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.

§ 3.5.3.3 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.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

The term **Contractor**, shall mean **General Contractor or Construction Manager, in the clauses set forth below.**
The Architect shall provide construction phase services solely for the Contractor's Work included in the Architect's Instruments of Service.

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below, as indicated in Exhibit B.1 – Bidding and Construction Phase Services and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 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. 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.

§ 3.6.1.3 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.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals indicated in Exhibit B.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents, however, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not 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.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The

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Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

Paragraphs intentionally deleted.

(Paragraphs deleted)

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 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.

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

§ 3.6.4.3 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.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 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.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 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. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct reviews and System Testing, Refer to Exhibit B.7, to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive

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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 review indicating the Work complies to the best of the Architect's information and knowledge and belief with the requirements of the Contract Documents.

§ 3.6.6.2 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. **If the Owner opts to accept Contractor's or Vendor's Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Architect shall not be liable for the Owner's decision. Where the Owner's acceptance of nonconforming work causes the Architect to provide additional services, the Architect shall be compensated for said services.**

§ 3.6.6.3 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.

§ 3.6.6.4 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.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect may, as a **Contingent Additional Service** conduct a meeting with the Owner and the Contractor to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 **Designated** Additional Services listed in **Exhibit B – Table of Services** as included are required for the Project. The Architect shall provide the **Designated** Additional Services indicated, and the Owner shall compensate the Architect as provided in Section 11.2.

(Paragraph deleted)

Refer to Exhibit B - Table of Services

(Table deleted)

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

§ 4.3 **Contingent** 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 **Contingent** Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following **Contingent** 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 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 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 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;

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- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Intentionally omitted;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Intentionally omitted;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 **As a Basic Service, Architect shall define not more than six (6) alternates whose estimated total shall not exceed two and one-half percent (2-1/2%) of the Base Bid Construction Cost. These alternates shall be simple to define and not require additional documentation. Any additional design or documentation work related to the preparation of alternates, or work related to the identification of more than six (6) alternates as required by the Owner, shall be considered a Contingent Additional Service;**
- .13 **The design and documentation of future phases, not identified as part of the scope of the work under this contract;**
- .14 **Services specifically excluded from the Scope of Basic Services under this Agreement include, but are not limited to, the following:**
 - .1 Preparation and appearances before Adjudication Boards for building department code variances.
 - .2 Neighborhood Group presentations.
 - .3 Finish Material Presentation Boards.
 - .4 Three-dimensional hand or computer generated models, animations, or renderings.
 - .5 Preparation of special presentations to agencies, including appearances before governmental agencies, including Municipal Planning Commissions, Zoning Boards, Historic District Commissions, and Architectural Review Boards, having jurisdiction over the Project, in excess of one (1) meeting.
- .15 **Required consultation, design or documentation by the Architect or the Architect's consultants based on the presence of existing physical project conditions that could not reasonably be known or discovered prior to construction;**
- .16 **Changes in the project construction budget that result in additional work effort by the Architect caused by forces outside the control of the Owner or the Architect. Should the cost of any material escalate beyond that which would normally be predicted or budgeted, resulting in the project being over the construction budget, and because of this overage, the project is required to be reduced in cost thereby modifying program, material and/or details that result in additional work effort by the Architect to document the change,;**
- .17 **Meetings with the Owner during the Design and Procurement phases, in excess of those identified in Exhibit A.6 preliminary project schedule.**

§ 4.3.2 To avoid delay in the Construction Phase, the Architect **may** provide the following **Contingent** Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services; **and the Architect shall have no further obligation to perform the services:**

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

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- .6 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 (**synonymous with Beneficial Occupancy or Use**) or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.
- .7 **Should authorization to proceed with Bidding/Negotiation or Construction Phase Services not occur within sixty (60) days or other delay as mutually agreed to by the parties, of the completion of Construction Documents, Architect shall be entitled to demobilization and remobilization fees as indicated in the Contract Exhibit C.2. Should authorization to proceed with Bidding/Negotiation or Contract Administration not occur within twelve (12) months of the completion of Construction Documents, professional service fees for these phases may be renegotiated due to escalation or market changes.**

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

- .1 **The Architect's Basic Services for review of the Contractor's submittals shall be limited to an initial submittal and one (1) resubmittal. Services by the Architect for review of additional resubmittals shall be compensated as an Additional Service or Change in Services. It will be the responsibility of all Contractors and subcontractors to provide complete, thorough, and accurate Shop Drawings and Submittals. The Architect will not be held responsible for construction delays resulting from submittals that must be summarily returned to Contractors or subcontractors as rejected because of significantly incomplete or inaccurate information.**
- .2 twenty eight (28) visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within sixty (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements, **upon which the Architect shall be entitled to rely for accuracy and completeness pursuant to clause 3.1.2.** Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.1.1 **The Owner shall obtain and maintain property insurance for the building or facility. The Owner shall evidence the insurance to the Architect, and name the Architect as a loss payee on the general liability policy in the event a lien is placed on the property as a result of dispute over the Architect's compensation.**

§ 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, **and a corresponding change to the Architect's compensation.**

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

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§ 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; 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.

(Paragraph deleted)

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

§ 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.

§ 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 promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner 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 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 The Owner shall provide in a timely manner, information regarding the existing facility, including destructive testing and investigation of concealed conditions, upon which the Architect may rely for accuracy and completeness.

- .1 In the event documentation or information furnished by the Owner is inaccurate or incomplete, any resulting damages, losses and expenses, including the cost of the Architect's Change in Services or Additional Services, shall be borne by the Owner.
- .2 If the Owner does not provide documentation or information beyond that which is apparent by non-intrusive observations of the existing facility and the Owner does not perform destructive testing or investigate concealed or unknown conditions, the Owner shall assume sole responsibility, including the cost of Additional Services of the Architect, if any, for all unknown or concealed conditions that are encountered during construction that require changes in the design or construction of the Project.

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§ 5.14 The Owner shall arrange and pay for all inspections and testing required by but not limited to the following:

- .1 destructive or investigative testing or inspections of existing concealed conditions;
- .2 testing or inspections required by authorities having jurisdiction;
- .3 quality assurance and quality control testing required during the Contract Administration Phase of the Project;
- .4 testing and inspections are not included in the Architect's scope of services.

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

§ 5.16 Where the Architect considers it necessary to protect the safety, health and welfare of its agents or employees, or of any other persons or entities performing services, the Architect or the Owner shall engage the services of other consultants, contractors or vendors as set forth in Exhibit B.5 – Facility Safety Services.

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, approved change orders, 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 as required under Sections 5.2, 6.4 and 6.5. 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, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to 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. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as a **Designated** Additional Service under Article 4.

§ 6.3.1 Evaluations of the Owner's budget for the Project, the preliminary Opinion of the Cost of the Work and updated Opinions of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's or subcontractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. The Opinions of Probable Cost of the Work are made on the basis of experience, qualifications, and best judgment of a professional construction consultant familiar with the construction industry. Accordingly, the Architect cannot and does not warrant or represent that proposals, bids negotiated prices, or actual construction costs will not vary from the Owner's budget for the Project or from any Opinion of the Cost of the Work or evaluation prepared or agreed to by the Architect. The Architect shall compile Opinions of the Cost of the Work based on the design progress, by utilizing historical data, material quotations, discussions with trade professionals, and experience with similar projects. Bids will not be solicited for estimating purposes; therefore, competitive bidding or lack thereof may affect the actual costs. The Owner shall acknowledge the following assumptions and cautions:

- .1 The Opinions of the Cost of the Work will assume a competitive bidding process for the entire scope of work, as defined by the plans and specifications. Competitive bidding is defined as receiving responsive bids from a minimum of 5 (five) general contractors who typically and routinely engage in building the project type, and the general contractors will have received responsive bids for all trades work from four (4) or five (5) subcontractors for each trade item who typically and routinely engage in construction of the portion of the work applicable to their trade.
- .2 If less than the number of bids indicated in 2.1.7.2.1 are received, the bids may deviate from the Opinion of Probable Cost of the Work as follows: 1 bid +20% to +50%, 2 or 3 bids +10% to +30%, 4 or 5 bids +0% to +5%, 6 or more bids +0% to -10%.
- .3 Due to unpredictable conditions in the construction and other industries causing unusual fluctuations, such as the influence of commodity trading markets, regional supply and demand, regional inflation, or natural disasters; costs and availability of products and labor may fluctuate.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 60 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market. **Should the Owner elect not to adjust the budget due to escalation, but rather elect to reduce the scope of the project to maintain the original budget, the Architect shall be equitably compensated as Contingent Additional Service, in accordance with this Agreement for all services performed to revise the scope and the documents, whether or not construction is commenced.**

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 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, the Owner shall

- .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; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, **as a compensated Contingent Additional Service** 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. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service, and upon payment of all funds owed to the Architect at this Project's completion, shall be the property of the Owner for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed to have prepared the Instruments of Service as works for hire, and the Owner shall have all common law, statutory and other reserved rights, including copyrights.

§ 7.2 No license or right shall be deemed granted or implied under this Agreement, except that the Owner grants the Architect a nonexclusive license to reproduce the drawings, specifications, and other documents for purposes of the Architect and the Architect's consultants to perform services for the Project, and for business development. The Architect shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Owner. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Owner. Any use of the Instruments of Service for future

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additions or alterations to this Project or for other projects shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.3 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by execution of a separate written Data Transfer Agreement, set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

(Paragraph deleted)

§ 7.4 All Project-related publicity that the Owner or its consultants, agents, and contractors issue or cause to be issued before or after final completion of the Project shall identify the Architect.

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 in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

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

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

§ 8.2 MEANS OF RESOLUTION

§ 8.2.1 It is agreed that any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

§ 8.2.2 Any matters referred to legal or equitable proceedings shall be decided by a court of competent jurisdiction in District Court in Mesa County, Colorado.

(Paragraph deleted)

§ 8.2.4

(Paragraphs deleted)

Risk Allocation. In recognition of the relative risks and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent not prohibited by law, to limit the liability of the Architect and the Architect's consultants to the Owner and to all construction contractors and subcontractors on the Project for any and all claims, losses, costs, awards, damages of any nature whatsoever or claims or expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect and the Architect's consultants to all of those entities named above shall not exceed the lesser of (a) the Architect's total fee for services rendered on this Project or (b) the amount of insurance proceeds available under the Architect's professional liability policy that is available to respond to the claim. Such claims and causes of action include, but are not limited to, gross negligence, professional errors or omissions, strict liability, or breach of contract or warranty. Additional limits of liability may be made a part of this Agreement as an additional cost to the Owner if required.

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§ 8.2.5 Owner agrees with Architect to defend, indemnify and hold harmless Architect from any and all costs related to Architect's employees having to prepare for or participate in any subpoena, deposition, mediation, arbitration or trial between Owner's Contractor and any of that contractor or subcontractors or other person or entity related to the project (collectively "subcontractor") or any aspect of the project (collectively "dispute"). Owner shall reimburse Architect for employees time spent in preparation for, travel to and attendance at such deposition, mediation, arbitration, trial and/or in responding to a subpoena at that employees standard hourly rate and within 30 days of submission of Architect's invoice for same. Owner shall prepay Architect a flat fee of \$750 for making its files available to Contractor or Contractor's subcontractor(s). Owner shall reimburse Architect for its legal fees (if any) involved in connection with any such dispute within 30 days of submission of Architect's invoice for same. The Owner shall cause the contractor, through the owner-contractor agreement to have (similar) provisions.

§ 8.3 MEDIATION

In accordance with Section 8.2, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

(Paragraph deleted)

§ 8.3.2 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.

§ 8.3.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.3, the method of binding dispute resolution shall be the following:

Litigation in a court of competent jurisdiction

(Paragraphs deleted)

§ 8.4 Any agreement as a result of responding to this Contract shall be deemed to have been made in, and shall be construed and interpreted in accordance with, the laws of the City, Mesa County, Colorado.

§ 8.5 Intentionally omitted.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the 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.

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§ 9.1.1 This Agreement shall remain in effect until any of the following occurs:

- .1 Agreement expires;
- .2 completion of services;
- .3 acceptance of services or;
- .4 for convenience terminated by either party with a written Notice of Cancellation.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension, **and de-mobilization costs indicated in Exhibit C.2**. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services **including re-mobilization costs indicated in Exhibit C.2**. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. **Upon termination, the Owner waives all claims and damages against the Architect and the Architect's consultants.**

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 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 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the **State where the project is located**.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

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

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

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

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§ 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. **Determination and treatment of hazardous materials, if any, is the responsibility of the Owner. The Owner shall secure all approvals and permits required by the authorities having jurisdiction for the project scope, with the assistance of the Architect.**

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

§ 10.8 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, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. (4) the extent such information has become known to the public through no fault of the receiving party, (5) the extent such information is reasonably necessary for a party to defend itself in any dispute, or (6) to the extent the Architect and/or its consultants must disclose such information as required by law or to comply with their applicable professional codes of ethics or standards of conduct .

§ 10.9 **Public Funds/Non-appropriation:** Funds for payment have been provided through the City of Grand Junction budget approved by the City Council for the stated fiscal year only. State of Colorado statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the stated City of Grand Junction fiscal year shall be subject to budget approval. Any contract will be subject to and must contain a governmental non-appropriation of funds clause.

ARTICLE 11 COMPENSATION

§ 11.1 COMPENSATION FOR BASIC SERVICES

For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

The Architect shall be compensated in accordance with Exhibit C- Project Fee Summary. Reimbursable Expenses as described in clause 11.8 are in addition to the fees.

§ 11.2 COMPENSATION FOR DESIGNATED ADDITIONAL SERVICES

For **Designated** Additional Services as shown in Section 4.1 and Exhibit B – Table of Services, 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.)

Refer to Exhibit C – Project Fee Summary.

§ 11.3 COMPENSATION FOR CONTINGENT ADDITIONAL SERVICES

For **Contingent** 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.)

Compensation shall be equitably negotiated in accordance with the Westlake Reed Leskosky Hourly Rate Schedule, in effect at the time the services are performed, Refer to Exhibit C.1.

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§ 11.4 Compensation for **Contingent** Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus **one point zero (1.0)**, or as otherwise stated below:

§ 11.5

(Paragraphs deleted)

Intentionally omitted.

§ 11.6 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 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

Refer to Exhibit C.1 – Westlake Reed Leskosky Hourly Rate Schedule.

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

(Paragraphs deleted)

estimated as follows:

REIMBURSABLE EXPENSE CATEGORY	ESTIMATED AMOUNT
<p>Transportation</p> <ul style="list-style-type: none"> • Authorized out-of-town travel, lodging, and subsistence; • All mileage, parking, and tolls related to the project regardless of proximity to the Architect's place of business; 	
<p>Communications</p> <ul style="list-style-type: none"> • Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; • Printing, reproductions, plots, standard form documents. The costs of printing and distributing the documents for bidding and permit submissions shall be borne directly by the Owner, and such costs are excluded from the Architect's Reimbursable Expenses. The Owner shall open an account with a local printing company for said printing and distribution; • Postage, handling and delivery; 	
<p>Regulatory Fees</p> <ul style="list-style-type: none"> • Fees paid for securing approval of authorities having jurisdiction over the Project; 	
<p>Design Models, Renderings, and Animations</p> <p>All expenses related to labor, materials and equipment. Design Models Renderings, and Animations are defined as materials used during the normal progression of the design process for presentations to the Owner, regulatory agencies, and other stakeholders to study and communicate the design intent.</p>	

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<p>Promotional Models, Renderings, and Animations</p> <ul style="list-style-type: none"> All expenses related to labor, materials and equipment. Promotional Models Renderings, and Animations are defined as materials developed outside the normal progression of the design process for the Owner's use in fundraising and other public relations activities. 	<p><i>As approved by Owner in advance on a case-by-case basis</i></p>
<p>Miscellaneous</p> <ul style="list-style-type: none"> Mock ups; Professional photography; Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; Site office expenses; Other similar Project-related expenditures; 	<p><i>As approved by Owner in advance on a case-by-case basis</i></p>
<p>Taxes</p> <ul style="list-style-type: none"> All taxes levied on professional services and on reimbursable expenses. 	<p><i>As applicable to taxable reimbursable expenses</i></p>
<p>Total, Estimated Reimbursable Expenses</p>	

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus **one point one (1.1) times** the expenses incurred.

§ 11.9 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 shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

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

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

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

One and one-half percent (1.50%) per month.

For the Construction Administration phase, the following payment schedule will apply:

Months of Construction (per Exhibit A.6)	% of CA Fee Invoiced
May 2013	10%
June 2013	15%
July 2013	15%
August 2013	10%
September 2013	9%
October 2013	9%

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November 2013	9%
December 2013	8%
January 2014	5%
March 2014	5%
April 2014	5%
Total 11 months	100%

Where the Owner changes the scope or duration of the project, the above payment schedule may be adjusted as mutually agreed to by the parties.

§ 11.10.2.1 The Owner and the Architect agree that the Architect will not issue documents for bidding or permit unless all payments due to the Architect up to that time have been paid in full to the satisfaction of the Architect.

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

§ 11.10.3 The Owner and the Architect acknowledge that the Architect's standard of care is one of reasonableness and not of perfection and may contain a normative level of errors or omissions, as set forth in clauses 2.2 and 2.2.1. The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been adjudged liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.3.1 The Owner and the Architect agree that in no case shall the Architect be required to issue project closeout documents such as Record Drawings, Certificate of Substantial or Final Completion, etc. unless payments to the Architect on account of services rendered and Reimbursable Expenses incurred have been paid in full, to the satisfaction of the Architect.

§ 11.10.4 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 Written approval shall be received from the Owner at the completion of Documents at each phase: Schematic Design, Design Development, and Construction Documents. Should authorization to proceed with the subsequent phase not occur per the accepted time schedule indicated in Exhibit A.6 – Preliminary Project Schedule. Architect shall be entitled to demobilization and remobilization fees as noted in Exhibit C.2.

