***DRAFT – October 2024***

**[PROPOSED] ARCHITECTURAL AGREEMENT**

**Between**

**NORTHSIDE EDUCATION, INC.
d/b/a ATLANTA CLASSICAL ACADEMY**

**And**

**[** **]**

**for the**

**[** **]**

**PROJECT**

\* THIS IS NOT AN AGREEMENT, OR AN OFFER FOR AN AGREEMENT, NOR DOES IT ACCEPT AN OFFER FOR AN AGREEMENT OR MEMORIALIZE ANY AGREEMENT BETWEEN THE PARTIES. NO AGREEMENT, ORAL OR WRITTEN, REGARDING OR RELATING TO ANY OF THE MATTERS COVERED BY THIS DOCUMENT HAS BEEN ENTERED INTO BETWEEN THE PARTIES. THIS DOCUMENT, IN ITS PRESENT FORM OR AS IT MAY BE HEREAFTER REVISED BY ANY PARTY, WILL NOT BECOME THE AGREEMENT OF THE PARTIES UNTIL, WITH ALL EXHIBITS ATTACHED AND INITIALED BY THE PARTIES, IT HAS BEEN SIGNED BY ALL PARTIES AND THE COMPLETE SIGNED COPIES HAVE BEEN EXCHANGED.

\*\* THIS DOCUMENT IS SUBJECT TO FURTHER COMMENT FROM COUNSEL

**TABLE OF CONTENTS**

**ARTICLE 1: DEFINITIONS AND INTERPRETATION** 1

**ARTICLE 2: SCOPE OF SERVICES** 7

**ARTICLE 3: TIME FOR PERFORMANCE OF THE SERVICES** 8

**ARTICLE 4: DESIGN DOCUMENTS** 9

**ARTICLE 5: OWNERSHIP OF DESIGN DOCUMENTS** 10

**ARTICLE 6: OWNER PROVIDED INFORMATION** 11

**ARTICLE 7: ARCHITECT’S STAFFING AND SUBCONSULTANTS** 12

**ARTICLE 8: CONTRACT PRICE AND PAYMENTS** 13

**ARTICLE 9: CHANGE ORDERS** 16

**ARTICLE 10: STANDARD OF CARE** 19

**ARTICLE 11: TERMINATION OR SUSPENSION BY OWNER** 19

**ARTICLE 12: INDEMNIFICATION** 21

**ARTICLE 13: INSURANCE** 23

**ARTICLE 14: CONFIDENTIALITY** 26

**ARTICLE 15: CLAIMS AND DISPUTE RESOLUTION** 27

**ARTICLE 16: NOTICE REQUIREMENTS** 29

**ARTICLE 17: MISCELLANEOUS** 29

**LIST OF APPENDICES**

APPENDIX A PROJECT REQUIREMENTS

APPENDIX B SCOPE OF SERVICES

APPENDIX B-1 CONSTRUCTION BUDGET

APPENDIX C TIME SCHEDULE

APPENDIX D PAYMENT SCHEDULE

APPENDIX E KEY PERSONNEL AND APPROVED SUBCONSULTANTS

APPENDIX E-1 KEY PERSONNEL

APPENDIX E-2 APPROVED SUBCONSULTANTS

APPENDIX F HOURLY RATES FOR UNILATERAL CHANGE ORDERS AND REIMBURSABLE EXPENSES

APPENDIX G LIEN AND CLAIM WAIVER FORMS

APPENDIX G-1 ARCHITECT’S WAIVER AND RELEASE OF LIEN AND PAYMENT BOND RIGHTS UPON INTERIM PAYMENT

APPENDIX G-2 ARCHITECT’S INTERIM CLAIM WAIVER AND RELEASE UPON PROGRESS PAYMENT

APPENDIX G-3 SUBCONSULTANT/SUPPLER/VENDOR WAIVER AND RELEASE OF LIEN AND PAYMENT BOND RIGHTS UPON INTERIM PAYMENT

APPENDIX G-4 SUBCONSULTANT’S INTERIM CLAIM WAIVER AND RELEASE UPON PROGRESS PAYMENT

APPENDIX G-5 ARCHITECT’S WAIVER AND RELEASE OF LIEN AND PAYMENT BOND RIGHTS UPON FINAL PAYMENT

APPENDIX G-6 ARCHITECT’S FINAL, UNCONDITIONAL CLAIM WAIVER AND RELEASE UPON FINAL PAYMENT

APPENDIX G-7 SUBCONSULTANT/SUPPLIER/VENDOR WAIVER AND RELEASE OF LIEN AND PAYMENT BOND RIGHTS UPON FINAL PAYMENT

APPENDIX G-8 SUBCONSULTANT’S FINAL, UNCONDITIONAL CLAIM WAIVER AND RELEASE UPON FINAL PAYMENTAPPENDIX H INVOICE FORMS

APPENDIX H-1 INVOICE FORM FOR INTERIM PAYMENTS

APPENDIX H-2 INVOICE FORM FOR FINAL PAYMENT

APPENDIX I CHANGE ORDER FORMS

APPENDIX I-1 CHANGE ORDER FORM

APPENDIX I-2 UNILATERAL CHANGE ORDER FORM

APPENDIX I-3 ARCHITECT’S CHANGE ORDER REQUEST FORM

APPENDIX J OWNER PROVIDED INFORMATION

**THIS ARCHITECTURAL AGREEMENT** (this “Agreement”)is made under seal this [date] day of [month], 20[##] (“Effective Date”), by and between Northside Education, Inc. dba Atlanta Classical Academy (“Owner”), a Georgia Domestic Nonprofit Corporation, whose address for the receipt of all notices shall be:

| [name] |
| --- |
| 3260 Northside Drive NW |
| Atlanta, GA, 30305 |
| [email] |