§ 12.2 Documentation related to this Project shall be retained in the Architect's office for a period of 17 years from the date of Substantial Completion. Document retention beyond 17 years will be at the Architect's sole discretion.

12.2 INDEMNIFICATION

Subject to 8.2.4 Risk Allocation

Architect shall indemnify and save harmless the City of Grand Junction, State of Colorado, and all its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name, description, brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of negligent acts of the Architect, or of any Architect's agent, employee, subcontractor or supplier in the execution of, or performance under, the contract. Architect shall pay any judgment with cost which may be obtained against the Owner growing out of such injury or damages.

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(1517111673)

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from damage or liability to the extent caused by the Owner's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Owner is legally liable, and arising from the project that is the subject of this Agreement.

Neither Party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.

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.

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 **Exhibit 1 - Digital Data Transfer Agreement**

- .3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit A – Initial Information AIA Document B201-2007

- Exhibit A.1 – Owner's Program**
- Exhibit A.2 – Not used**
- Exhibit A.3 – Not used**
- Exhibit A.4 – Conceptual Drawings**
- Exhibit A.5 – Owner's Preliminary Budget**
- Exhibit A.6 – Preliminary Project Schedule**
- Exhibit A.7 – AIA A201-2007 (Included by Reference)**
- Exhibit A.8 – WRL Model Supplementary Conditions to the Contract for Construction**

Exhibit B – Table of Services

- Exhibit B.1 – Construction Phase Services**
- Exhibit B.2 – Not Used**
- Exhibit B.3 – Sustainability Services**
- Exhibit B.4 – Not Used**
- Exhibit B.5 – Facility Safety Services**
- Exhibit B.6 – Not Used**
- Exhibit B.7 – System Validation Testing**
- Exhibit B.8 – Not Used**
- Exhibit B.9 – Not Used**

Exhibit C – Project Fee Summary

- Exhibit C.1 – Westlake Reed Leskosky Billable Rates**
- Exhibit C.2 – Delay Penalty Clause**

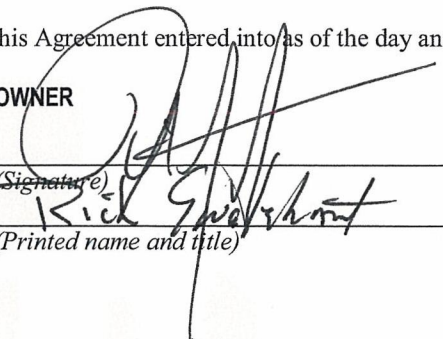
Exhibit D – Equal Opportunity Employer

Exhibit E – Certificate of Insurance

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This Agreement entered into this _____ day and year first written above.

OWNER

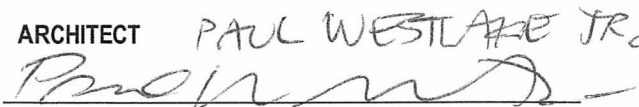


(Signature)

Rick Gwaltner

(Printed name and title)

ARCHITECT

PAUL WESTLAKE JR.


(Signature)

MANAGING PRINCIPAL

(Printed name and title)

Init.

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

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PAGE 1

AGREEMENT made as of the 5 day of July in the year Two Thousand Twelve
(In words, indicate day, month and ~~year~~ year)

...

(Name, ~~legal status~~, address and other information)

City of Grand Junction Colorado
c/o Public Works and Planning
250 North Fifth Street
Grand Junction, Colorado 81501

...

(Name, ~~legal status~~, address and other information)

Westlake Reed Leskosky
One East Camelback, Suite 690
Phoenix, AZ 85012

...

Avalon Theatre Addition and Renovation

PAGE 2

Refer to Exhibit A – Initial Information AIA Document B201-2007

...

- To be determined
- .2 Substantial Completion (synonymous with Beneficial Occupancy) date:**
To be determined
- .3 Refer to Attachment A.6 – Preliminary Project Schedule.**
- .4 Provision of items identified in clauses 5.4 and 5.5 (surveys and geotechnical services) is required prior to commencement of Design Development.**
- .5 Actual Substantial Completion date is subject to Owner's acceptance of design, actual construction schedule, and procurement of funding.**

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§ 2.2 STANDARD OF CARE

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(1517111673)

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. Regardless of any other term or condition of this Agreement, Architect makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

§ 2.2.1 The Owner and the Architect acknowledge that the Architect's standard of care is one of reasonable professional diligence and that certain increased costs and changes may be required because of possible ambiguities and inconsistencies in the drawings and specifications prepared by the Architect or its consultants. In recognition of the foregoing, the Owner shall set aside in the Project budget a contingency equal to 2% of the Construction Cost of the Work as a contingency to be used, as required, to pay for the increased or additional costs relating to any ambiguities or inconsistencies in the drawings and specifications (the "Contingency"). The Contingency is in addition to any construction contingency or other separate owner contingencies and may not be used to fund costs that are typically funded by such other contingencies (such as, changed site conditions, subcontractor default or acceleration costs). The Owner shall make no claim against the Architect or its consultants for any costs, expenses or damages to the extent that such costs, expenses or damages are equal to or less than 2% of the Cost of the Work. It is well-recognized that an architect is not liable to an owner for costs incurred to install an omitted item. In no event shall the Architect or the Architect's consultants be responsible for any cost or expense that provides a betterment, upgrade or enhancement of the Project, as these costs or expenses would have been part of the Project construction costs in the first instance.

§ 2.2.2 If the Owner elects to implement a project scheduling system that utilizes a fast track process or any other process in which the Architect's design services overlap commencement of construction or are out of sequence with the traditional design-bid-build project delivery method, then the Owner agrees to waive all claims against the Architect for design changes and modifications of portions of the Work already procured or constructed by the Contractor due to the Owner's desire to employ such a process. The Owner agrees to compensate the Architect for all Changes in Services required to modify, correct or adjust Construction Documents and coordinate them in order to meet the Owner's program requirements because of the Owner's decision to construct the Project in an accelerated, phased or fast track or other out of sequence manner.

...

§ 2.5 The Architect shall maintain the following insurance types and limits for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner requires types or limits in excess of those indicated below, the Owner shall reimburse the Architect for any additional cost:

...

\$1,000,000 each occurrence
\$2,000,000 aggregate

...

\$1,000,000

PAGE 4

\$1,000,000

.4 Professional Liability

\$1,000,000 per claim
\$1,000,000 aggregate

...

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in ~~this Article 3~~ Article 3 or indicated as Basic Services or Designated Additional Services in Exhibit B – Table of Services are Additional Services.

...

§ 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 or Owner. With the Owner's approval, the Architect shall adjust the schedule, if ~~necessary~~, necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 Release and Indemnification for Owner Directed Revisions

The Architect shall not be responsible for an ~~Owner's directive~~ Owner's, Contractor's or Vendor's directive, revision or substitution made without the Architect's ~~approval~~ approval, knowledge, or consent. In the event that the Owner chooses to accept, and directs the Architect to make revisions to the Construction Documents to include revisions, value engineering, value reduction, or material substitution proposals made by the Owner, Owner's Contractors, or Owner's vendors, Owner's consultants, or others, and the Architect does not recommend acceptance of such proposed revisions, the Owner shall release, and to the extent authorized by law indemnify, and defend the Architect, and its consultants, called indemnitees, from and against all damages, losses, liabilities, costs, and Attorney's fees called damages are caused by the sole or comparative negligence, strict liability, or other fault of any indemnitee.

Where the Owner causes the Architect to provide consultation to implement such directives, revisions, or substitutions, the Architect shall be compensated as an Additional Service.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental ~~authorities~~ authorities, including the Owner required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.5.1 The Architect shall use reasonable professional effort and judgment in interpreting and advising the Owner as to the necessary requirements for the Project to comply with the Americans with Disabilities Act (ADA). The Architect shall rely on the local building department for interpretations of the ADA at the time service is rendered.

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§ 3.2.2 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. The Architect shall not be required to prepare a Program of Requirements, extensive pre design investigations, studies, or planning options without compensation for a Contingent Additional Service in accordance with Article 11.3.

...

§ 3.2.5.1 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. The Owner may obtain other environmentally responsible design services under Article 4. Sustainability Goals for the Project are as set forth in Contract Exhibit B.3 – Sustainability Services.

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

...

§ 3.3.3 The Architect shall submit the Design Development ~~Documents~~ documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

...

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the 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 customary detail the quality levels of materials and 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 3.6.4.

§ 3.4.1.1 This Agreement assumes the preparation of bid package(s) Exhibit B – Table of Services. The preparation of additional bid packages shall be considered a Contingent Additional Service, and the Architect's compensation shall be adjusted per Clause 11.3. The Project Schedule shall also be concomitantly adjusted.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the ~~Project~~ Project, including the Owner.

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§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project as follows and as indicated in Exhibit B.1 by

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The term Contractor, shall mean General Contractor or Construction Manager, in the clauses set forth below. The Architect shall provide construction phase services solely for the Contractor's Work included in the Architect's Instruments of Service.

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth ~~below~~ below, as indicated in Exhibit B.1 – Bidding and Construction Phase Services and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

...

§ 3.6.2.1 The Architect shall visit the site at intervals ~~appropriate to the stage of construction, or as otherwise required in Section 4.3.3,~~ indicated in Exhibit B.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when ~~fully~~ completed, will be in accordance with the Contract ~~Documents. However, 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.

PAGE 8

Paragraphs intentionally deleted.

~~§ 3.6.3.1~~ 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 3.6.2 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.

~~§ 3.6.3.2~~ The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and 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.

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

...

§ 3.6.4.3 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~~ 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.

...

§ 3.6.6.1 The Architect shall conduct ~~inspections reviews~~ **and System Testing, Refer to Exhibit B.7,** 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~~ review indicating the Work complies to the best of the Architect's information and knowledge and belief with the requirements of the Contract Documents.

§ 3.6.6.2 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. **If the Owner opts to accept Contractor's or Vendor's Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Architect shall not be liable for the Owner's decision. Where the Owner's acceptance of nonconforming work causes the Architect to provide additional services, the Architect shall be compensated for said services.**

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

...

§ 4.1 Additional Services listed below are not included in Basic Services but may be **Designated Additional Services** listed in Exhibit B – Table of Services as included are required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, **Designated Additional Services indicated**, and the Owner shall compensate the Architect as provided in Section 11.2.

(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.)

Refer to Exhibit B - Table of Services

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		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™ 2007)		
§ 4.1.6 Building information modeling		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™ 2007)		
§ 4.1.10 Value Analysis (B204™ 2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site project representation		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record drawings		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™ 2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™ 2007)		
§ 4.1.22 Commissioning (B211™ 2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™ 2007)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™ 2007)		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™ 2007)		

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

...

§ 4.3 **Contingent** 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 **Contingent** Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

§ 4.3.1 Upon recognizing the need to perform the following **Contingent** 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 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~~ Owner's, schedule or budget for Cost of the Work, or procurement or delivery method;

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- .7 ~~Preparation for, and attendance at, a public presentation, meeting or hearing;~~ Intentionally omitted;

...

- .9 ~~Evaluation of the qualifications of bidders or persons providing proposals;~~ Intentionally omitted;

...

- .11 Assistance to the Initial Decision Maker, if other than the Architect.

- .12 As a Basic Service, Architect shall define not more than six (6) alternates whose estimated total shall not exceed two and one-half percent (2-1/2%) of the Base Bid Construction Cost. These alternates shall be simple to define and not require additional documentation. Any additional design or documentation work related to the preparation of alternates, or work related to the identification of more than six (6) alternates as required by the Owner, shall be considered a Contingent Additional Service;

- .13 The design and documentation of future phases, not identified as part of the scope of the work under this contract;

.14 Services specifically excluded from the Scope of Basic Services under this Agreement include, but are not limited to, the following:

- .1 Preparation and appearances before Adjudication Boards for building department code variances.

- .2 Neighborhood Group presentations.

- .3 Finish Material Presentation Boards.

- .4 Three-dimensional hand or computer generated models, animations, or renderings.

- .5 Preparation of special presentations to agencies, including appearances before governmental agencies, including Municipal Planning Commissions, Zoning Boards, Historic District Commissions, and Architectural Review Boards, having jurisdiction over the Project, in excess of one (1) meeting.

- .15 Required consultation, design or documentation by the Architect or the Architect's consultants based on the presence of existing physical project conditions that could not reasonably be known or discovered prior to construction;

- .16 Changes in the project construction budget that result in additional work effort by the Architect caused by forces outside the control of the Owner or the Architect. Should the cost of any material escalate beyond that which would normally be predicted or budgeted, resulting in the project being over the construction budget, and because of this overage, the project is required to be reduced in cost thereby modifying program, material and/or details that result in additional work effort by the Architect to document the change.;

- .17 Meetings with the Owner during the Design and Procurement phases, in excess of those identified in Exhibit A.6 preliminary project schedule.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall ~~may~~ provide the following **Contingent** Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services; and the Architect shall have no further obligation to perform the services:

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- .6 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 (synonymous with Beneficial Occupancy or Use) or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.
- .7 Should authorization to proceed with Bidding/Negotiation or Construction Phase Services not occur within sixty (60) days or other delay as mutually agreed to by the parties, of the completion of Construction Documents, Architect shall be entitled to demobilization and remobilization fees as indicated in the Contract Exhibit C.2. Should authorization to proceed with Bidding/Negotiation or Contract Administration not occur within twelve (12) months of the completion of Construction Documents, professional service fees for these phases may be renegotiated due to escalation or market changes.

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

- .1 ~~() reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor~~ The Architect's Basic Services for review of the Contractor's submittals shall be limited to an initial submittal and one (1) resubmittal. Services by the Architect for review of additional resubmittals shall be compensated as an Additional Service or Change in Services. It will be the responsibility of all Contractors and subcontractors to provide complete, thorough, and accurate Shop Drawings and Submittals. The Architect will not be held responsible for construction delays resulting from submittals that must be summarily returned to Contractors or subcontractors as rejected because of significantly incomplete or inaccurate information.
- .2 twenty eight (28) visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within sixty (60) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

§ 5.1 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. requirements, upon which the Architect shall be entitled to rely for accuracy and completeness pursuant to clause 3.1.2. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.1.1 The Owner shall obtain and maintain property insurance for the building or facility. The Owner shall evidence the insurance to the Architect, and name the Architect as a loss payee on the general liability policy in the event a lien is placed on the property as a result of dispute over the Architect's compensation.

§ 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~~-quality, and a corresponding change to the Architect's compensation.

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§ 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.

§ 5.5 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.

...

§ 5.13 The Owner shall provide in a timely manner, information regarding the existing facility, including destructive testing and investigation of concealed conditions, upon which the Architect may rely for accuracy and completeness.

- .1 In the event documentation or information furnished by the Owner is inaccurate or incomplete, any resulting damages, losses and expenses, including the cost of the Architect's Change in Services or Additional Services, shall be borne by the Owner.
- .2 If the Owner does not provide documentation or information beyond that which is apparent by non-intrusive observations of the existing facility and the Owner does not perform destructive testing or investigate concealed or unknown conditions, the Owner shall assume sole responsibility, including the cost of Additional Services of the Architect, if any, for all unknown or concealed conditions that are encountered during construction that require changes in the design or construction of the Project.

§ 5.14 The Owner shall arrange and pay for all inspections and testing required by but not limited to the following:

- .1 destructive or investigative testing or inspections of existing concealed conditions;
- .2 testing or inspections required by authorities having jurisdiction;
- .3 quality assurance and quality control testing required during the Contract Administration Phase of the Project;
- .4 testing and inspections are not included in the Architect's scope of services.

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

§ 5.16 Where the Architect considers it necessary to protect the safety, health and welfare of its agents or employees, or of any other persons or entities performing services, the Architect or the Owner shall engage the services of other consultants, contractors or vendors as set forth in Exhibit B.5 – Facility Safety Services.

§ 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, approved change orders, 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.

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§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to 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. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an ~~Additional Service under Article 4.~~ Designated Additional Service under Article 4.

§ 6.3.1 Evaluations of the Owner's budget for the Project, the preliminary Opinion of the Cost of the Work and updated Opinions of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's or subcontractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. The Opinions of Probable Cost of the Work are made on the basis of experience, qualifications, and best judgment of a professional construction consultant familiar with the construction industry. Accordingly, the Architect cannot and does not warrant or represent that proposals, bids negotiated prices, or actual construction costs will not vary from the Owner's budget for the Project or from any Opinion of the Cost of the Work or evaluation prepared or agreed to by the Architect. The Architect shall compile Opinions of the Cost of the Work based on the design progress, by utilizing historical data, material quotations, discussions with trade professionals, and experience with similar projects. Bids will not be solicited for estimating purposes; therefore, competitive bidding or lack thereof may affect the actual costs. The Owner shall acknowledge the following assumptions and cautions:

- .1 The Opinions of the Cost of the Work will assume a competitive bidding process for the entire scope of work, as defined by the plans and specifications. Competitive bidding is defined as receiving responsive bids from a minimum of 5 (five) general contractors who typically and routinely engage in building the project type, and the general contractors will have received responsive bids for all trades work from four (4) or five (5) subcontractors for each trade item who typically and routinely engage in construction of the portion of the work applicable to their trade.**
- .2 If less than the number of bids indicated in 2.1.7.2.1 are received, the bids may deviate from the Opinion of Probable Cost of the Work as follows: 1 bid +20% to +50%, 2 or 3 bids +10% to +30%, 4 or 5 bids +0% to +5%, 6 or more bids +0% to -10%.**
- .3 Due to unpredictable conditions in the construction and other industries causing unusual fluctuations, such as the influence of commodity trading markets, regional supply and demand, regional inflation, or natural disasters; costs and availability of products and labor may fluctuate.**

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90-60 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market. Should the Owner elect not to adjust the budget due to escalation, but rather elect to reduce the scope of the project to maintain the original budget, the Architect shall be equitably compensated as Contingent Additional Service, in accordance with this Agreement for all services performed to revise the scope and the documents, whether or not construction is commenced.

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§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, as a compensated Contingent Additional Service 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. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

...

§ 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. 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. Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service, and upon payment of all funds owed to the

Architect at this Project's completion, shall be the property of the Owner for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed to have prepared the Instruments of Service as works for hire, and the Owner shall have all common law, statutory and other reserved rights, including copyrights.

~~§ 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. No license or right shall be deemed granted or implied under this Agreement, except that the Owner grants the Architect a nonexclusive license to reproduce the drawings, specifications, and other documents for purposes of the Architect and the Architect's consultants to perform services for the Project, and for business development. The Architect shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Owner. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Owner. Any use of the Instruments of Service for future additions or alterations to this Project or for other projects shall be at the Owner's sole risk and without liability to 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, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the 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. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by execution of a separate written Data Transfer Agreement, set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.~~

~~§ 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. All Project-related publicity that the Owner or its consultants, agents, and contractors issue or cause to be issued before or after final completion of the Project shall identify the Architect.~~

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§ 8.2 MEDIATION MEANS OF RESOLUTION

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

~~§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American~~

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

Any matters referred to legal or equitable proceedings shall be decided by a court of competent jurisdiction in District Court in Mesa County, Colorado.

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

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

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

— Arbitration pursuant to Section 8.3 of this Agreement

— Litigation in a court of competent jurisdiction

— Other (Specify)

Risk Allocation. In recognition of the relative risks and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent not prohibited by law, to limit the liability of the Architect and the Architect's consultants to the Owner and to all construction contractors and subcontractors on the Project for any and all claims, losses, costs, awards, damages of any nature whatsoever or claims or expenses from any cause or causes, including attorney's fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect and the Architect's consultants to all of those entities named above shall not exceed the lesser of (a) the Architect's total fee for services rendered on this Project or (b) the amount of insurance proceeds available under the Architect's professional liability policy that is available to respond to the claim. Such claims and causes of action include, but are not limited to, gross negligence, professional errors or omissions, strict liability, or breach of contract or warranty. Additional limits of liability may be made a part of this Agreement as an additional cost to the Owner if required.

§ 8.2.5 Owner agrees with Architect to defend, indemnify and hold harmless Architect from any and all costs related to Architect's employees having to prepare for or participate in any subpoena, deposition, mediation, arbitration or trial between Owner's Contractor and any of that contractor or subcontractors or other person or entity related to the project (collectively "subcontractor") or any aspect of the project (collectively "dispute"). Owner shall reimburse Architect for employees time spent in preparation for, travel to and attendance at such deposition, mediation, arbitration, trial and/or in responding to a subpoena at that employees standard hourly rate and within 30 days of submission of Architect's invoice for same. Owner shall prepay Architect a flat fee of \$750 for making its files available to Contractor or Contractor's subcontractor(s). Owner shall reimburse Architect for its legal fees (if any) involved in connection with any such dispute within 30 days of submission of Architect's invoice for same. The Owner shall cause the contractor, through the owner-contractor agreement to have (similar) provisions.

§ 8.3 ARBITRATION/MEDIATION

In accordance with Section 8.2, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration. The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration. Mediation Procedures **currently** in effect. A request for mediation shall be made in writing, delivered to the other party to this the Agreement, and filed with the person or entity administering the arbitration. the mediation. **If mutually agreed by both parties, 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 or other equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.**

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

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

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If the parties do not resolve a dispute through mediation pursuant to this Section 8.3, the method of binding dispute resolution shall be the following:

[X] Litigation in a court of competent jurisdiction

§ 8.3.4 CONSOLIDATION OR JOINDER

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

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

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

§ 8.4 Any agreement as a result of responding to this Contract shall be deemed to have been made in, and shall be construed and interpreted in accordance with, the laws of the City, Mesa County, Colorado.

§ 8.5 Intentionally omitted.

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§ 9.1.1 This Agreement shall remain in effect until any of the following occurs:

.1 Agreement expires;

.2 completion of services;

.3 acceptance of services or;

.4 for convenience terminated by either party with a written Notice of Cancellation.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such ~~suspension~~-suspension, and de-mobilization costs indicated in Exhibit C.2. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's ~~services~~-services including re-mobilization costs indicated in Exhibit C.2. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

...

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. Upon termination, the Owner waives all claims and damages against the Architect and the Architect's consultants.

...

§ 10.1 This Agreement shall be governed by the law of the ~~place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8-3.State where the project is located.

...

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

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

§ 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. **Determination and treatment of hazardous materials, if any, is the responsibility of the Owner. The Owner shall secure all approvals and permits required by the authorities having jurisdiction for the project scope, with the assistance of the Architect.**

...

§ 10.8 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, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. (4) the extent such information has become known to the public through no fault of the receiving party, (5) the extent such information is reasonably necessary for a party to defend itself in any dispute, or (6) to the extent the Architect and/or its consultants must disclose such information as required by law or to comply with their applicable professional codes of ethics or standards of conduct.

§ 10.9 Public Funds/Non-appropriation: Funds for payment have been provided through the City of Grand Junction budget approved by the City Council for the stated fiscal year only. State of Colorado statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the stated City of Grand Junction fiscal year shall be subject to budget approval. Any contract will be subject to and must contain a governmental non-appropriation of funds clause.

...

§ 11.1 COMPENSATION FOR BASIC SERVICES

...

The Architect shall be compensated in accordance with Exhibit C- Project Fee Summary. Reimbursable Expenses as described in clause 11.8 are in addition to the fees.

...

§ 11.2 For Additional Services designated in Section 4.1, **COMPENSATION FOR DESIGNATED ADDITIONAL SERVICES For Designated Additional Services as shown in Section 4.1 and Exhibit B – Table of Services,** the Owner shall compensate the Architect as follows:

...

Refer to Exhibit C – Project Fee Summary.

...

§ 11.3 COMPENSATION FOR CONTINGENT ADDITIONAL SERVICES

For **Contingent** 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:

...

Compensation shall be equitably negotiated in accordance with the Westlake Reed Leskosky Hourly Rate Schedule, in effect at the time the services are performed, Refer to Exhibit C.1.

§ 11.4 Compensation for **Contingent** Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent (—%), **one point zero (1.0)**, or as otherwise stated below:

...

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

Schematic Design Phase	percent (%)
Design Development Phase	percent (%)
Construction Documents Phase	percent (%)
Bidding or Negotiation Phase	percent (%)
Construction Phase	percent (%)
<hr/>		
Total Basic Compensation	one hundred percent (100 %)

Intentionally omitted.

...

Refer to Exhibit C.1 – Westlake Reed Leskosky Hourly Rate Schedule.

...

Employee or Category	Rate
-----------------------------	-------------

...

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

- .1 — Transportation and authorized out-of-town travel and subsistence;
- .2 — Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 — Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 — Printing, reproductions, plots, standard form documents;
- .5 — Postage, handling and delivery;
- .6 — Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 — Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 — Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 — All taxes levied on professional services and on reimbursable expenses;
- .10 — Site office expenses; and
- .11 — Other similar Project related expenditures, **estimated** as follows:

<u>REIMBURSABLE EXPENSE CATEGORY</u>	<u>ESTIMATED AMOUNT</u>
<u>Transportation</u> <ul style="list-style-type: none"> • Authorized out-of-town travel, lodging, and subsistence; • All mileage, parking, and tolls related to the project regardless of proximity to the Architect's place of business; 	

<p><u>Communications</u></p> <ul style="list-style-type: none"> • Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; • Printing, reproductions, plots, standard form documents. The costs of printing and distributing the documents for bidding and permit submissions shall be borne directly by the Owner, and such costs are excluded from the Architect's Reimbursable Expenses. The Owner shall open an account with a local printing company for said printing and distribution; • Postage, handling and delivery; 	
<p><u>Regulatory Fees</u></p> <ul style="list-style-type: none"> • Fees paid for securing approval of authorities having jurisdiction over the Project; 	
<p><u>Design Models, Renderings, and Animations</u> <u>All expenses related to labor, materials and equipment. Design Models Renderings, and Animations are defined as materials used during the normal progression of the design process for presentations to the Owner, regulatory agencies, and other stakeholders to study and communicate the design intent.</u></p>	
<p><u>Promotional Models, Renderings, and Animations</u></p> <ul style="list-style-type: none"> • All expenses related to labor, materials and equipment. Promotional Models Renderings, and Animations are defined as materials developed outside the normal progression of the design process for the Owner's use in fundraising and other public relations activities. 	<p><i>As approved by Owner in advance on a case-by-case basis</i></p>
<p><u>Miscellaneous</u></p> <ul style="list-style-type: none"> • Mock ups; • Professional photography; • Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner; • Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants; • Site office expenses; • Other similar Project-related expenditures; 	<p><i>As approved by Owner in advance on a case-by-case basis</i></p>
<p><u>Taxes</u></p> <ul style="list-style-type: none"> • All taxes levied on professional services and on reimbursable expenses. 	<p><i>As applicable to taxable reimbursable expenses</i></p>
<p><u>Total, Estimated Reimbursable Expenses</u></p>	

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (—%) of **one point one (1.1) times** the expenses incurred.

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

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

One and one-half percent (1.50%) per month.

For the Construction Administration phase, the following payment schedule will apply:

<u>Months of Construction (per Exhibit A.6)</u>	<u>% of CA Fee Invoiced</u>
May 2013	10%
June 2013	15%
July 2013	15%
August 2013	10%
September 2013	9%
October 2013	9%
November 2013	9%
December 2013	8%
January 2014	5%
March 2014	5%
April 2014	5%
Total 11 months	100%

Where the Owner changes the scope or duration of the project, the above payment schedule may be adjusted as mutually agreed to by the parties.

§ 11.10.2.1 The Owner and the Architect agree that the Architect will not issue documents for bidding or permit unless all payments due to the Architect up to that time have been paid in full to the satisfaction of the Architect.

~~%~~ **§ 11.10.2.2 The Owner acknowledges that with an accelerated Project schedule or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.**

§ 11.10.3 The Owner and the Architect acknowledge that the Architect's standard of care is one of reasonableness and not of perfection and may contain a normative level of errors or omissions, as set forth in clauses 2.2 and 2.2.1. The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found adjudged liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.3.1 The Owner and the Architect agree that in no case shall the Architect be required to issue project closeout documents such as Record Drawings, Certificate of Substantial or Final Completion, etc. unless payments to the Architect on account of services rendered and Reimbursable Expenses incurred have been paid in full, to the satisfaction of the Architect.

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§ 12.1 Written approval shall be received from the Owner at the completion of Documents at each phase: Schematic Design, Design Development, and Construction Documents. Should authorization to proceed with the subsequent phase not occur per the accepted time schedule indicated in Exhibit A.6 – Preliminary Project Schedule. Architect shall be entitled to demobilization and remobilization fees as noted in Exhibit C.2.

§ 12.2 Documentation related to this Project shall be retained in the Architect's office for a period of 17 years from the date of Substantial Completion. Document retention beyond 17 years will be at the Architect's sole discretion.

12.2 INDEMNIFICATION

Subject to 8.2.4 Risk Allocation

Architect shall indemnify and save harmless the City of Grand Junction, State of Colorado, and all

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User Notes:

(1517111673)

its officers, employees, insurers, and self-insurance pool, from and against all liability, suits, actions, or other claims of any character, name, description, brought for or on account of any injuries or damages received or sustained by any person, persons, or property on account of negligent acts of the Architect, or of any Architect's agent, employee, subcontractor or supplier in the execution of, or performance under, the contract. Architect shall pay any judgment with cost which may be obtained against the Owner growing out of such injury or damages.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect harmless from damage or liability to the extent caused by the Owner's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Owner is legally liable, and arising from the project that is the subject of this Agreement.

Neither Party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.

PAGE 22

- .2 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following: **Exhibit 1** - Digital Data Transfer Agreement

...

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit A – Initial Information AIA Document B201-2007

Exhibit A.1 – Owner's Program

Exhibit A.2 – Not used

Exhibit A.3 – Not used

Exhibit A.4 – Conceptual Drawings

Exhibit A.5 – Owner's Preliminary Budget

Exhibit A.6 – Preliminary Project Schedule

Exhibit A.7 – AIA A201-2007 (Included by Reference)

Exhibit A.8 – WRL Model Supplementary Conditions to the Contract for Construction

Exhibit B – Table of Services

Exhibit B.1 – Construction Phase Services

Exhibit B.2 – Not Used

Exhibit B.3 – Sustainability Services

Exhibit B.4 – Not Used

Exhibit B.5 – Facility Safety Services

Exhibit B.6 – Not Used

Exhibit B.7 – System Validation Testing

Exhibit B.8 – Not Used

Exhibit B.9 – Not Used

Exhibit C – Project Fee Summary

Exhibit C.1 – Westlake Reed Leskosky Billable Rates

Exhibit C.2 – Delay Penalty Clause

Exhibit D – Equal Opportunity Employer

Exhibit E – Certificate of Insurance

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Richard Sourbrine, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:41:52 on 07/05/2012 under Order No. 8789865058_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



RICHARD SOURBRINE

(Signed)

ASSOCIATE PRINCIPLE / PROJ. DIRECTOR

(Title)

7.5.12

(Dated)



Document B201™ – 2007 Exhibit A

Initial Information

for the following PROJECT:

(Name and location or address)

Avalon Theatre Addition and Renovation

THE OWNER:

(Name and address)

City of Grand Junction Colorado
Public Works and Planning
250 North Fifth Street
Grand Junction, Colorado 81501

THE ARCHITECT:

(Name and address)

Westlake Reed Leskosky
One East Camelback, Suite 690
Phoenix, AZ 85012

This Agreement is based on the following information.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

ARTICLE A.1 PROJECT INFORMATION

§ A.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

Refer to Exhibit A.4 – Conceptual Report

§ A.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Refer to Exhibit A.4 – Conceptual Report

§ A.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

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

Refer to Exhibit A.5 – Owner's Preliminary Budget.

§ A.1.4 The Owner's other anticipated scheduling information, if any, not provided in Section 1.2:

Refer to Exhibit A.6 – Preliminary Project Schedule.

ADDITIONS AND DELETIONS:

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

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

Init.

§ A.1.5 The Owner intends the following procurement or delivery method for the Project:

General Contractor, using AIA A101 Standard Form of Agreement Between Owner and Contractor, where the basis of payment is a Stipulated Sum, not-to-exceed.

The General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, as amended by mutual agreement.

§ A.1.6 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

ARTICLE A.2 PROJECT TEAM

§ A.2.1 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address and other information.)

Trent Prall, Engineering Manager

§ A.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address and other information.)

Harry Weiss, Director, Downtown Development Authority
Debbie Kovalik, Executive Director, Visitor & Convention Bureau

§ A.2.3 The Owner will retain the following consultants and contractors:

(List discipline and, if known, identify them by name and address.)

1. Surveyor –
2. Environmental Consultant –

The Owner shall contract separately for the design services listed above. Unless otherwise indicated, those services shall be performed by licensed professional consultants, who where applicable shall affix their seals on the appropriate documents prepared by them. The contracts between the Owner and the Owner's consultants shall require the consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflict. Architect shall have no responsibility for the components of the Project designed by the Owner's consultants. Review by the Architect of the consultants' drawings and other instruments of service is solely for consistency with the Architect's design concept of the Project. The Architect shall be entitled to rely upon the technical sufficiency and timely delivery of documents and services furnished by the Owner's consultants, as well as on the computations performed by those consultants in connection with such documents and services, and shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The Owner shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of the services performed by the other consultants of the Owner.

§ A.2.4 The Architect identifies the following representative in accordance with Section 2.3:

(List name, address and other information.)

Paul E. Westlake Jr., FAIA, Managing Principal

§ A.2.5 The Architect will retain the consultants identified in Sections A.2.5.1 and A.2.5.2.

(List discipline and, if known, identify them by name and address.)

§ A.2.5.1 Consultants retained under Basic Services:

.1 Structural Engineer

Westlake Reed Leskosky

.2 Mechanical Engineer

Westlake Reed Leskosky

.3 Electrical Engineer

Westlake Reed Leskosky

.4 other Specialty Disciplines provided under Basic Services

- a. Cost Estimator – Project Construction Services
- b. Architectural & Electronic Access Control Hardware Consultant – TBD
- c. Civil Engineer – Austin Civil Group
- d. Landscape Architect – Ciavonne, Roberts, & Associates
- e. Preservation – Westlake Reed Leskosky
- f. Sustainability / LEED – Westlake Reed Leskosky
- g. Fire Protection – Westlake Reed Leskosky
- h. Life Safety and Code – Westlake Reed Leskosky
- i. Multi-Media (AV) – Westlake Reed Leskosky
- j. Information Transport (IT) – Westlake Reed Leskosky
- k. Security – Westlake Reed Leskosky
- l. Interior Design – Blythe Interiors
- m. Acoustician – Kirkegaard Associates
- n. Geotechnical Engineer – TBD
- o. Foodservice/Concessions Consultant – TBD
- p. Associate Architect – Chamberlin Architects
- q. Associate Structural Engineer – Lindauer Dunn
- r. Associate MEP Engineer – Bighorn Consulting

(Paragraphs deleted)

§ A.2.6 Other Initial Information on which the Agreement is based:

(Provide other Initial Information.)

Additions and Deletions Report for **AIA[®] Document B201[™] – 2007 Exhibit A**

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

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PAGE 1

Avalon Theatre Addition and Renovation

...

~~(Name, legal status (Name and address))~~

City of Grand Junction Colorado
Public Works and Planning
250 North Fifth Street
Grand Junction, Colorado 81501

~~(Name, legal status (Name and address))~~

Westlake Reed Leskosky
One East Camelback, Suite 690
Phoenix, AZ 85012

...

Refer to Exhibit A.4 – Conceptual Report

...

Refer to Exhibit A.4 – Conceptual Report

§ A.1.3 The Owner's budget for the Cost of the Work, as defined in Section ~~5.1-6.1~~:

...

Refer to Exhibit A.5 – Owner's Preliminary Budget.

...

Refer to Exhibit A.6 – Preliminary Project Schedule.