and whose representative for giving and receiving notices shall be [name], with a copy of notices to Gregory K. Smith (gsmith@sgrlaw.com), and

and

[NAME] (“Architect”), a [STATE AND ENTITY TYPE], whose address for the receipt of all notices shall be:

| [architect] |
| --- |
| [address] |
| [address] |
| [email] |

and whose representative for giving and receiving notices shall be [name].

**RECITALS**

WHEREAS Owner desires to design and construct [a and other infrastructure] (“Project,” as further defined below), to be located at [ADDRESS] in [CITY], [STATE] Georgia (“Site,” as further defined below);

WHEREAS Owner desires to retain Architect and Architect desires to perform Services (as defined below) for the Project, on the terms and conditions set forth below; and

WHEREAS Architect has represented to Owner that it possesses expertise in the performance of the Services.

NOW THEREFORE, in consideration of the mutual undertakings of the Parties set forth in this Agreement, Owner and Architect agree as follows:

# **DEFINITIONS AND INTERPRETATION**

## Definitions. The terms used in this Agreement shall have the following meanings:

### “AAA” has the meaning specified in Section 15.2.

### “AAA Rules” has the meaning specified in Section 15.2.

### “Affiliate” means (i) any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a Party, and (ii) any Person that, directly or indirectly, is the beneficial owner of fifty percent (50%) or more of any class of equity securities of, or other ownership interests in, a Party or of which the Party is directly or indirectly the owner of fifty percent (50%) or more of any class of equity securities or other ownership interests. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or otherwise.

### “Agreement” means this Agreement (including all Appendices attached hereto), as it may be amended by Change Order pursuant to this Agreement from time to time.

### “Applicable Codes and Standards” means all codes, standards or requirements set forth herein (including Appendix B) or in any Applicable Law, which codes, standards and requirements include, those listed in Appendix A, and which shall govern Architect’s performance of the Services as provided herein. In the event of an inconsistency or conflict between any of the Applicable Codes and Standards, the highest performance standard as contemplated therein shall govern Architect’s performance under this Agreement.

### “Applicable Law” means all laws, statutes, ordinances, certifications, orders, decrees, injunctions, licenses, permits, approvals, rules and regulations, including any conditions thereto, of any Governmental Authority having jurisdiction over all or any portion of the Site or the Project or performance of all or any portion of the Services, or other legislative or administrative action of a Governmental Authority, or a final decree, judgment or order of a court which relates to the performance of the Services hereunder or the application of this Agreement, including (i) any and all permits, (ii) any Applicable Codes and Standards incorporated into Applicable Law, and (iii) any Applicable Law related to (x) conservation, improvement, protection, pollution, contamination or remediation of the environment, or (y) Hazardous Substances or any handling, storage, release or other disposition of Hazardous Substances. In the event of a Change in Law, Architect shall comply with such Change in Law, but Architect shall be entitled to a Change Order to the extent permitted under Section 9.2(a)(iii).