PAGE 2

~~(Identify method such as competitive bid, negotiated contract, or construction management.)~~

General Contractor, using AIA A101 Standard Form of Agreement Between Owner and Contractor, where the basis of payment is a Stipulated Sum, not-to-exceed.

The General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current

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as of the date of this Agreement, as amended by mutual agreement.

...

§ A.2.1 The Owner identifies the following representative in accordance with AIA Document B102™ 2007, Standard Form of Agreement Between Owner and Architect, Section 2.2:Section 5.3:

...

Trent Prall, Engineering Manager

...

Harry Weiss, Director, Downtown Development Authority
Debbie Kovalik, Executive Director, Visitor & Convention Bureau

...

1. Surveyor –
2. Environmental Consultant –

The Owner shall contract separately for the design services listed above. Unless otherwise indicated, those services shall be performed by licensed professional consultants, who where applicable shall affix their seals on the appropriate documents prepared by them. The contracts between the Owner and the Owner’s consultants shall require the consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflict. Architect shall have no responsibility for the components of the Project designed by the Owner’s consultants. Review by the Architect of the consultants’ drawings and other instruments of service is solely for consistency with the Architect’s design concept of the Project. The Architect shall be entitled to rely upon the technical sufficiency and timely delivery of documents and services furnished by the Owner’s consultants, as well as on the computations performed by those consultants in connection with such documents and services, and shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The Owner shall indemnify and hold harmless the Architect, Architect’s consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys’ fees, arising out of the services performed by the other consultants of the Owner.

§ A.2.4 The Architect identifies the following representative in accordance with AIA Document B102™ 2007, Section 1.3:Section 2.3:

...

Paul E. Westlake Jr., FAIA, Managing Principal

...

(List discipline and, if known, identify them by name, legal status, address and other information.)name and address.)

PAGE 3

Westlake Reed Leskosky

.2 Mechanical Engineer

Westlake Reed Leskosky

.2 Mechanical .3 Electrical Engineer

Westlake Reed Leskosky

.4 other Specialty Disciplines provided under Basic Services

- a. Cost Estimator – Project Construction Services
- b. Architectural & Electronic Access Control Hardware Consultant – TBD
- ~~c. Electrical Engineer~~
- c. Civil Engineer – Austin Civil Group
- d. Landscape Architect – Ciavonne, Roberts, & Associates
- e. Preservation – Westlake Reed Leskosky
- f. Sustainability / LEED – Westlake Reed Leskosky
- g. Fire Protection – Westlake Reed Leskosky
- h. Life Safety and Code – Westlake Reed Leskosky
- i. Multi-Media (AV) – Westlake Reed Leskosky
- j. Information Transport (IT) – Westlake Reed Leskosky
- k. Security – Westlake Reed Leskosky
- l. Interior Design – Blythe Interiors
- m. Acoustician – Kirkegaard Associates
- n. Geotechnical Engineer – TBD
- o. Foodservice/Concessions Consultant – TBD
- p. Associate Architect – Chamberlin Architects
- q. Associate Structural Engineer – Lindauer Dunn
- r. Associate MEP Engineer – Bighorn Consulting

~~§ A.2.5.2 Consultants retained under Additional Services:~~

Westlake Reed Leskosky may furnish or be furnished electronic Data, data which contains machine readable information.

Because of the possibility that Data may be altered, where inadvertently or otherwise, Westlake Reed Leskosky reserves the right to retain hard copy originals of the electronic documentation delivered in machine-readable form. These hard copy originals shall be referred to and shall govern in the event of any inconsistency between the two formats.

Automated conversion (translation) of information and data from the system and format used by Westlake Reed Leskosky to an alternate system or format cannot be accomplished without the introduction of anomalies and/or errors. The Owner agrees to assume all risks associated therewith, and to the fullest extent permitted by law to hold harmless and indemnify Westlake Reed Leskosky from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Owner recognizes that changes or modifications to Westlake Reed Leskosky's instruments of professional service introduced by anyone other than Westlake Reed Leskosky may result in adverse consequences which Westlake Reed Leskosky can neither predict nor control. Therefore, and in consideration of Westlake Reed Leskosky's agreement to deliver its instruments of professional service in machine-readable form, the Owner agrees to the fullest extent permitted by law to defend, hold harmless and indemnify Westlake Reed Leskosky from and against all claims, liabilities, losses, damages, and costs including but not limited to attorney's fees arising out of or in any way connected with the modification, misinterpretation, misuse or reuse by others of the machine readable information and data provided by Westlake Reed Leskosky under this agreement. The forgoing indemnification applies, without limitation, to any use of the project documentation on other projects, for additions to this project or for completion of this project by others, excepting only such use as may be authorized, in writing, by Westlake Reed Leskosky.

BASE SCOPE

The general scope of design of the proposed AVALON THEATRE ADDITION AND RENOVATION which includes a gross area of 11,950 square foot addition that will provide for new movie theater, concession area, bathrooms, ADA compliance amenities, an unfinished basement, and renovation of approximately 3,300 square feet of lobby in the existing building all located in the vicinity of 7th Street and Main Street in Grand Junction, Colorado. This is a highly visible, critical urban corner anchoring the east end of Main Street. The vision of this work is to integrate into the existing 1923 Avalon Theatre building and expand operations into a full service performing arts building while establishing this street corner as a key focal point.

The Program is based on the Westlake Reed Leskosky (WRL) 2010 Master Plan study that provided the vision for the proposed work. The ultimate goal is to complete all three phases of the WRL study.

Shown as Phase II in the 2010 Master Plan Study, the Avalon Theatre Addition is currently envisioned to expand and enhance the public functions of the theatre. This phase would expand the public lobbies, concessions and restrooms into an addition that completes the northeast corner of the property. This phase also provides full ADA accessibility throughout the theatre by adding fully accessible restrooms and a new public elevator to access all floors. This phase also includes building the fully excavated basement under the addition and a multi-purpose space on the first floor, but to reduce costs of this phase, these spaces would not be fully completed. The City intends to maintain this contract as funding emerges to complete not only Phase II of the WRL Master Plan Study, but also Phase I and Phase III. Therefore all work completed under this contract will accommodate and integrate into completion of those other phases.

ALTERNATE (ADD) SCOPE

In addition to the scope above, the items below will be studies in Schematic Design to determine if they can be included in the project:

- Completion of the Multipurpose Room / Theatre space as identified in Phase III of the WRL Master Plan
- Upgrade of electrical system to reflect Phase I, II and III of the Master Plan
- Relocation of main theatre HVAC system
- Extension of city technology infrastructure into the structure
- Seating upgrades and expansion of seat count to 1100 seats in Main Theatre
- Event Space at the roof of Phase II Addition

Conceptual Drawings from the Master Plan dated **June 14, 2010 Revised** are included by this reference.

July 5, 2012

Construction Budget: The Owner's program scope per Exhibit A.1 is estimated as follows:

Base plus Alternate Scope	Estimated at \$11,000,000	A/E services authorized to proceed to final Schematic Design and Design Development
Base Scope	TBD - \$6,500,000 committed to date	Construction Documents to be determined after completion of DD and evaluation of fundraising

As funds emerge through fund raising efforts scope may be added as noted in Exhibit A.1

All dates below represent start of task:

March 12, 2012	Schematic Design 'SD' (5 weeks)
April 2/3, 2012	Interim Schematic Design Review
April 16, 2012	Cost Estimate and Reconciliation (3 Weeks)
May 2, 2012	SD scope/cost work session with project management team
May 3, 2012	SD review with Avalon Foundation, Symphony, and other funders
June 29, 2012	Determination of Scope to proceed for Documentation
July 2, 2012	Begin Design Development 'DD'
July 30/31	Interim Design Development Review
August 23/24	Final Design Development Review
September 7, 2012	Issue 100% DD Package to Cost Estimator and Owner
September 18, 2012	Complete Cost Estimate and Reconciliation
September 19, 2012	DD scope/cost work session with project management team
September 20, 2012	DD review w/ Avalon Foundation, Symphony, and other funders
September 28, 2012	Determination of Scope to proceed for Documentation
October 1, 2012	50% Construction Documents begin for determined scope
January 4, 2013	Determination of Scope to proceed for Documentation
January 7, 2012	Full Construction Documents (10 weeks)
March 18, 2013	Issue for Bid and Permit (4 Weeks)
April 15, 2013	Bid Award and Contract (2 Weeks)
April 29, 2013	Start of Construction
Spring 2014	Opening Avalon

AIA Document A201-2007 General Conditions of the Contract for Construction as amended by mutual agreement is incorporated into this Agreement by this reference.

The Westlake Reed Leskosky model *Supplementary Conditions* that modify *AIA Document A201-2007 General Conditions of the Contract for Construction* follow this page.

SUPPLEMENTARY CONDITIONS

The following supplements modify the AIA Document A201-2007, General Conditions of the Contract for Construction, referred to in all Documents as "General Conditions". Where a portion of the General Conditions is not modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

Delete the last sentence beginning with "Unless....." and add:
The Contract Documents also include Instructions to Bidders, Supplementary Instructions to Bidders, Bid Form, Substitution Sheet, and Contract and Attachments, Bid Guarantee and Contract Bond (if required), Proposal Requests and Change Orders.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 Add the following to the Paragraph:

In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

If an item is shown on the Drawings but not specified, the Contractor shall provide the item of the same quality as similar items specified, as determined by the Architect. If an item is specified but not shown on the Drawings, it shall be located as directed by the Architect.

The Drawings are indications of the design intent as well as specific instructions. The "details" included on Drawings show the intent of all similar areas. If questions arise about the construction of an area not specifically detailed, consult with the Architect who will provide further "details" and instructions. Such further documentation, if consistent with the Contract Documents, shall not alter the Contract Sum.

If the Contractor, in the course of construction, finds any conflict, error, or discrepancy on or between the Drawings and Specifications or any of the related Contract Documents, such conflict, error, or discrepancy shall be immediately referred to the Architect, via electronic mail. Architect shall issue an interpretation, in writing, to the Contractor within (10) days after receipt of the written request. No additional compensation will be paid to the Contractor as a result of an interpretation of the Contract Documents.

The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for interpretation that are not prepared in accordance with the Contract Documents or where the requested interpretation 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.

1.2.3 Add the following to the Paragraph:

In addition, the following terms are used throughout the Contract Documents:

- .1 Product: Materials, systems, equipment.
- .2 Provide: Furnish, install and pay all costs.

Add the following Paragraphs:

1.6.2 Contractor's Use of Instruments of Service in Electronic Form.

- .1 The Architect may, upon receipt of an executed CAD Disk Transfer Agreement (included in the

Specifications), furnish to the Contractor versions of Instruments of Service in electronic form. The Contract Documents executed or identified in accordance with subparagraph 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic means.

- .2 The Contractor shall not transfer or reuse Instruments of Service in electronic or machine form without the prior written consent of the Architect.

ARTICLE 2 OWNER

2.1 GENERAL

- 2.1.1 Add the following to the Paragraph:
The Owner is identified as:

Name: City of Grand Junction
Address: 250 North Fifth Street, Grand Junction CO, 81501

Phone: (970) 256-4047
Email: trentonp@ci.grandjct.co.us
Authorized Representative: Trent Prall, Engineering Manager

RETAIN BELOW IF APPLICABLE

- 2.2.5 Delete the Paragraph and substitute the following:
The Contractor will be furnished, free of charge three (3) copies of Drawings and Project Manuals. Additional sets will be furnished at the cost of reproduction, postage and handling.

ARTICLE 3 CONTRACTOR

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- 3.2.2 In the second sentence, delete the word "information" and insert the word "interpretation".

- 3.2.2 Add the following subparagraph:

- .1 Do not scale the Drawings. Follow indicated dimensions. In case of discrepancy in the figures, bring the matter to the attention of the Architect for his interpretation before proceeding with the Work. Failure to follow this procedure shall be at the Contractor's own risk and the Architect's interpretation shall be final.

Add the following Paragraph:

- 3.2.5 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for interpretation that are not prepared in accordance with the Contract Documents or where the requested interpretation is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.3.1 Add the following to the Paragraph:

Contractor shall review means, methods, techniques, sequences and procedures indicated in the Contract Documents either directly or by reference to standards or manufacturer's instructions and advise the Architect (1) if the specified procedure deviates from good construction practice, (2) if following the procedure will affect warranties including the Contractor's general warranty, or (3) of objections the Contractor may have to the procedure, and shall propose alternative procedures the Contractor will warrant.

3.4 LABOR AND MATERIALS

Add the following Paragraph:

- 3.4.2.1 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

3.5 WARRANTY

- 3.5.1 Add the following to the Paragraph:

The Contractor's warranty shall also cover (1) specified proprietary products and (2) specified construction means, methods, techniques, sequences and procedures unless the Contractor makes specific objection to these products or procedures and proposes alternate products or procedures the Contractor will warrant.

3.6 TAXES

Add the following Paragraph:

- 3.6.1 Material and labor purchased for use or consumption in the Work are exempt from the State of **Colorado** sales tax as provided in **the Statutes** and exempt from the State of **Colorado** Use Tax. The Owner shall issue Tax Exemption Certificates to the Contractor.

- 3.7.1 Delete the Paragraph and substitute the following:

The Contractor shall secure and pay for the building, mechanical, electrical and plumbing permits, the health and environmental impact fees due to water and sewer connections, and the zoning regulation fees and permits. The Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution of and completion of the Contract which are legally required when bids are received or negotiations concluded. Includes all fees imposed by and payable to the Owner.

3.9 SUPERINTENDENT

- 3.9.1 Add the following to the Paragraph:

A competent Superintendent is defined as a Superintendent having, or with assistants having, technical registration or the equivalent construction engineering knowledge and experience in all technical disciplines affecting the Work. Assistants are defined as Contractor employees, professionally engaged consultants, or members of subcontracting firms contracted to provide assistance.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Add the following Paragraph:

- 3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional resubmittals. In no case will the Architect's review period on any submittal be less than 10 days after receipt of the submittal from the Contractor.

3.18 INDEMNIFICATION

- 3.18.1 Insert in line four after the word "Work", the following: ".....or from errors, inconsistencies or omissions in the Contract Documents if the Contractor recognized such error, inconsistency or omission and failed to report it to the Architect, provided that....."

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

INCLUDE 4.1 AND 4.1.2 WHERE ARCHITECT'S CA DUTIES ARE REDUCED OR ELIMINATED

4.1 ARCHITECT

Add the following Paragraph:

- 4.1.2 The Architect's duties, responsibilities, and limitations of authority are modified as follows:

Insert here or attach exhibit

4.2 ADMINISTRATION OF THE CONTRACT

Add the following Paragraph:

- 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Add the following Paragraph:

- 4.2.7.1 In no case will the Architect's review period on any submittal be less than 10 days after receipt of the submittal from the Contractor.

- 4.2.14.1 Contractor's requests for interpretation shall be prepared and submitted in accordance with Division 01 General Requirements sections on the form included in the Contract Documents. The Architect will return without action requests for interpretation that do not conform to requirements of the Contract Documents.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

- 5.1.1 Add the following to the end of the Paragraph:
".....or a manufacturer's supplier or installer of materials or equipment."

Add the following Paragraphs:

5.2.5 MANUFACTURERS AND FABRICATORS

- 5.2.5.1 Not later than fourteen (14) days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner through the Architect the names of persons or entities proposed as manufacturers, fabricators or material suppliers for the products, equipment and systems identified in Divisions 01 through 49 of the Specifications, and the name of the installing Subcontractors. The Architect may reply within 14 days to the Contractor in writing stating 1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or 2) that the Architect requires additional time to review. Failure of the Owner or Architect to reply within the 14 days shall constitute notice of no reasonable objection.

- 5.2.5.2 The Contractor shall not contract with a proposed person or entity to which the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

- 5.2.5.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected manufacturer or fabricator was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and a appropriate Change Order shall be issued before commencement of the substitute manufacturer's or fabricator's Work, however, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contract has acted promptly and responsively in submitting names as required.

- 5.2.5.4 The Contractor shall not substitute a person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

ARTICLE 7 CHANGES IN THE WORK

7.2 CHANGE ORDERS

Add the following Paragraphs:

- 7.2.2 The Owner has a budget of **\$0.00** for direct costs of all Change Orders. The Contractor's Bids and Original Contract Amount shall include the Contractor's anticipated Overhead and Profit for all Change Orders. The Contractor's Bid and Original Contract Amount are not to include the **\$0.00** Change Order direct cost budget amount. No Overhead and Profit shall be permitted to be included in changes to the Contract Sum by Change Order. All Change Orders shall therefore be quoted for all direct labor, materials, and incidentals, at Contractor's costs only.
- 7.2.3 If the **\$0.00** budgeted amount for direct costs of Change Orders is exceeded, the combined overhead and profit shall be based on the following schedule:
- .1 For the Contractor, for Work performed by the Contractor's own forces, 7.5 percent of the cost.
 - .2 For the Contractor, for Work performed by the Contractor's Subcontractor, 3 percent of the amount due the Subcontractor.
 - .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, 7.5 percent of cost.
 - .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, 3 percent of the amount due the sub-subcontractor.
 - .5 The combined total of all overhead and profit allowed on Change Orders/Construction Change Directives shall not exceed 10.5 percent of the final bill regardless of the number of Subcontractor tiers.
 - .6 Cost to which overhead and profit is applied shall be determined in accordance with paragraph 7.3.7.
 - .7 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, materials, and subcontracts, which shall also be itemized.

7.3 CONSTRUCTION CHANGE DIRECTIVES

- 7.3.3.3 Delete the Paragraph and substitute the following:
Cost to be determined in a manner agreed upon by the parties; or
- 7.3.7 Delete the period at the end of the second sentence, and add the following to the end of the Paragraph:
,as provided in Sections 7.2.2 and 7.2.3.

ARTICLE 8 TIME

8.2 PROGRESS AND COMPLETION

- 8.2.3 Add the following subparagraphs:
- .1 Owner has the right to direct Contractor to work overtime as the Owner deems necessary. Reimbursement for such work shall be limited to actual premium time cost incurred without markup.
 - .2 Architect has the right to direct Contractor to work overtime, at no additional cost, as the Architect deems necessary should the rate of progress fall behind that in the Schedule of Construction.

ARTICLE 9 PAYMENTS AND COMPLETION

9.2 SCHEDULE OF VALUES

Add the following Paragraph:

- 9.2.2 A Schedule of Values shall be issued with each Application for Payment and shall indicate values for both labor and materials.

9.3 APPLICATION FOR PAYMENT

9.3.1 Add the following:

The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, or other forms as acceptable to the Architect. In addition, each application must include a revised detailed Construction Schedule and an up-to-date Submittal Schedule. Application for payment must be received by the Owner ten (10) business days before payment is due.

Add Paragraph 9.3.1.3 as follows: **EDIT TO SUIT OWNER'S REQUIREMENTS**

- 9.3.1.3 Until Substantial Completion, the Owner shall pay **90** percent of the amount due the Contractor on account of progress payments. Upon Substantial Completion, the retainage shall be reduced to **5** percent of the amount due the Contractor until final payment is made.

9.3.2 Add the following to the end of the Paragraph:

Provide the following information with the Application for Payment:

- .1 A list of materials (which shall be clearly identified) consigned to the Project, giving the place of storage, together with copies of invoices.
- .2 A letter stating that all items have been tagged for delivery to the Project and that they will not be used for any other purpose.
- .3 Evidence of adequate insurance covering the materials in storage.

9.8 SUBSTANTIAL COMPLETION

Add the following Paragraphs:

- 9.8.3.1 The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.
- 9.8.3.2 Where the Contractor causes the Architect to provide construction phase services more than 60 days after the agreed upon date for Substantial Completion; the Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for services.

9.10 FINAL COMPLETION AND FINAL PAYMENT

Add the following Paragraph:

- 9.10.1.1 The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections.

- 9.10.2 (4) Insert after ".....payment": ".....on AIA Form G707, or G707A, latest edition."

Add the following Paragraph:

- 9.10.6 Before payment will be made on an Application for Payment, the Contractor shall provide documents the Owner or the Architect may require to insure compliance with the **Colorado** Mechanic's Lien Laws to

ensure the Owner is protected from mechanic's liens in connection with the Project. The Owner may retain out of sums due to the Contractor a sufficient amount to pay Subcontractors or Sub-subcontractors who have furnished labor or materials and who, by affidavit, statement or certificate delivered to the Owner remain unpaid from previous Applications for Payment. Such amounts will be retained until satisfactory evidence is furnished to the Owner that all of such claims have been fully satisfied.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Add the following subparagraphs:

- .4 Wherever required by law, the Contractor shall shore up, brace, underpin and protect as may be necessary, all foundations and other parts of the existing structures and adjacent and adjoining structures at the site which are in any way or may be affected by the Contractor's operations. Whenever notice is required to be given by the Owner or the Contractor to an adjoining or adjacent landowner or other party before commencement of the Work of this Project, such notice shall be given by the Contractor. The Contractor shall indemnify and save harmless the Owner from damages on account of settlements, or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Owner may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- .5 The Contractor shall exercise precaution at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment and other hazards shall be guarded in accordance with the provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law.

10.2.4 Delete the Paragraph and substitute the following:

Use or storage of explosives or other hazardous materials or equipment or unusual methods for construction are not permitted in any way in the execution of the Contract.

ARTICLE 11 INSURANCE AND BONDS **CAUTION: THE FOLLOWING REPRESENT SAMPLE MODIFICATIONS – THE OWNER MUST ESTABLISH ALL REQUIREMENTS**

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1.1 Delete the semicolon at the end of 11.1.1.1 and add:

, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

11.1.1.2 Delete the semicolon at the end of 11.1.1.2 and add:

Or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by the Contract Documents to provide the insurance required by that section;

11.1.1 Add the following subparagraphs:

- .9 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:
 1. Premises Operations (including X, C and U coverages as applicable).
 2. Independent Contractor's Protective.
 3. Products-Completed Operations.
 4. Personal Injury Liability with Employment Exclusion deleted.

- 5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.
- 6. Personal and Advertising Injury
- 7. Owned, non-owned and hired motor vehicles.
- 8. Excess or Umbrella Liability
- .10 If the Commercial General Liability coverages are written on a claims-made basis, the policy date or Retroactive Date shall predate the Contract. Prior to final payment and in accordance with Subparagraph 9.10.2, the contractor will certify his liability coverage for the period of time he is required to maintain Completed Operations coverage at the conclusion of the job.

11.1.1.2 Delete the semicolon at the end of subparagraph 11.1.1.2 and add:
or persons or entities excluded by statute from the requirements of Clause 11.1.1.1 but required by the Contract Documents to provide the insurance required by that Clause;

Add the following subparagraphs:

11.1.2.1 The limits for Worker's Compensation and Employers' Liability insurance shall meet statutory limits mandated by State and Federal Laws. If (1) limits in excess of those required by statute are to be provided or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

\$500,000	Each Accident
\$500,000	Disease, Policy Limit
\$500,000	Disease, Each Employee

11.1.2.2 The limits for Commercial General Liability insurance including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards shall be as follows:

\$1,000,000	Each Occurrence
\$2,000,000	General Aggregate
\$1,000,000	Personal and Advertising Injury
\$2,000,000	Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in AIA Document A201-1997 under Paragraph 3.18.
- .3 Products and Completed Operations insurance shall be maintained for a period of as least One (1) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier, if such coverage is reasonably available at commercially affordable premiums.

11.1.2.3 Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage:

\$1,000,000	Each Occurrence
-------------	-----------------

11.1.2.4 Umbrella or Excess Liability Coverage:

\$2,000,000	Limit
\$2,000,000	Over Primary insurance
\$1,000,000	Retention for Self-Insured Hazards, Each Occurrence

11.1.2.5 Aircraft Liability (owner and non-owned), with limits proposed by the Contractor for Owner's approval, prior to any use of aircraft.

- 11.1.2.6 Watercraft Liability (owned and non-owned), with limits proposed by the Contractor for Owner's approval, prior to any use of watercraft.
- 11.1.2.7 Name Owner, Architect, Architect's consultants and agents and employees of any of them as Additional Insureds. Liability coverage afforded to Additional Insured shall be primary as respects coverage carried by the Additional Insureds for their own benefit.
- 11.1.3 Add the following to the Paragraph:
If this insurance is written on a Commercial General Liability policy form, the certificates shall be ACORD form 25-S, completed and supplemented in accordance with AIA Document G715, Instruction Sheet and supplemental Attachment for ACORD Certificate of Insurance 25-S. Attach a copy of endorsement including primary coverage for Additional Insiders.

11.3 PROPERTY INSURANCE

- 11.3.1.4 Delete the Paragraph and substitute the following:
The Contractor shall at the Contractor's own expense provide insurance coverage for portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and shall also provide insurance for portions of the Work in transit until such materials are permanently attached to the Work.

Add the following Paragraphs:

- 11.3.1.6 The insurance required by Paragraph 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment, which shall be subject to the provisions of Subparagraph 11.3.7.

11.4 PERFORMANCE BOND AND PAYMENT BOND

Delete the Paragraph and substitute the following:

- 11.4.1 The Contractor shall furnish Bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of the Bonds shall be equal to 100 percent of the Contract Sum.
 - .1 The Contractor shall deliver the required bonds to the Owner prior to the signing date that the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
 - .2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

Add the following Paragraphs:

- 12.2.2.4 Upon request of the Owner, and prior the expiration of one year from the date of Substantial Completion, the Architect will conduct, and the Contractor, without additional compensation, shall attend a meeting with the Owner to review the facility operations and performance.
- 12.2.6 Where the Owner identifies deficiencies subsequent to Final Completion, the following procedures shall be followed:
 - .1 The parties responsible for providing the deficient system shall cooperate on an uncompensated basis with the Owner and the Architect to investigate and correct the deficiency.

- .2 Where the deficient Work is determined to be caused by the Contractor or its subcontractors, suppliers, etc., the Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for the Architect's efforts used to determine the cause of the deficiency.
- .3 Where the deficient Work is determined not to be caused by the Contractor or its subcontractors, suppliers, etc., the Contractor may be compensated as equitably negotiated for efforts used to determine the cause of the deficiency.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

Delete the sentence and replace with the following:

The Contract shall be governed by the law of the place where the Project is located.

Add the following Paragraphs:

13.8 EQUAL OPPORTUNITY

13.8.1 The Contractor shall maintain policies of employment as follows:

The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include; but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.4 Delete the paragraph and substitute the following.

"The Owner shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 14.1.1 and 14.2.2"

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1.1 After "materials" add "or equipment"

14.2.1.2 After "materials" add "or equipment,"

14.2.1.3 Line 1; Delete "persistently" and Line 3; Delete "or";

14.2.1.4 Delete in its entirety and substitute "disregards the instructions of Architect or Owner (when such instructions are based on the requirements of the Contract Documents)"; and add the following two Clauses:

- .5 is judged as bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws; or
- .6 otherwise does not fully comply with the Contract Documents."

14.2.2 Line 1, after "Owner" delete "Upon certification by the Architect that sufficient cause exists to justify such

action,” and after “Notice” delete the balance of the sentence and add “except in cases of emergency as reasonable determined by Owner, terminate the services of the Contractor and may:” Delete the subparagraphs and substitute the following:

- .1 take possession of the site and Project and of all materials, equipment, tools and construction equipment and machinery thereon owned, rented, or leased by the Contractor; and
- .2 finish the Work by whatever method the Owner may deem expedient.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.3 Delete the sentence and replace with the following:

In case of such termination for the Owner’s convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reasons of such termination.

ARTICLE 15 CLAIMS AND DISPUTES

15.1.5 CLAIMS FOR ADDITIONAL TIME

Add the following Paragraphs:

15.1.5.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis of the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days’ increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

15.1.5.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes for delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

Add the following to the last Paragraph:

If before expiration of 30 days from the date of execution for this Agreement, the Owner obtains by separate agreement and furnishes to the Contractor a similar mutual waiver of all claims from the Architect against the Contractor for consequential damages which the Architect may incur as a result of any act or omission of the Owner or Contractor, then the Waiver of consequential damages by the Owner and Contractor contained in this Section 15.1.6 shall be applicable to claims by the Contractor against the Architect.

15.4 ARBITRATION

15.4.2 Delete the paragraph and substitute the following:

The award rendered by the arbitrator or arbitrators shall be either accepted or rejected by both parties within 72 hours. In the event the judgment is not accepted by both parties within such a period, the judgment shall be resolved in a court of competent jurisdiction.

Add the following Paragraphs:

15.5 DISCOVERY

15.5.1 Contractor shall defend, indemnify and hold harmless Architect from any and all costs related to Architect's employees having to prepare for or participate in any subpoena, deposition, mediation, arbitration or trial between s Contractor and any of that contractor or subcontractors or other person or entity related to the project or any aspect of the project (collectively "dispute"). Owner is entitled to funds as necessary to reimburse Architect for employees time spent in preparation for, travel to and attendance at such deposition, mediation, arbitration, trial and/or in responding to a subpoena at that employees standard hourly rate and

within 30 days of submission of Architect's invoice for same. Contractor shall prepay Owner a flat fee of \$750 for making Architect's files available to Contractor or Contractor's subcontractor(s).

END OF SUPPLEMENTARY CONDITIONS

Exhibit B
TABLE OF SERVICES

SERVICES	RESPONSIBILITY			COMMENTS
	OWNER	Architect (Basic Services)*	Architect (Designated Additional Services)*	
1. Land Survey Services	X			
2. Geotechnical Services		X		Excludes cost of rig and lab analysis, these fees will be reimbursable expense
3. Environmental Surveys, Studies & Reports	X			
4. Facility Safety Services	X			
5. Owner supplied data coordination		X		
6. Economic Feasibility Study	X			
7. Economic Impact Analysis	X			
8. Fundraising Analysis	X			
9. Existing Conditions Survey and Drawings	X			
10. Needs Assessment				Provided under previous contract
11. Programming				Provided under previous contract
12. Program Verification		X		
13. Evaluation of site and existing building conditions		X		
14. Destructive testing to investigate concealed or unknown conditions	X			
15. Code required special inspections	X			
16. Quality assurance testing during the Construction Administration Phase	X			
17. Site Analysis and selection				Provided under previous contract
18. Zoning Analysis		X		
19. Historic Preservation				X
20. Building Design – New Construction or Additions		X		
21. Interior Alterations		X		
22. Exterior Alterations		X		
23. Code Analysis		X		
24. Construction Documents		X		
25. Construction Documents - Multiple Bid Packages				X
26. Detailed Cost Estimate		X		
27. Value Analysis		X		
28. Schedule Development & Monitoring	X			
29. Contractor Qualifications Analysis	X			
30. Bidding/Negotiations		X		
31. Contract Administration		X		
32. Post Contract Evaluation				X

*Services included in fee. Refer to Exhibit C – Project Fee Summary

**Services not included in original fee. Service is available for an adjustment in compensation pursuant to Article 11.3 of the Agreement.

SERVICES	RESPONSIBILITY			COMMENTS	
	OWNER	Architect (Basic Services)*	Architect (Designated Additional Services)*		Architect (Contingent Additional Services)**
33. Full-Time On-Site Project Representation				X	
34. Record Drawings				X	
35. System Validation Testing (SVT)		X			
36. Tenant-Related Services				X	
37. LEED™ – Project registration, consultation, documentation, and certification submission				X	
38. Infrared Thermography				X	
39. Master Planning					Provided under previous contract
40. Test Fits		X			
41. Civil Design	X			X	
42. Landscape / Site Work Design		X			
43. Commissioning				X	(Required for LEED™)
44. Warranty Review				X	
45. Historic Tax Credit Submissions					
a. Part 1					N/A
b. Part 2					N/A
c. Part 3					N/A
46. Structural Engineering					
a. Lateral and Gravity Loading		X			
b. Seismic Loading		X			
c. Blast /Progressive Collapse				X	
47. Mechanical Engineering					
a. HVAC Systems		X			
b. Plumbing Systems		X			
c. Fire Protection (Sprinklers)		X			
d. Medical Gasses				X	
e. Integrated Automation Control		X			
48. Electrical Engineering					
a. Medium Voltage Distribution		X			
b. Power Distribution		X			
c. On Site Power Generation		X			
d. General Lighting		X			
49. Low Voltage Systems					
a. Fire Alarm		X			
b. Security	X	X			WRL - Backbone infrastructure only
c. Telephone	X	X			WRL - Backbone infrastructure only
d. Data	X	X			WRL - Backbone infrastructure only
e. Nurse Call				X	

*Services included in fee. Refer to Exhibit C – Project Fee Summary

**Services not included in original fee. Service is available for an adjustment in compensation pursuant to Article 11.3 of the Agreement.

SERVICES	RESPONSIBILITY			COMMENTS	
	OWNER	Architect (Basic Services)*	Architect (Designated Additional Services)*		Architect (Contingent Additional Services)**
f. Code Blue				X	
g. Monitoring	X	X			WRL - Backbone infrastructure only
h. CCTV	X	X			WRL - Backbone infrastructure only
i. CTV	X				
j. MATV	X				
k. Master Clock	X				
l. Intercom		X			
m. Paging		X			
n. Room Automation		X			
50. Energy Modeling		X			
51. Operating Cost Analysis				X	
52. Life Cycle Cost Analysis				X	
53. Utility Incentive Analysis				X	
54. Energy Tax Credit Analysis				X	
55. Lighting Design					
a. Decorative/Accent Lighting		X			
b. Theatrical Lighting		X			
c. Exhibit Lighting		X			
56. Interior Design, Details, and Specifications					
a. Room Finishes		X			
b. Furniture, Fixtures, & Equipment (FFE)	X				
c. Specialized elements for AV/IT/COM equipment and devices	X				
57. Signage Design, Details, and Specifications					
a. Required by Certificate of Occupancy	X				
b. Discretionary (such as donor recognition, directories, etc.)	X				
58. Acoustics					
a. Architectural Acoustics / Performance Space Acoustics		X			
b. Isolation		X			
c. Noise Control		X			
59. Audio Visual					
a. Background Music		X			
b. Video Conferencing	X				
c. Audio Conferencing	X				
d. Distance Learning	X				
e. Playback Entertainment Sound Systems		X			
f. Sound Reinforcement Systems		X			
g. Media Projection		X			

*Services included in fee. Refer to Exhibit C – Project Fee Summary

**Services not included in original fee. Service is available for an adjustment in compensation pursuant to Article 11.3 of the Agreement.

SERVICES	RESPONSIBILITY			COMMENTS	
	OWNER	Architect (Basic Services)*	Architect (Designated Additional Services)*		Architect (Contingent Additional Services)**
h. Video Camera Systems		X			
60. Radiation Protection				X	
61. Food Service					
a. Full Service Kitchen				X	
b. Catering Kitchen		X		Assumes this is not a production kitchen	
c. Concessions		X			
62. Theatrical Equipment Selection and Specifications		X			
63. Medical Equipment Selection and Specifications				X	
64. Exhibit Design, Selection, and Specifications				X	
a. Image Acquisition	X				
b. Content Development	X				
c. Intellectual Property Rights	X				
65. Retail Design, Selection, and Specifications				X	
66. Presentation Renderings		X		X	3 views included in basic services, additional views are Reimbursable Expenses
67. Presentation Models				X	Reimbursable Expense
68. Agency Approvals					
a. Architectural Review Board		X			Limited to 1 meeting in basic services
b. Board of Zoning Appeals				X	
c. State Historic Preservation Office				X	
d. National Park Service				X	
e. Landmark Commission				X	

*Services included in fee. Refer to Exhibit C – Project Fee Summary

**Services not included in original fee. Service is available for an adjustment in compensation pursuant to Article 11.3 of the Agreement.