### “Architect” has the meaning specified in the preamble of this Agreement.

### “Architect Representative” means that Person or Persons designated by Architect in a written notice to Owner specifying any and all limitations of such Person’s authority, and acceptable to Owner, who shall have complete authority to act on behalf of Architect on all matters pertaining to this Agreement or the Services, including receiving communicationsand notices on behalf of Architect, giving instructions and making changes in the Services. Any change in the Architect Representative shall be subject to Section 7.2.

### “Architect’s Intellectual Property” has the meaning specified in Section 5.2.

### “Business Day” means every Day other than a Saturday, a Sunday or a Day that is an official holiday for employees of the federal government of the United States of America.

### “CAD” has the meaning specified in Section 4.3.

### “Change Order” means a written order issued by Owner to Architect after the execution of this Agreement in the form of Appendix I-2, or a written instrument signed by both Parties after the execution of this Agreement in the form of Appendix I-1, that authorizes an addition to, deletion from or any other modification or adjustment to the requirements of this Agreement, including an addition to or deletion from the Services or any modification or adjustment to the Contract Price, Payment Schedule, Time Schedule, Completion Dates, or any Project Requirements.

### “Changed Criteria” has the meaning specified in Section 9.1(a).

### “Changes in Law” means any amendment, modification, superseding act, deletion, addition or change in or to Applicable Law (excluding changes to tax laws where such taxes are based upon Architect’s inventory, revenue, income, profits/losses or cost of finance or withholding tax) that occurs and takes effect after the Effective Date.

### “Completion” means that all Services and all other of Architect’s obligations under this Agreement (except for those obligations that survive the termination or expiration of this Agreement), are fully and completely performed in accordance with the terms of this Agreement, including: (i) delivery by Architect to Owner of fully executed Final, Unconditional Lien and Claim Waiver and Release forms in the form of Appendix G-5 and Appendix G-6; (ii)  delivery by Architect to Owner of all documentation required to be delivered under this Agreement, including Design Documents and Confidential Information; (iii) delivery by Architect to Owner of evidence acceptable to Owner that all Subconsultants have been fully and finally paid, including fully executed Final, Unconditional Lien and Claim Waiver and Release forms from each Subconsultant in the form of Appendix G-7 and Appendix G-8; and (iv) performance by Architect of all other obligations required under this Agreement for Completion.

### “Completion Dates” means those dates in which Architect is required to complete certain portions or Phases of the Services which are set forth in the Time Schedule in Appendix C.

### “Confidential Information” has the meaning specified in Section 14.1(a).

### “Construction Budget” has the meaning set forth in Appendix B.

### “Construction Contract” is a contract between Owner and Contractor for the construction of the Project.

### “Contract Price” has the meaning specified in Section 8.1.

### “Contractor” means that entity which will contract with Owner to provide construction services and work for the Project pursuant to a Construction Contract.

### “Damages” means all losses, costs, expenses, damages, injuries, liabilities, claims, demands, fines, penalties, interest and causes of action, suits or litigation of every kind and character, including reasonable attorneys’ fees and expenses (including the reasonable attorneys’ fees, costs and expenses of any appeal or arbitration).

### “Day” means a calendar day.

### “Default” has the meaning specified in Section 11.1(a).

### “Defect” and “Defective” have the meaning specified in Section 10.1.

### “Design Documents” means the Drawings, Specifications and all other documents that Architect is required to produce or produces pursuant to this Agreement, including reports, studies, meeting minutes, computer files, calculations and other tangible manifestations of Architect’s efforts under this Agreement.

### “Dispute” has the meaning specified in Section 15.1.

### “Drawings” means the graphic and pictorial documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams, which Architect is required to produce pursuant to this Agreement and as part of the Services. The Drawings form a part of the Design Documents.

### “Effective Date” has the meaning specified in the preamble of this Agreement.

### “Final Completion” means that all Work required under the Construction Contract has been fully and properly completed, including all punch list items as defined more fully in the Construction Contract.

### “Final Lien and Claim Waiver” means the waiver and release provided to Owner by Architect and Subconsultants in accordance with the requirements of Section 8.3 and Appendices G-5 through G-8.

### “Final Payment” has the meaning specified in Section 8.3.

### “Force Majeure” means any act or event that (i) renders it impossible for the affected Party to perform its obligations under this Agreement, (ii) is beyond the control of the affected Party and not due to its fault or negligence, (iii) could not have been prevented or avoided by the affected Party through the exercise of due diligence, including the expenditure of any reasonable sum taking into account the Contract Price, and (iv) is a catastrophic storm or flood, lightning, tornado, earthquake, other act of God, war, civil disturbance, terrorist attack, revolt, insurrection, sabotage, commercial embargo, epidemic, fire, explosion, or action of a Governmental Authority that was not requested, promoted or caused by the affected Party.

### “Good Design Practices” means the design and engineering practices, methods, techniques and standards with respect to the design and engineering of [TYPE OF PROJECT], which includes compliance with Applicable Codes and Standards and Applicable Law, used or accepted by similar design professionals on projects of similar size and complexity in the jurisdiction in which the Project is located.

### “Governmental Authority” means any federal, state or local department, office, instrumentality, agency, board or commission having jurisdiction over a Party or any portion of the Services, the Project or the Site.

### “Hazardous Substances” means (i) any “hazardous waste” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and regulations promulgated thereunder; (ii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in (or for the purposes of) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended, and regulations promulgated thereunder; (iii) any “hazardous waste” or “hazardous substance” as defined by Applicable Law; and (iv) any hazardous, toxic or dangerous waste, substance, product, or material as defined in any so-called “superfund” or “superlien” law or in any other Applicable Law regulating, relating to or imposing liability or standards of conduct concerning such waste, substance, product, or material.

### “Interim Lien and Claim Waiver” means the waiver and release provided to Owner by Architect and Subconsultants in accordance with the requirements of Section 8.2(c), which shall be in the form of Appendices G-1 through G-4.

### “Invoice” means Architect’s request for each payment, which invoice shall be in the form of Appendix H-1, other than the Final Payment made pursuant to Section 8.3, which shall be in the form of Appendix H-2.

### “Key Personnel” and “Key Persons” have the meaning specified in Section 7.2.

### “Lender” means any entity or entities providing temporary or permanent debt financing to Owner for the Project.

### “Month” means a Gregorian calendar month; “month” means any period of thirty (30) consecutive Days.

### “Notice to Proceed” has the meaning specified in Section 3.2.

### “Owner” has the meaning specified in the preamble of this Agreement.

### “Owner Indemnified Parties” means (i) Owner, [add any additional named entities], [Lender] and each of their respective Affiliates and (ii) the respective partners, directors, officers, agents, employees, representatives and invitees of each Person specified in clause (i) above. An “Owner Indemnified Party” means any one of the Owner Indemnified Parties.

### “Owner Provided Information” has the meaning specified in Section 6.1.

### “Owner Representative” shall mean that Person or Persons designated by Owner in a written notice to Architect who shall have complete authority to act on behalf of Owner on all matters pertaining to the Services, including receiving communications and notices on behalf of Owner, giving instructions and making changes in the Services. Notification of a change in Owner Representative shall be provided in advance, in writing, to Architect.

### “Party” means Owner or Architect and “Parties” means Owner and Architect.

### “Payment Schedule” means the allocation of payment for each Phase, as set forth in Appendix D, which allocates the Contract Price among all the Phases.

### “Person” means any individual, company, joint venture, corporation, partnership, association, joint stock company, limited liability company, trust, estate, unincorporated organization, Governmental Authority or other entity having legal capacity.

### “Phase” means a designated portion of the Services as described in Appendix B (collectively or in groups the “Phases”).

### “Project” means the [describe project] and other infrastructure to be built on the Site.

### “Project Requirements” means those requirements for the Project, as specified in Appendix A. The Project Requirements form a part of the requirements for the Services, and may be changed only by Change Order.

### “Project Schedule” means the schedule, to be developed by Owner and Contractor, with input from Architect, and as may be thereafter modified or updated in writing by Owner, of events, dates and milestones for the timely completion of the Project.

### “Services” means those services to be performed by Architect pursuant to this Agreement and described in the Scope of Services set forth in Appendix B and Article 2.