		RESPONSIBLE		
		OWNER	CONSTRUCTOR	A/E
LEGEND				
X	Party responsible under the terms of this agreement.			
1	Available additional service, not included in basic services compensated under the terms of this Agreement.			
.0 CONTRACT AWARD				
.01	Notification of Contract award	X		
.02	Preparation of construction contract agreement forms for approval by Owner and Constructor			X
.03	Preparation and distribution of sets of Contract Documents for execution by parties to the Contract(s)			X
.04	Receipt, distribution and processing, for Owner's approval, of required certificates of insurance, bonds and similar documents		X	
.05	Preparation and distribution to Constructor(s), of notice(s) to proceed with the Work.	X		
.1 OBSERVATION				
.01	Visits to the site in accordance with Article 2.8 of the Agreement, for the following purposes:			
.001	to attend Owner-Constructor Project Meetings at the site, at the indicated intervals:			
	twice per month			X
	once per week			1
	_____ days a week.			1
	Full time on site plus office support			1
	Time spent en route to Project Meetings			X
.002	Participate in one (1) teleconference meeting per month			---
.003	to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents.			X
.02	Write, publish and distribute meeting minutes of the Project Meetings.		X	
.3 SUBMITTALS				
.01	Processing of submittals required by the Construction Documents, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals only as required by the Construction Documents. Two reviews per Spec Section.			X
.02	Distribution of submittals to Owner, Constructor and/or Architect's field representative, or other responsible parties.		X	
.03	Maintenance of master file and log of submittals.		X	
.4 INDEPENDENT TESTING AND INSPECTIONS BY AGENCIES				
.01	Administration and coordination.	X		
.02	Arranging and scheduling.		X	
.03	Notifying agency of status of Work		X	
.04	Review of reports and tests and notification of deficiencies.	X		1
.05	Evaluating compliance by testing and inspection agencies with required scope, standards, procedures and frequency	X		1
.06	Review of reports on inspections and tests and notifications to Owner and Constructor(s) of observed deficiencies in the Work.	X		1
.5 SUPPLEMENTAL DOCUMENTATION				
.01	Preparation, reproduction and distribution of Architects Supplemental Instructions (ASI's) to the Constructor and Owner.			X
.02	Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to Requests for Interpretation (RFI's) by Constructor(s) or the Owner.			X
.03	Forwarding Owner's instructions and providing guidance to the Constructor(s) on the Owner's behalf relative to changed requirements and schedule revisions.			1

		RESPONSIBLE		
		OWNER	CONSTRUCTOR	A/E
LEGEND				
X	Party responsible under the terms of this agreement.			
	Available additional service, not included in basic services compensated under the terms of this			
1	Agreement.			
.6 PROPOSAL REQUESTS AND CHANGE ORDERS				
.01	Preparation, reproduction and distribution of Drawings and Specifications as Proposal Requests, to describe Work to be added, deleted or modified.			1
.02	Review of proposals from Constructor(s) for reasonableness of quantities and costs of labor and materials.			1
.03	Review and recommendations relative to changes in time for Substantial Completion			1
.04	Negotiations with Constructor(s) on Owner's behalf relative to costs of Work proposed to be added, deleted or modified			1
.05	Preparation of Change Orders.		X	1
.06	Preparation of Construction Change Directives.			1
.07	Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.		X	
.7 CONTRACT COST SERVICES				
.01	Maintenance of records of payments on account of the Contract Sum and all changes thereto	X		
.02	Evaluation of Applications for Payment and certification thereof	X		
.8 INTERPRETATIONS AND DECISIONS				
.01	Review of claims, disputes or other matters between the Owner and Constructor relating to the execution or progress of the Work as provided in the Contract Documents			1
.02	Rendering written decisions within a reasonable time and following the procedures as set forth in the General Conditions of the Contract for Construction			1
.9 PROJECT CLOSEOUT SERVICES				
.01	One "Punch List" performed with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Constructor(s) of items to be completed or corrected		X	X
.02	Determination of the amounts to be withheld until final completion	X		
.03	Issuance of Certificate(s) of Substantial Completion			X
.04	Inspection(s) upon notice by the Constructor(s) that the Work is ready for final inspection and acceptance	X		1
.05	Notification to Owner and Constructor(s) of deficiencies found in final inspection, if any			1
.06	Additional inspection(s) with the Owner's representative to verify final completion of the Work			1
.07	Receipt and transmittal of warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying the Owner against liens		X	
.08	Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s)	X		
.09	Issuance of final Certificate(s) for Payment.	X		
2 POST-CONSTRUCTION SERVICES				
.1 MAINTENANCE AND OPERATIONAL PROGRAMMING				
.01	Assistance in the establishment by the Owner of in-house or contract program(s) of operation and maintenance of the physical plant and equipment		X	
.02	Arranging for and coordinating instructions on operations and maintenance of equipment in conjunction with manufacturer's representatives		X	
.03	Preparation of operations and maintenance manual(s) for the Owner's use.		X	
.04	Review of operations and maintenance manual(s) for the Owner's use.			X
START UP ASSISTANCE				
.01	On-site assistance in the operation of building systems during initial occupancy			1
.02	Assistance in the training of the Owner's operation and maintenance personnel in proper operations, schedules and procedures			1
.03	Administration and coordination of remedial work by the Constructor(s) after final completion			1

		RESPONSIBLE		
		OWNER	CONSTRUCTOR	A/E
LEGEND				
X	Party responsible under the terms of this agreement.			
1	Available additional service, not included in basic services compensated under the terms of this Agreement.			
.2 RECORD DRAWINGS				
.01	Making arrangements for obtaining from Constructor(s) information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work			X
.02	Review of general accuracy of information submitted and certified by the Constructor(s)			X
.03	Preparation of record drawings, based on certified information furnished by the Constructor(s)			1
.04	Transmittal of record drawings and general data, appropriately identified, to the Owner and others as directed.			1
.3 WARRANTY REVIEW				
.01	Consultation and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty			1
.02	Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment			1
.03	Documenting defects or deficiencies and assisting the Owner in preparing instruction to the Constructor(s) for correction of noted defects.			1
.4 FACILITY OPERATION SERVICES - 1 YEAR FROM DATE OF SUBSTANTIAL COMPLETION				
.01	Project review and analysis of the following:			
.001	The initial Project programming versus actual facility use			1
.002	The functional effectiveness of planned spaces and relationships			1
.003	The operational effectiveness of systems and materials installed			1

ARTICLE B.3.1 PROJECT SUSTAINABILITY GOALS

.1 The Parties shall discuss prior to execution of the Agreement the extent to which they will incorporate sustainable design elements, including whether LEED Certification will be required, under the guidelines of the U.S. Green Building Council's (USGBC) LEED Rating Systems. The Parties may select one or both of the boxes below as they deem appropriate.

It is the shared goal of the Parties to design and construct a Project that imposes a minimal negative impact on the environment while maximizing the health and comfort of the Project's users and occupants by exploring commercially available sustainable design products, technologies, and practices that can be incorporated into the Project. Accordingly, Owner and Architect shall discuss during the design phase, and incorporate into the Project, design and construction methods, materials and systems for an environmentally beneficial, cost effective, and resource efficient Project. This may include sustainable practices that impact the Project site, energy and water use, materials, indoor air quality, and maintenance, provided that the sustainable design elements and construction practices are consistent with the Project Budget and Project Schedule.

and/or

Owner and Architect agree that a shared goal is that the Project will achieve (1) the following sustainable rating system _____, or (2) the following level of LEED certification under version _____ of the USGBC's _____ [E.g., *New Construction & Major Renovations, Core and Shell, Commercial Interiors, etc.*] Rating System.

- | | | | |
|--------------------------|-----------|--------------------------|----------|
| <input type="checkbox"/> | Certified | <input type="checkbox"/> | Gold |
| <input type="checkbox"/> | Silver | <input type="checkbox"/> | Platinum |

.2 The requisite credits to achieve the applicable LEED® certification will be set forth in the LEED Scorecard as determined in the Predesign Workshop as set forth herein.

.3 Predesign Workshop:

- .1 The Architect shall conduct the Predesign Workshop with the Owner, the Owner's consultants, the Architect's consultants, and the Owner's Constructor, at which the participants will review the USGBC's LEED Green Building Rating System.
- .2 The participants will also examine each LEED credit utilizing the appropriate Green Building Rating System Project Checklist as a template for establishing green building goals, identify potential LEED points, examine strategies for implementation, assess the impact on the Owner's program, schedule and budget, and determine the LEED points to be targeted for the level of Certification that is achievable for the project.
- .3 At the Predesign Workshop the participants shall reach consensus for the level of Certification that is achievable for the project. Any subsequent increase to the targeted level of Certification shall require commensurate modifications to the Owner's budget and schedule, and to the Architect's compensation.

ARTICLE B.3.2 DEFINITIONS

- .1 **Commissioning Authority (CxA):** An independent individual or entity responsible to lead, review and oversee the completion of the commissioning process activities.
- .2 **Commissioning Process:** A planned, systematic quality-control process that involves the Owner, Users, Operations Staff, Design Professionals, and Constructors.
- .3 **Leadership in Energy and Environmental Design (LEED):** A measurement system developed by the USGBC to evaluate environmental performance of new and existing buildings. LEED is compatible with standard design processes, self-evaluating, self-documenting, but not self-certifying. Certification is solely done by the USGBC.
- .4 **Owner's Program of Requirements (OPR):** A document prepared by the Owner that details the functional requirements of a project and the expectations of the building's use and operation as they relate (at a minimum) to the following criteria:

- .1 Owner and User Requirements – Define primary program, purpose and use.
 - .2 Environmental and Sustainability Goals – Describe specific goals.
 - .3 Energy Efficiency Goals – Describe overall goals relative to local codes, or LEED.
 - .4 Indoor Environmental Quality Requirements – Describe intended use of program areas, anticipated occupancy schedules, lighting level requirements, temperature & humidity constraints, etc.
 - .5 Equipment and Systems – Describe expected level of quality, reliability, automation and flexibility, with known proven targets.
 - .6 Occupant and Operations Personnel Requirements – Describe how the building will be operated and by whom and what level of training is anticipated.
- .5 Basis of Design (BOD):** A document prepared by the Design Team describing the systems to be commissioned and outlining any design assumptions that are not otherwise included in the design documents.
- .6 U.S. Green Building Council (USGBC):** A nonprofit entity providing a forum for promoting environmental stewardship of the built environment.

ARTICLE B.3.3 ARCHITECT’S RESPONSIBILITIES

The Architect shall provide only the services specifically designated herein. The Architect shall perform the designated services in accordance with the description. Refer also to Exhibit C for compensation of LEED Certification Services.

.1 LEED Scorecard

- .1 The Architect shall prepare a LEED Scorecard based on the LEED points targeted. The LEED Scorecard will describe the LEED certification process and may contain a description of the green building goals established, LEED points targeted, implementation strategies selected, list of participants and their roles and responsibilities, description of how the plan is to be implemented, certification schedule, specific details about design reviews, list of systems and components to be certified, and certification documentation required.
- .2 The Level of LEED Certification attempted shall take the Owner’s schedule, budget, program, and capacity for participation into consideration.
- .3 The Architect shall revise the LEED Scorecard as the design and construction of the Project progresses to reflect any changes approved by the Owner, as a Change in Services.

.2 LEED Certification Documentation

- .1 The Architect shall organize and manage the LEED design documentation and certification process.
- .2 The Architect shall review the LEED certification process and regularly report progress to the Owner.
- .3 The Architect shall provide the services of LEED accredited professionals necessary for certification of the Project.
- .4 The Architect shall register the Project with the USGBC. Registration fees charged by the USGBC shall be a reimbursable expense.
- .5 The Architect may, as a compensated Additional Service, prepare submittals for Credit Rulings from the USGBC for interpretation of credit language, principles, or implementation strategies. Credit Ruling fees charged by the USGBC shall be a reimbursable expense.
- .6 The Architect shall prepare and submit a LEED Certification Application for the Project to the USGBC, including required calculations and documentation for each LEED credit claimed, in accordance with the LEED Scorecard.
- .7 The Architect shall prepare responses and submit additional documentation required by comments or questions received from the USGBC after review of the original submission for certification.

.3 LEED Certification Specifications

- .1 The Architect shall provide specifications that incorporate LEED requirements for inclusion in the Construction Documents.
- .2 The Construction Documents shall define the Constructor’s responsibilities and documentation requirements related to LEED documentation, including Construction Waste Management, Construction Indoor Air Quality, and obtaining materials credits.

.4 LEED Certification Services During Bidding

- .1 The Architect shall conduct a pre-bid meeting to review the differences between current standard construction practices and LEED principles, procedures, and requirements.
- .2 The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents related to LEED certification in the form of addenda.
- .3 The Architect shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare addenda identifying approved substitutions related to LEED certification.

- .4 The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any, related to LEED certification.
- .5 LEED Certification Services During Contract Administration**
- .1 The Architect shall review properly prepared, timely requests by the Constructor for additional information about the Contract Documents related to LEED certification. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- .2 If deemed appropriate by the Architect, the Architect shall, on the Owner's behalf, prepare, reproduce and distribute supplemental Drawings, Specifications and information in response to requests for information by the Constructor related to LEED certification.
- .3 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Constructor's operations, or as otherwise agreed by the Owner and the Architect in Article 4, to become generally familiar with and to keep the Owner informed about the progress of the portions of the Work related to LEED certification. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Constructor's rights and responsibilities under the Contract Documents.
- .4 The Architect shall at all times have access to the Work wherever it is in preparation or progress.
- .5 The Architect shall review and approve or take other appropriate action upon the Constructor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with requirements for LEED certification. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Owner's consultants or Constructor, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Constructor as required by the Contract Documents. 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.
- .6 The Architect shall review properly prepared, timely requests by the Owner, Owner's consultants or Constructor for changes in the Work related to LEED certification. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements for LEED certification, the Architect shall recommend an order for a minor change in the Work be issued or recommend to the Owner that the requested change be denied.
- .7 If the Architect determines that implementation of the requested changes would result in a material change to the LEED certification, or would require extensive investigation or preparation of additional drawings or specifications, the Architect shall notify the Owner, who may authorize further investigation of such change as a compensated Additional Service. Upon such authorization, and based upon information furnished by the Constructor, if any, the Architect shall make a recommendation to the Owner regarding the implementation of the requested changes.
- .6 LEED Certification Services Post-Occupancy**
After eleven months of occupancy, where required by attempted LEED credits (such as EA Credit 5, Measurement and Verification) the Architect shall perform post-occupancy services as may be required for the credit submissions to USGBC.
- .7 Final LEED Certification Report**
The Architect shall prepare a Final LEED Certification Report documenting the LEED rating the Project achieved, including the LEED Certification Plan, LEED Certification Documentation submitted, LEED Certification Reviews received from the USGBC, together with the specific LEED points that the Project is recognized as having received, all clarifications or interpretations of credits, and any re-certification requirements.

.8 Expanded Description Of LEED Certification Services

(In the space below, provide expanded descriptions of the services listed above. If nothing is inserted here, it is presumed that there are no expanded requirements.)

ARTICLE B.3.4 OWNER'S RESPONSIBILITIES

- .1 Predesign Workshop:** The Owner shall participate in the Predesign Workshop, and shall cause the Owner's consultants and constructors to participate in the Predesign Workshop.
- .2 Owner's Program of Requirements (OPR):** The Owner shall provide an initial OPR document, prior to the commencement of the Schematic Design Phase. The Owner shall submit an updated OPR document at the completion of each phase of the design and documentation.
- .3 Commissioning Authority (CxA):** The Owner shall identify the CxA, as acceptable to the Architect, such acceptance shall not be unreasonably withheld. The Owner shall arrange and execute the CxA's Form of Agreement, and shall be responsible for the associated fees.
 - .1** The independent Commissioning Authority (CxA) shall be retained to lead, review, and oversee the completion of all commissioning process activities, including monitoring compliance with the Contract Documents and completing all necessary documentation for commissioning credits. The CxA shall be a LEED Accredited Professional (LEED AP) and meet the credit requirements of the applicable LEED rating system. The CxA shall report results, findings and recommendations directly to the Owner, with a copy to the Architect.
 - .2** The CxA shall conduct, consistent with the review requirements of the LEED rating system, the necessary commissioning design reviews of the Basis of Design Documents and design documents prior to completion of the Construction Documents, and back-check the review comments in subsequent design submissions. The CxA shall also review Architect's submittals applicable to systems being commissioned for compliance with the Basis of Design Documents.
- .4 Constructor's Role:** The Owner shall cause the Constructor to be responsible for construction phase documentation required by LEED/USGBC, in the Owner's Form of Agreement with the Constructor.
- .5 Funding Requirements:** The Owner shall identify the funding requirements for the project, related to sustainable design.

(In the space below, insert any funding requirements; if nothing is inserted here, it is presumed that there are no applicable requirements.)
- .6 Legal Requirements:** The Owner shall identify the legal requirements for the project related to sustainable design, as set forth below.

ARTICLE B.3.5 LEGAL REQUIREMENTS

- .1** The parties will discuss whether LEED certification or other sustainable standards are required by law (Legal Requirements). The Owner shall be responsible to identify any such requirements applicable to the Project and the Architect is entitled to rely on the Owner's representations without any independent verification.
- .2** The Architect shall be entitled to compensated Additional Services for work related to changes in the law enacted after the date of this Agreement due to sustainable requirements for completion of the Project.
- .3** The Owner has identified the following Legal Requirements for the Project that relate to sustainable design:

(In the space below, insert any ordinance, statute, executive order or other Legal Requirement; if nothing is inserted here, it is presumed that there are no applicable requirements.)
- .4** The Architect acknowledges that as a matter of law the Project is obligated to satisfy or achieve the level of LEED certification or other sustainable standards identified in the above-cited Legal Requirements. Owner recognizes that the ultimate decision to certify the Project under a LEED® Rating System and/or the satisfaction of other sustainable standards is dependent on a variety of circumstances, including the subjective determination of the USGBC and/or other interested organizations or entities. Therefore, Owner and Architect pledge to each other to use best efforts to satisfy or achieve the level of LEED® certification or to satisfy the other sustainable standards indicated in the Owner's Program of Requirements or mandated by Legal Requirements.
- .5** The Owner acknowledges that the Architect will exercise reasonable efforts to design and specify products and/or systems that achieve performance expectations indicated in the OPR or LEED Certification criteria. However, the Architect does not provide assurances that those performance expectations will be met during occupancy and operations of the building.

- .6 The Owner acknowledges that LEED verification documents including signed letter templates submitted to the USGBC are based on professional opinion, are solely for the purpose of asserting LEED compliance, and do not constitute performance guarantees.

ARTICLE B.3.6 REMEDIES

- .1 In the event that the Project fails to satisfy or obtain such level of LEED certification or other sustainable standards as identified or as required by the Legal Requirements or the OPR, the parties agree to file a timely appeal to the USGBC, or other appropriate entity, of such action. The costs of such appeal shall be paid for by the Owner.
- .2 In the event that, after a timely appeal to the USGBC or other certifying organization, the Project fails to satisfy or obtain such level of LEED® certification or other sustainable standards as are identified in, or as required by the Legal Requirements or the OPR, the parties agree as follows:

(check the appropriate box below)

Waiver. In no event shall the failure of the Project to satisfy or obtain such level of LEED certification or other sustainable standards be deemed a breach of contract, or otherwise actionable by the Owner, and any claims for failure of Architect to satisfy or achieve LEED certification at any level or other sustainable standards are hereby waived by the Owner against the Architect.

or

Liquidated Damages. Architect has a contractual obligation to satisfy or achieve the level of LEED certification indicated above and/or to satisfy or achieve other sustainable standards as are identified, or as required by the Legal Requirements, provided the Owner and the Owner's Constructor have fully satisfied their obligations in relation thereto. In the event such level of LEED certification or other sustainable standards are not satisfied or achieved, subject to a timely filed appeal, and provided the Owner and the Owner's Constructor have fully performed their obligations in relation thereto, Architect agrees to pay the Owner the following amount not by way of penalty, but as liquidated damages, the sum of _____ Dollars (\$ _____). Architect shall not be liable for any other related damages including, but not limited to consequential damages as identified in the Agreement.

ARTICLE B.3.7 EXPERIMENTAL PRODUCTS, DESIGNS OR SYSTEMS

- .1 In order to achieve the desired LEED® level of certification or other similar rating, the Architect may recommend the use of experimental or newly developed products, materials or building systems (hereafter "Sustainable Products"). The Architect shall disclose to the Owner that it has limited or no prior professional experience with such Sustainable Products in actual construction. However, the Architect will review available technical literature on the Sustainable Products.
- .2 The Architect shall advise the Owner of the risks and benefits of such Sustainable Products, and that the proposed use of such Sustainable Products are untested with this Architect and, therefore, experimental. The Architect and Owner shall consider alternative methods, products, materials or building systems, and where Owner desires, nonetheless, to use the Sustainable Products identified by the Architect, the Owner shall advise the Architect in writing.
- .3 Given all this information, and with full knowledge of the risks and rewards, where the Owner consents to the Architect's inclusion of the Sustainable Products identified in the Project design; the Owner shall look solely to the manufacturer, supplier or installer of the same, and waives any claim against the Architect that result from the Owner's selection of such Sustainable Products for use on this Project.

ARTICLE B.3.8 MISCELLANEOUS

- .1 The registration, certification, credit interpretation ruling and any other fees charged by the USGBC, The Green Building Certification Institute or other similar organizations shall be paid by the Owner, directly to such organizations, and shall not be an obligation of the Architect, nor included in the Architect's Fees unless otherwise agreed in writing.
- .2 In no event shall the dates of Substantial Completion or Final Completion be contingent on any certification of the Project to meet any level of the USGBC's LEED rating system or other similar system.

B.5 FACILITY SAFETY SERVICES

B.5.1 The Architect shall provide only the services designated below. Refer also to Exhibit C for compensation of Facility Safety Services.

- .1 Electrician for accessing and surveying electrical panels and equipment.
- .2 HVAC Contractor for accessing and surveying mechanical equipment.
- .3 Plumbing Contractor for accessing and surveying plumbing equipment.
- .4 Carpenter for opening ceiling plenum spaces in sensitive areas, such as healthcare environments.
- .5 Swing stage operators.
- .6 *other*

B.5.2 The Owner shall provide the services of qualified personnel as designated below, prior to the Architect commencing services.

- .1 Pest (insect, rodent, stray animal, etc.) extermination or removal services.
- .2 Professional cleaning or abatement services, for removal of contaminants posing a threat to human occupancy, including but not limited to: ACM, mold, animal waste and debris, lead-based paint.
- .3 Construction trades work as required to repair all unsafe walking surfaces, guardrails, ladders, stairways, etc., in all areas where investigation services are to be performed by the Architect.
- .4 Electrician for accessing and surveying electrical panels and equipment.
- .5 HVAC Contractor for accessing and surveying mechanical equipment.
- .6 Plumbing Contractor for accessing and surveying plumbing equipment.
- .7 Carpenter for opening ceiling plenum spaces in sensitive areas, such as healthcare environments.
- .8 Swing stage operators.

B.5.3 If after the execution of this Agreement, the Architect identifies other Facility Safety Service requirements, the services and compensation shall be equitably negotiated and approval shall not be unreasonably withheld.

Exhibit B.7 SYSTEM VALIDATION TESTING

Due to the complex nature of the buildings mechanical and electrical systems, a complete System Validation Testing (SVT) is required prior to the completion of the construction period and the Owner taking beneficial occupancy of the facility in whole or in part. The SVT shall be completed by Westlake Reed Leskosky (WRL) with the assistance of the required Contractor or subcontractors.

The project will not be accepted as "substantially complete" without the satisfactory completion of the SVT. Systems to be validated by the Engineer and the construction team shall include but not be limited to the following:

1. Building automation or facility control systems including Owner's facility staff training.
2. System testing and balancing.
3. Medical gas systems and alarms.
4. Fire alarm systems.
5. Emergency power systems.
6. Acoustical testing.
7. Power quality testing.
8. Theatrical and Audio Visual systems
9. Other low-voltage systems

SVT shall occur during construction one month prior to the Owner occupying the facility. The Construction Manager or General Contractor shall incorporate this time into the Construction Progress Schedule. The Contractor or subcontractors shall arrange and pay for the tests indicated in the Construction Documents. An engineering field report of the testing and its result shall be distributed to all parties.

During the SVT, if a system or a piece of equipment is not performing per the design intent, the respective Contractor or subcontractor shall repair or replace the equipment or system component, at no additional cost to the Owner, as required to successfully complete the SVT, as acceptable to WRL.

If the Owner identifies deficiencies subsequent to Substantial Completion, the following procedures shall be followed:

1. The Owner shall continue to compensate the Architect according to the terms set forth in this Agreement.
2. The Architect shall continue to provide basic services, and in addition will work to remedy the perceived deficiencies. The Architect reserves the right to contract with independent resources for additional testing, inspections, etc., as a Reimbursable expense to determine the cause of the deficiency.
3. The parties responsible for providing the deficient system shall cooperate with the Architect to investigate and correct the deficiency.
4. The Owner shall compensate the Architect for Direct Personnel Expenses and Reimbursable expenses incurred to resolve the deficiency, as a Change in Service.
5. Where the Architect is adjudged to be liable for the deficiency, the Architect shall bear the costs of his Direct Personnel and Reimbursable expenses incurred while determining the cause.

Exhibit C PROJECT FEE SUMMARY

Phase	Fee Amount	Percentage
Schematic Design		25%
Design Development		20%
Construction Documents		35%
Bidding/Construction Administration		20%
TOTAL		100%

Schematic Design Fee	\$210,476
Design Development Fee	\$249,100
Contract Documents Fee	\$ 21,453
Bidding / CA Fee	\$ 0

Fees for CD – CA will be equitably negotiated at beginning of each phase depending on scope and complexity of work. Spread sheet as continuation of Exhibit C will be used as basis of negotiation. Fees for other phases derived from applying phase % times fee percentage. Fees will be in the range of 6% to 12.5% depending on scope, complexity, and number of design disciplines involved.

The specialty services are to be “allowances” that are to be confirmed by negotiated proposals to be evidenced to the owner. The agreement will provide that these fees are allowances, and the contract will be adjusted by the final amounts of these specialty service agreements.

Consultant Fees and Agreements will be evidenced to Owner and will contain no Mark Up by WRL

Fees do not include:
Reimbursable Expenses
Testing and Inspections
Environmental
Survey

Fee: Billed Hourly not to Exceed the values above for Basic Services and is based on percentage agreed to for the final market value of the Cost of the Work (which may include the fair market value of in-kind gifts) designed and administered by WRL, including Alternates; includes Basic Services and Designated Additional Services, as set forth in Exhibit B –Table of Services; customary reimbursable expenses, invoiced at a multiplier of 1.1 times our direct cost, are in addition to the percentage fee.

Pursuant to Article 6.1, the Owner and the Architect agree that when the basis of compensation is a percentage of the Cost of the Work: When the Owner agrees to increase the project budget based on either an increase in the scope of the work or an increase in the Cost of the Work through no fault of the Owner or the Architect, the Architect shall be compensated as a Contingent Additional Service per Article 11.3 of the Agreement. Additionally, the Owner and the Architect agree that when the basis of compensation is a percentage of the cost of work and the Owner agrees to decrease the project budget due to favorable market conditions or project cost estimates that exceed the actual construction contract amount, the Architect's compensation shall not be decreased to less than the amount of the calculated compensation at the end of the previous phase.

Exhibit C Cont.

		Core		Buildout			
		Const. Cost	\$7,500,000	Const. Cost	\$3,500,000		
Disciplines	Associate Firms	Fee%	Fee	Fee%	Fee		
Basic Services	Architectural	Chamberlain	8.50%	\$637,500	8.50%	\$297,500	
	Interiors	Blythe					
	Mechanical, Electrical, Plumbing Eng						
	Fire Protection/ Life Safety Eng						
	Structural Eng	Lindauer					
	Subtotal Basic Services		8.50%	\$637,500	8.50%	\$297,500	
Specialty Services	Civil	Austin		\$15,000		\$5,000	
	Landscape	Ciavonne		\$15,000		\$5,000	
	Geotechnical	Hud - Berry		\$3,000		\$0	
	Cost estimating	PCS		\$25,000		\$5,000	
	Theatrical, AV, Acoustical, Lighting			\$190,000		\$65,000	
	Security			\$0		\$0	
	Data/IT			\$20,000		\$5,000	
	Subtotal Specialty Services		3.57%	\$268,000	2.43%	\$85,000	
	Total WRL Design Team Services		12.07%	\$905,500	10.93%	\$382,500	
Phase		Core			Buildout		Total Fee
	Phase %						Total Base Contract
	Schematic Design			\$140,317		\$70,159	\$210,476
	Design Development	20%		\$166,067		\$83,033	\$249,100
	Contract Documents	35%		\$290,570		\$145,285	\$21,453
	Bidding/Contract Administration	20%		\$166,067		\$83,033	\$0
	Total all phases	100%		\$763,021		\$381,510	\$481,029
<i>Construction Costs are estimated, fees to be negotiated upon approval of funding and related scope</i>							
<i>Fees highlighted in yellow are base contract cost</i>							

2012 Average Billable Rates

<u>Principals</u>		\$205.00
<u>Architects</u>	Project Director	\$135.00
	Project Manager	\$118.00
	Interns	\$ 93.00
	Specifications	\$138.00
	Interiors	\$ 93.00
<u>Engineers</u>	Electrical, Mechanical, Structural Engineer	\$155.00
	Electrical, Mechanical, Structural Designer	\$ 108.00
<u>Other</u>	Practice Leaders, Specialists	\$150.00
	Clerical, Office, Admin, Marketing	\$ 75.00

**Actual billing rates will vary by individual and will vary with customary compensation changes and will be adjusted during our normal annual review period.

The Owner shall be liable to the Architect for the cost of de-mobilizing and re-mobilizing the Architect's staff, and that of its Consultants, which may be required due to unforeseen circumstances that are of no fault of the Architect.

Work stoppage may include, but are not limited to, delay in procuring approvals from Owner or reviewing agencies having jurisdiction, and the Owner's ability to determine funding limits.

The cost of the de-mobilization of the job shall be \$1,000 for each person (including Consultants) that was scheduled to be involved full time on the project. For individuals that are not involved full time, cost shall be pro-rated.

The cost of the re-mobilization of the job shall be \$1,000 for each person (including Consultants) that will be required to be involved full time on the project. For individuals that will not be required full time, cost shall be pro-rated.

Exhibit D
EQUAL OPPORTUNITY EMPLOYER

Westlake Reed Leskosky provides equal employment opportunities to all employees and applicants for employment without regard to race, color, religion, gender, sexual orientation, national origin, age, disability, or status as a Vietnam-era or special disabled veteran in accordance with applicable federal laws. In addition, the firm complies with applicable state and local laws governing nondiscrimination in employment. This policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation, and training.

TO: Trenton Prall

DATE: October 1, 2012

In accordance with the AIA- B1401 Agreement dated: July 5, 2012

BETWEEN the Owner:
City of Grand Junction
c/o Public Works and Planning
250 North Fifth St.
Grand Junction, CO 81501

and the Design Professional/Architect:
Westlake Reed Leskosky
One E. Camelback Rd., Suite 690
Phoenix, AZ 85012

for the Project:
Avalon Theatre Addition and Renovation

The Agreement is modified, amended, and supplemented as set forth in this Contract Modification. Wherein this Contract Modification is in conflict with the Agreement, the requirements of this Contract Modification shall govern.

Authorization is requested

to proceed with Additional Services or a Change in Services

to incur Additional Reimbursable Expenses.

As Follows:

Proceed with the Construction Document Phase to include:

Base Scope:

- Includes the following scope:
 - Lobby/MP Room Addition
 - Auditorium Upgrades – including reworking Proscenium
 - New Auditorium Mechanical System
 - New Orchestra Pit
 - Value Engineering items as listed in the Value Engineering list dated 10/1/12
 - Total Estimated Construction Cost = \$6.57M

Additional Scope:


- Expanded Acoustical Scope in Existing Auditorium – additional scope not included in original SD phase, but added and completed in DD phase.
- Expanded Site work – utility yard for generator and trash enclosure not included in SD phase, but added and completed in DD phase.
- Design new House Audio System - additional scope not included in original SD phase, but added and completed in DD phase.
- Redesign Utility Infrastructure – relocate new electrical equipment room and boiler room to under existing stage.

The following adjustments shall be made to compensation and time.

(Insert provisions in accordance with the Agreement or as otherwise agreed by the parties.)

Compensation:

Additional Services to be completed on a Lump Sum Basis as follows:

Basic + Specialty Services for Base Package	\$ 275,398		
Basic + Specialty Services for Additional Scope	\$ 105,403	80,403	
Construction Documents Phase Lump Sum Sub-total	\$ 380,800	<u>355,800</u>	
Estimated Additional Reimbursable Expenses	\$ 12,000		

Time:


Construction Document Phase to be completed within four (4) months of this Modification being fully executed.

All work executed under this Contract Modification is subject to the terms and conditions of the original Contract, except as herein specifically modified.

SUBMITTED BY:
DESIGN PROFESSIONAL/ARCHITECT
Westlake Reed Leskosky

AGREED TO:
CLIENT/OWNER

Paul E. Westlake, Jr., FAIA, Managing Principal
(Printed name and title)

 
(Printed name and title)

(Signature)

(Date)



(Signature)



(Date)

TO: Trenton Prall

DATE: March 7, 2013

In accordance with the AIA- B1401 Agreement dated: July 5, 2012

BETWEEN the Owner:
City of Grand Junction
c/o Public Works and Planning
250 North Fifth St.
Grand Junction, CO 81501

and the Design Professional/Architect:
Westlake Reed Leskosky
One E. Camelback Rd., Suite 690
Phoenix, AZ 85012

for the Project:
Avalon Theatre Addition and Renovation

The Agreement is modified, amended, and supplemented as set forth in this Contract Modification. Wherein this Contract Modification is in conflict with the Agreement, the requirements of this Contract Modification shall govern.

Authorization is requested
 X to proceed with Additional Services or a Change in Services
 X to incur Additional Reimbursable Expenses.

As Follows:

Proceed with the Bidding Phase that coordinates with the Scope indicated in the Construction Documents dated and Issued for Bidding on February 28, 2013.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement or as otherwise agreed by the parties.)

Compensation:

Additional Services to be completed on a Lump Sum Basis as follows:

Bidding Phase Hourly Not-to-Exceed	\$ 19,671
Estimated Additional Reimbursable Expenses	\$ 3,660
Total Additional Services Hourly Not-to-Exceed + Expenses	\$ 23,331

Time:

It is anticipated that the Bidding Phase is to be completed within one (1) months of this Modification being fully executed.

All work executed under this Contract Modification is subject to the terms and conditions of the original Contract, except as herein specifically modified.