### “Site” means the approximately [##] acres located at [ADRDESS], [CITY] [STATE], and on which the Project shall be constructed.

### “Specifications” means those documents consisting of the written requirements for the Work, including requirements for equipment, materials, standards and workmanship and performance of related services, which are required to be prepared by Architect pursuant to this Agreement and as a part of the Services. The Specifications form a part of the Design Documents.

### “Standard of Care” has the meaning specified in Section 10.1.

### “Subconsultant” means any Person who has a direct or indirect contract with Architect or another Subconsultant to perform a portion of the Services.

### “Subcontract” means an agreement between Subconsultant and Architect or another Subconsultant for the performance of any portion of the Services.

### “Substantial Completion” means that all Work required under the Construction Contract is sufficiently complete so that Owner may use the Work for the purpose for which it was intended as defined more fully in the Construction Contract.

### “Taxes” means any and all taxes, assessments, levies, duties, fees, charges and withholdings of any kind or nature whatsoever and howsoever described, including gross receipts, franchise, sales, use, value-added, property, excise, capital, stamp, transfer, employment, occupation, generation, privilege, utility, regulatory, energy, consumption, lease, filing, recording and activity taxes, levies, duties, fees, charges, imposts and withholding, together with any and all penalties, interest and additions thereto.

### “Time Schedule” means the schedule of dates in which Architect is required to complete certain portions or Phases of the Services, such as the Completion Dates, as more particularly described in Section 3.3 and Appendix C.

### “Work” means the construction services and work to be provided by the Contractor in accordance with the Construction Contract to construct and complete the Project.

## Interpretation. The meanings specified in this Article 1 are applicable to both the singular and plural. As used in this Agreement, the terms “herein,” “herewith” and “hereof” are references to this Agreement taken as a whole, and the term “include,” “includes” or “including” means “including, without limitation.” Reference in this Agreement to an Article or Section shall be a reference to an Article or Section contained in this Agreement (and not to any Appendices to this Agreement) unless expressly stated otherwise, and a reference in this Agreement to an Appendix shall be a reference to an Appendix to this Agreement unless expressly stated otherwise.

# **SCOPE OF SERVICES**

## Scope of Services. Architect shall, either directly or through Subconsultants, provide for Owner, in accordance with the terms and conditions of this Agreement, the Services specified in Appendix B and all additional services reasonably implied or inferred therefrom or otherwise customarily provided in the performance of services of the nature to be provided by Architect. Without limiting the generality of the foregoing, Architect shall perform the Services and deliver the Design Documents in accordance with the Time Schedule specified in Appendix C and the Standard of Care specified in Section 10.1.

## Licenses. The Services shall be performed by individuals licensed in accordance with, and where required by, Applicable Law.

## Meetings. As specified in Appendix B, Architect shall attend Owner/Architect meetings during the design of the Project, and Architect shall attend all scheduled Owner/Architect/Contractor meetings during the construction of the Project.

## Coordination. As specified in Appendix B, Architect shall closely coordinate the performance of the Services with Owner’s other consultants.

## Hazardous Substances. Architect agrees to promptly notify Owner in writing in the event it acquires knowledge of any Hazardous Substances relating to the Work, other than de minimus amounts ordinarily contained in standard construction materials. Architect shall have no responsibility for the discovery, presence, handling, removal of or exposure of persons to pre-existing Hazardous Substances in any form at the Site, nor shall Architect have the responsibility to monitor substances brought onto the Site to determine whether such substances are Hazardous Substances. Architect shall incorporate a statement in the Drawings that no Hazardous Substances shall be contained in or incorporated in the Work, other than de minimus amounts ordinarily contained in standard construction materials. Further, Architect shall require in the Specifications that all contractors, subcontractors, manufacturers and suppliers whose equipment, materials and products are incorporated into the Work provide a certification acceptable to Owner warranting that their equipment, materials or products are free from Hazardous Substances, other than de minimus amounts ordinarily contained in standard construction materials, and are installed in accordance with all Applicable Law.

# **TIME FOR PERFORMANCE OF THE SERVICES**

## Time is of the Essence. Time is of the essence in the performance of all of Architect’s obligations under this Agreement, including the performance of the Services.