SUBMITTED BY:
DESIGN PROFESSIONAL/ARCHITECT
Westlake Reed Leskosky

AGREED TO:
CLIENT/OWNER

Paul E. Westlake, Jr., FAIA, Managing Principal
(Printed name and title)

Debbie Kovalik DEPARTMENT HEAD
(Printed name and title)

Paul E. Westlake, Jr. 3-8-13
(Signature) (Date)

Debbie Kovalik 3-7-2013
(Signature) (Date)

03.07.2013
 Avalon Theatre, Grand Junction, CO
 Prepared by Westlake Reed Leskosky

Disciplines	Associate Firms	Total Project Construction Fee%	Previous Fee \$10,500,000 Fee	Base Fee \$6,578,000	Alternates \$3,000,000	New Total \$9,578,000	
Basic Services:							
Architectural Interiors	Chamberlain Blythe	3.50%	\$392,000	\$658,430	\$255,000	\$913,430	8.50%
Mechanical, Electrical, Plumbing Eng							
Fire Protection/ Life Safety Eng							
Structural Eng	Lindauer						
Subtotal Basic Services		3.50%	\$392,000	\$658,430	\$255,000	\$913,430	8.50%
Specialty Services:							
Civil	Austin		\$20,000	\$14,000	\$6,000	\$20,000	
Landscape	Claytons		\$20,000	\$14,000	\$6,000	\$20,000	
Geotechnical			\$3,000	\$3,000	\$0	\$3,000	
Cost estimating	PCS		\$30,000	\$21,000	\$9,000	\$30,000	
Performance Specialties							
Theatrical			\$75,000	\$47,250	\$27,750	\$75,000	
Audio-Visual/Broadcast			\$80,000	\$50,400	\$29,600	\$80,000	
Acoustical	Kirkegaard		\$75,000	\$47,250	\$27,750	\$75,000	
Lighting			\$28,000	\$15,740	\$9,260	\$28,000	
Security			\$0	\$0	\$0	\$0	
Data/IT			\$25,000	\$15,750	\$8,250	\$25,000	
Subtotal Specialty Services		3.36%	\$353,000	\$228,400	\$126,600	\$355,000	3.40%
Subtotal Basic + Specialty Services				\$886,830	\$381,600	\$1,268,430	
15% Premium for Alternate packages					\$57,240	\$57,240	
Total WRL Design Team Services		11.86%	\$1,245,500	\$748,800	\$404,340	\$1,153,140	11.32%
Phase	Phase %						
Schematic Design	10%		\$105,550	\$67,800	\$33,900	\$105,550	
Design Development	20%		\$249,100	\$161,600	\$80,800	\$249,100	
Contract Documents	5%		\$62,275	\$40,700	\$20,350	\$62,275	
Bidding Phase	2.5%		\$32,138	\$19,871	\$10,118	\$32,138	
Contract Administration	17.5%		\$217,963	\$139,871	\$70,790	\$217,963	
Total all phases	100%		\$1,244,821	\$748,842	\$404,340	\$1,153,182	

Phase	Base Construction Scope	Current Bidding/CA Fees	150K scope x 11.82% x 45% SD + DD Fee)	350K scope x 11.82% x 45% SD + DD Fee)	2415K scope x 11.82% x 45% SD + DD Fee)	\$1M scope x 11.82% x 45% SD + DD Fee) - \$25K	\$50,953	\$13,351
Schematic Design								
Design Development								
Contract Documents								
Bidding Phase								
Contract Administration								
Total all phases								

Color Key:

Base Construction Scope
 Current Bidding/CA Fees

Reimbursable Expenses:	Airfare	Hotel	Meals	Rental Car	Total
Top charge per person	\$450	\$140	\$50	\$80	\$720
No. of person trips - 3 per Bidding phase					3
Estimated Travel Expenses					\$2,160
Misc. Expenses					\$1,500
Total Estimated Reimbursable Expenses Bid Phase					\$3,660

Reimbursable Expenses:	Airfare	Hotel	Meals	Rental Car	Total
Top charge per person	\$450	\$140	\$50	\$80	\$720
No. of person trips - 2.5 per month x 12 months					30
Estimated Travel Expenses					\$21,600
Misc. Expenses					\$5,800
Total Estimated Reimbursable Expenses CA Phase					\$28,500

TO: Trenton Prail

DATE: July 19, 2013

In accordance with the AIA- B1401 Agreement dated: July 5, 2012

BETWEEN the Owner:
City of Grand Junction
c/o Public Works and Planning
250 North Fifth St.
Grand Junction, CO 81501

and the Design Professional/Architect:
Westlake Reed Leskosky
One E. Camelback Rd., Suite 690
Phoenix, AZ 85012

for the Project:
Avalon Theatre Addition and Renovation

The Agreement is modified, amended, and supplemented as set forth in this Contract Modification. Wherein this Contract Modification is in conflict with the Agreement, the requirements of this Contract Modification shall govern.

Authorization is requested

to proceed with Additional Services or a Change in Services

to incur Additional Reimbursable Expenses.

As Follows:

- Proceed with the Construction Administration Phase that coordinates with the Scope indicated in the Construction Documents dated and Issued for Bidding on February 26, 2013, subsequently revised and amended in the Scope Reduction Package identified as Option B by FCI Constructors dated May 16, 2013 and documents created by Chamberlin Architects, Bighorn Engineering and Grand Valley Engineering labeled as Option 05.
- Scope reduction as identified above to be incorporated into a Final Permit and Construction package.
- In the interest of saving costs and expenses, included Site visits for field observation and construction meetings by Westlake Reed Leskosky during construction are limited to thirteen (13) person trips (7 architectural, 2 electrical, 2 mechanical, 1 AV/Theatrical and 1 acoustics). Weekly OAC construction meetings are included per our original Agreement – Exhibit B.1 Construction Phase Services and shall be attended primarily by our local associate architect Chamberlin Architects and by our local engineering and interiors representatives Bighorn Engineering, Lindauer-Dunn, Austin and Blythe at appropriate intervals and when necessary.
- Site visits by WRL in excess of those identified above will be Additional Services at a Not-to-Exceed cost of \$2,100 per person trip (\$1,500 labor + \$600 expenses) and will only occur when specifically requested and pre-approved in writing by the City.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement or as otherwise agreed by the parties.)

Compensation:

Additional Services to be completed on an Hourly Not-to-Exceed Basis as follows:

Construction Administration Phase Hourly Not-to-Exceed	\$126,229
Estimated Additional Reimbursable Expenses	\$ 8,550
Total Additional Services Hourly Not-to-Exceed + Expenses	\$134,779

Time:

Incorporation of Scope Reduction into Final Permit and Construction package to be completed within four (4) weeks of this modification being executed.

The Construction Phase is to be completed within 310 calendar days of commencement of construction.

All work executed under this Contract Modification is subject to the terms and conditions of the original Contract, except as herein specifically modified.

SUBMITTED BY:
DESIGN PROFESSIONAL/ARCHITECT
Westlake Reed Leskosky

AGREED TO:
CLIENT/OWNER

Paul E. Westlake, Jr., FAIA, Managing Principal
(Printed name and title)

Richard E. [unclear] [unclear]
(Printed name and title)

Paul E. Westlake, Jr. - 7/22/13
(Signature) (Date)

[Signature] 7/19/13
(Signature) (Date)

JULY 22, 2013

6/27/2013
 Westlake Reed Leskoosky
 Aviston Illinois
 CA Phase - Based on \$6,570,000 construction cost
 Schedule of Services

	Prime Arch WRL	Assoc. Arch Chamberlain	Assoc. Struct Lindauer Gunn	Assoc. Eng Bjorkom	Interiors Byrbe
BASIC SERVICES					
Architectural Design	62.0%	20%	7.5%	7.5%	2.5%
Interior Design - Room Finishes	3.0%	20%			
Structural Engineering	10.0%	20%			80%
HVAC Engineering	7.5%	20%	80%		
Plumbing / Sprinkler Systems Engineering	7.0%	20%		80%	
Electrical Engineering	10.5%	20%		80%	
BASIC SERVICES TOTALS	100%	100%	100%	100%	100%
Architectural Design	2.71%	3.14%			
Interior Design - Room Finishes	0.11%				0.42%
Structural Engineering	0.35%		1.40%		
HVAC Engineering	0.26%			1.05%	
Plumbing / Sprinkler Systems Engineering	0.25%			0.98%	
Electrical Engineering	0.37%			1.47%	
BASIC SERVICES TOTALS	4.75%	3.14%	1.40%	3.52%	0.42%

Total Construction Cost - All Phases \$6,570,000
 Design Basic Services Fee Percentage 0.80%
 Design Basic Services Fee \$658,450

	17.5%	17.5%	17.5%	17.0%	17.1%	Total Fee by Discipline
BASIC SERVICES						
Architectural Design	\$115,110	\$49,244	\$0	\$0	\$0	\$164,354
Interior Design - Room Finishes	\$586	\$0	\$0	\$0	\$0	\$586
Structural Engineering	\$1,865	\$0	\$7,818	\$0	\$0	\$9,683
HVAC Engineering	\$1,486	\$0	\$0	\$5,864	\$0	\$7,350
Plumbing / Sprinkler Systems Engineering	\$1,368	\$0	\$0	\$5,475	\$0	\$6,843
Electrical Engineering	\$2,052	\$0	\$0	\$8,260	\$0	\$10,312
BASIC SERVICES TOTALS	\$22,572	\$49,244	\$7,818	\$13,694	\$2,340	\$115,728

	Firm	Fee
SPECIALTY FEE DISTRIBUTION		
Cost Engineering	Austin	\$1,500
Theatre Technical Design	WRL	\$8,000
Audio Video Design	WRL	\$8,000
Acoustics Design	Kirkgaard	\$8,500
Lighting Design	WRL	\$3,260
Detail/T Design	WRL	\$3,250
SPECIALTY SERVICE TOTALS		\$32,510
BASIC SERVICES		\$97,728
TOTAL BASIC + SPECIALTY SERVICES		\$130,238

	Item	Expenses
ESTIMATED REIMBURSABLE EXPENSES		
Travel	WRL	7500
	Kirkgaard	600
Sub-total Travel		7800
Prelims, Shipping and Misc. Expenses	All Firms	750
TOTAL REIMBURSABLE EXPENSES		\$8,550
TOTAL CA Phase FEE		\$138,788

12 WRL person trips
 1 Kirkgaard person trip
 \$800 per person trip (includes airfare, car, meals and PHX airport parking)
 based on submittals and shop drawings issued electronically

Fee Distribution to Local Firms (expenses not included)	
WRL	52.54%
Chamberlain	36.20%
Lindauer Gunn	6.19%
Byrbe	1.96%
Austin	1.19%
Big Horn	15.43%
Kirkgaard	0.73%
Local Firms	67.46%
Total Basic + Specialty Fee	100.00%

TO: Trenton Prall

DATE: January 6, 2014

In accordance with the AIA- B1401 Agreement dated: July 5, 2012

BETWEEN the Owner:
City of Grand Junction
c/o Public Works and Planning
250 North Fifth St.
Grand Junction, CO 81501

and the Design Professional/Architect:
Westlake Reed Leskosky
One E. Camelback Rd., Suite 690
Phoenix, AZ 85012

for the Project:
Avalon Theatre Addition and Renovation

The Agreement is modified, amended, and supplemented as set forth in this Contract Modification. Wherein this Contract Modification is in conflict with the Agreement, the requirements of this Contract Modification shall govern.

Authorization is requested

to proceed with Additional Services or a Change in Services

to incur Additional Reimbursable Expenses.

As Follows:

- Proceed with Additional Services to integrate previous VE scope reductions back into the project based on an additional One Million Dollar (\$1,000,000) increase to the current scope.
- Scope to be reincorporated into project is defined as the following:
 - Complete Stair A and removal of existing Stair F (First Floor to Mezzanine only).
 - Complete all components of First Floor of Addition including Lobby, Ticket Booth, Concessions, Toilet Rooms, Dressing Room and Multi-purpose Room (base finishes only).
 - Install all major HVAC Equipment and main distribution ducts.
 - Install complete Fire Alarm system.
 - Install all HVAC Controls.
 - Complete Mezzanine Level Lobby for access to Stair A and Elevator.
- A single bid/construction package indicating the additional scope of work to be provided. This package will be provided solely by WRL.
- Additional Construction Administration services associated with the additional scope of work such as shop drawing reviews, RFI responses, etc... to be included and assumes the overall construction duration to be extended by an additional two (2) months to complete the additional scope of work. Additional CA will be provided by WRL and in collaboration with local consultants based on the current CA Phase Agreements.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement or as otherwise agreed by the parties)

Compensation:

Additional Services to be completed on an Hourly Not-to-Exceed Basis as follows:

CD Package and additional CA - Hourly Not-to-Exceed	\$ 32,125
Estimated Additional Reimbursable Expenses	\$ 1,950
Total Additional Services Hourly Not-to-Exceed + Expenses	\$ 34,075

Time:

Incorporation of Scope of Work into Bid/Construction Package to be completed by January 17, 2014.

All work executed under this Contract Modification is subject to the terms and conditions of the original Contract, except as herein specifically modified.

SUBMITTED BY:
DESIGN PROFESSIONAL/ARCHITECT
Westlake Reed Leskosky

AGREED TO:
CLIENT/OWNER

Paul E. Westlake, Jr., FAIA, Managing Principal

(Printed name and title)

Richard S. [unclear]

(Printed name and title)


(Signature)

(Date)


(Signature)

(Date)

1/16/14
(Date)

12/20/2013

Westlake Reed Leskosky

Avalon Theatre

Additional Services - Based on \$1,000,000 additional construction cost

Schedule of Services

	Prime A/E WRL CD package	Prime A/E WRL CA only	Assoc. Arch. Chamberlin CA only	Assoc. Struct. Lindauer Dunn CA only	Assoc. Eng. BigHorn CA only	Interiors Blythe CA only
BASIC SERVICES	15.0%	17.5%	17.5%	17.5%	17.5%	17.5%
Architectural Design	62.0%	100%	25%	75%		
Interior Design - Room Finishes	3.0%	100%	20%			80%
Structural Engineering	10.0%	100%	20%	80%		
HVAC Engineering	7.5%	100%	30%		70%	
Plumbing / Sprinkler Systems Engineering	7.0%	100%	30%		70%	
Electrical Engineering	10.5%	100%	30%		70%	
BASIC SERVICES TOTALS	100%					
Architectural Design	9.30%	2.71%	8.14%			
Interior Design - Room Finishes	0.45%	0.11%				0.42%
Structural Engineering	1.50%	0.95%		1.40%		
HVAC Engineering	1.13%	0.39%			0.92%	
Plumbing / Sprinkler Systems Engineering	1.05%	0.37%			0.86%	
Electrical Engineering	1.58%	0.55%			1.29%	
BASIC SERVICES TOTALS	15.00%	4.48%	8.14%	1.40%	3.08%	0.42%

	Fee %
Total Construction Cost - All Phases	\$1,000,000
Design Basic Services Fee Percentage	8.60%
Design Basic Services Fee	\$85,000

	15.0%	17.5%	17.5%	17.5%	17.5%	17.5%	Total Fee by Discipline
BASIC SERVICES							
Architectural Design	\$7,905	\$2,306	\$6,917	\$0	\$0	\$0	\$17,128
Interior Design - Room Finishes	\$383	\$89	\$0	\$0	\$0	\$357	\$829
Structural Engineering	\$1,275	\$268	\$0	\$1,190	\$0	\$0	\$2,763
HVAC Engineering	\$956	\$335	\$0	\$0	\$781	\$0	\$2,072
Plumbing / Sprinkler Systems Engineering	\$893	\$312	\$0	\$0	\$729	\$0	\$1,934
Electrical Engineering	\$1,339	\$469	\$0	\$0	\$1,093	\$0	\$2,901
BASIC SERVICES TOTALS	\$12,750	\$3,809	\$6,917	\$1,190	\$2,603	\$357	\$27,625

	Firm	Fee
SPECIALTY FEE DISTRIBUTION		17.5%
Theatre Technical Design	WRL	\$500
Audio Video Design	WRL	\$1,500
Data/IT Design	WRL	\$2,500
SPECIALTIES SERVICE TOTALS		\$4,500
BASIC SERVICES		\$27,625
TOTAL BASIC + SPECIALTY SERVICES		\$32,125

	Item	Expenses
ESTIMATED REIMBURSABLE EXPENSES		
Travel	WRL	1200
Sub-total Travel		1200
Printing, Shipping and Misc. Expenses	All Firms	750
TOTAL REIMBURSABLE EXPENSES		\$1,950
TOTAL Additional Services FEE		\$34,075

2 WRL person trips based on 2 additional months of construction
 \$600 per person trip (includes airfare, car, meals and PHX airport parking)
 based on submittals and shop drawings issued electronically

TO: Trenton Prall

DATE: March 17, 2014

In accordance with the AIA- B1401 Agreement dated: July 5, 2012

BETWEEN the Owner:
City of Grand Junction
c/o Public Works and Planning
250 North Fifth St.
Grand Junction, CO 81501

and the Design Professional/Architect:
Westlake Reed Leskosky
One E. Camelback Rd., Suite 690
Phoenix, AZ 85012

for the Project:
Avalon Theatre Addition and Renovation

The Agreement is modified, amended, and supplemented as set forth in this Contract Modification. Wherein this Contract Modification is in conflict with the Agreement, the requirements of this Contract Modification shall govern.

Authorization is requested

to proceed with Additional Services or a Change in Services

to incur Additional Reimbursable Expenses.

As Follows:

- Additional Construction Administration services associated with the additional scope of work known as PR 06, to attend one additional site visit, participation in weekly OAC meetings via teleconference, shop drawing reviews, RFI responses, etc... to be included and assumes the overall construction duration to be extended by an additional one and one half (1-1/2) months to complete the additional scope of work by September 15, 2014. Additional CA will be provided by WRL and in collaboration with local consultants based on the current CA Phase Agreements.

The following adjustments shall be made to compensation and time.
(Insert provisions in accordance with the Agreement or as otherwise agreed by the parties.)

Compensation:

Additional Services to be completed on an Hourly Not-to-Exceed Basis as follows:

Additional CA - Hourly Not-to-Exceed	\$ 11,250
Estimated Additional Reimbursable Expenses	\$ 500
Total Additional Services Hourly Not-to-Exceed + Expenses	\$ 11,750

Time:

August 1, 2014 through September 15, 2014

All work executed under this Contract Modification is subject to the terms and conditions of the original Contract, except as herein specifically modified.

SUBMITTED BY:
DESIGN PROFESSIONAL/ARCHITECT
Westlake Reed Leskosky

AGREED TO:
CLIENT/OWNER

Paul E. Westlake, Jr., FAIA, Managing Principal

(Printed name and title)

Jay Valentine, Internal Services Manager

(Printed name and title)

 4-1-14

(Signature)

(Date)



(Signature)

3/17/14

(Date)