## Commencement of Services/Notice to Proceed. Upon Architect’s receipt from Owner of a written notice to proceed (“Notice to Proceed”) with the Services, Architect shall commence with the performance of the Services.

## Time Schedule. Architect shall perform its responsibilities and shall provide the Services (including the delivery of the Drawings, Specifications and other Design Documents required under this Agreement) in accordance with the times set forth in the Time Schedule attached hereto as Appendix C, including the Completion Dates, and in such a manner as to cause no delay in the construction or completion of the Project. The Time Schedule shall only be adjusted by Change Order as permitted under this Agreement. In addition, Architect shall promptly review and respond to all submittals (and take appropriate action, such approve and disapprove), including requests for information, shop drawings, product data and samples, but in all cases no later than [ten (10) Days] after Architect’s receipt of each submittal. It is hereby acknowledged that the Project is urgently needed by Owner and that Owner and the Owner Indemnified Parties would suffer substantial Damages if the Services are not performed in accordance with the Time Schedule, or if the Project is not completed in a timely manner and in accordance with the Project Schedule. Architect hereby agrees to pay to Owner any and all Damages incurred by or asserted against Owner or any Owner Indemnified Party and to hold Owner and all Owner Indemnified Parties harmless from any and all Damages incurred by or asserted against Owner or any Owner Indemnified Party: (1) as a result of Architect’s or any Subconsultant’s failure or delay in performing any of the Services, including failure or delay in providing any Design Documents required for the Services, in accordance with the Time Schedule, or (2) as a result of Architect’s or any Subconsultant’s acts or omissions which cause a delay in the construction or completion of the Project in accordance with the Project Schedule.

## Force Majeure and Owner-Caused Delay. If the commencement, prosecution or completion of Services is delayed by Force Majeure or by Owner or any other Person acting on behalf of or under the control of Owner, then Architect shall be entitled to an extension of time for the completion of those Services listed in the Time Schedule and affected by such delay if such delay causes Architect to complete such affected Services beyond the required time set forth in the Time Schedule for such affected Services, but only if (i) Architect is unable to proceed with other portions of the Services so as not to cause a delay in completing the affected Services by the required time set forth in the Time Schedule, (ii) such delay is not in any way attributable to Architect or any of its Subconsultants and (iii) Architect complies with the notice requirements in Section 9.4. The Parties agree that Architect’s sole remedy for such delay shall be an adjustment to the Time Schedule for such affected Services for such time as the Owner may determine, and such adjustment shall be recorded in a Change Order. For the purposes of this Section 3.4, the term “delay” shall include hindrances, disruptions, inefficiencies, impact, obstructions, lost production or any other similar term in the industry.

## Acceleration. Even if the Services are in compliance with the Time Schedule, Owner may, at any time, direct Architect by unilateral Change Order to accelerate the Services and perform additional shifts or overtime and provide additional labor. In this event, Owner’s sole liability to Architect shall be to pay any shift differential, premium or overtime payments to architects, engineers, draftsmen and other employees performing Services actually incurred over and above Architect’s normal rates. Any adjustment in the Contract Price for Owner’s acceleration of the Services shall be by Change Order.

# **DESIGN DOCUMENTS**

## Design Documents. The Design Documents, including the Drawings and Specifications, shall be based on and comply with the requirements of this Agreement, including the Scope of Services, Project Requirements, Good Design Practices, Applicable Codes and Standards, Applicable Law, the Standard of Care and all other provisions of this Agreement. Architect shall submit to Owner electronic design files, and sets of prints and reproducibles of Design Documents as required by this Agreement by the required Time Schedule as set forth in Appendix C.

## Review Process.

### Informal Review. During the development of the Design Documents during any Phase, Architect shall provide Owner with the opportunity to perform reviews of the design and engineering in progress. The reviews may be of progress prints, computer images, draft documents, working calculations, draft specifications or reports, Drawings, Specifications or other design or engineering documents determined by Owner.

### Formal Review Prior to Completion of a Phase.

#### When Architect believes that it has completed a Phase, Architect shall submit copies of the Design Documents to Owner for Owner’s formal review, comment, disapproval and approval. Each submission of Design Documents shall include a statement that to the best of Architect’s knowledge such Design Documents comply with the requirements of this Agreement.

#### Owner shall have up to [ten (10) Business Days] from its receipt to issue written comments, proposed changes and/or written approvals or disapprovals of the submission of Design Documents. Owner’s review periods shall be extended by the period of any delay due to Force Majeure. If Owner does not issue any comments, proposed changes or written approvals or disapprovals within such time period, Architect may proceed with the development of such Design Documents and continue with the next Phase, but Owner’s lack of comments, approval or disapproval, if applicable, shall in no event relieve Architect of any of its responsibilities under this Agreement (including responsibility for Defects) or any of Owner’s rights under this Agreement, at law or in equity.

#### In the event that Owner disapproves any Design Documents, Owner shall provide Architect with a written statement of the reasons for such rejection within the time period required for Owner’s response, and Architect shall provide Owner with revised and corrected Design Documents as soon as possible thereafter; provided that Architect shall not receive any extensions of time to perform any of its obligations hereunder. Upon resubmission of the Design Documents, Architect shall direct specific attention in writing to all of its revisions.

### Owner’s Approval. Owner’s review or approval of any Design Documents shall not in any way be deemed to limit or in any way alter, modify, relieve, waive or otherwise affect the Standard of Care, any other covenants, obligations or undertakings of Architect, or Architect’s obligation to perform and complete the Services in accordance with the requirements of this Agreement.

## CAD Drawings. Unless otherwise expressly provided under this Agreement, all Drawings prepared by Architect or its Subconsultants under this Agreement shall be prepared using computer aided design (“CAD”). The CAD version to be used by Architect shall be on AutoDesk AutoCAD version 2025.

# **OWNERSHIP OF DESIGN DOCUMENTS**

## Ownership of Design Documents. All Design Documents, including Drawings and Specifications, prepared by Architect or any Subconsultant shall be “works for hire,” and all rights, title and interest to the Design Documents, including any and all copyrights in the Design Documents, shall be owned by Owner, irrespective of any copyright notices or confidentiality legends to the contrary which may have been placed in or on the Design Documents by Architect or any Subconsultant. Architect and each Subconsultant waive in whole all the moral rights which may be associated with such Design Documents. If for any reason any part of or all of the Design Documents is not considered work for hire for Owner or if ownership of all right, title and interest in the Design Documents shall not otherwise vest in Owner, then Architect agrees that such ownership and copyrights in the Design Documents, whether or not such Design Documents are fully or partially complete, shall be automatically assigned from Architect to Owner, without further consideration, and Owner shall thereafter own all right, title and interest in the Design Documents, including all copyright interests. Notwithstanding the foregoing, nothing in this Section 5.1 shall result in a transfer of ownership of any Design Documents that are the proprietary intellectual property of Architect or any of its Subconsultants that was developed prior to the Effective Date of this Agreement. With respect to such proprietary intellectual property of Architect or its Subconsultants, Architect hereby grants Owner an irrevocable, perpetual and royalty-free license (with right to assign its rights) to use, modify and copy such proprietary intellectual property for any purpose relating to the Project.

## Architect’s Intellectual Property. Notwithstanding the provisions of Section 5.1, Architect shall (as between Owner and Architect) retain ownership of all proprietary intellectual property rights owned by Architect and developed by it prior to the Effective Date and outside this Agreement (hereinafter referred to as “Architect’s Intellectual Property”), regardless of whether such Architect’s Intellectual Property is included in the Design Documents, and nothing in this Section 5.2 shall result in a transfer of ownership of any of Architect’s Intellectual Property. With respect to such Architect’s Intellectual Property relating to the Services or the Design Documents, Architect hereby grants Owner an irrevocable, perpetual, and royalty-free license (including with right to assign its rights without consent to any purchaser of an interest in all or part of the Project) to use, disclose, modify and copy such Architect’s Intellectual Property. All Subcontracts shall contain provisions consistent with this Article 5.

## Return of Design Documents. Upon the termination or expiration of this Agreement and Owner’s written notice, all Design Documents, including all copies thereof, shall be returned to Owner, except that Architect may, subject to its confidentiality obligations under this Agreement, retain one record set of the Design Documents.

## Restricted Use of Design Documents. The Design Documents and copies thereof are not to be used by the Architect or any of its Subconsultants or any other person or entity on any other project without the prior written consent of Owner.

# **OWNER PROVIDED INFORMATION**

## Owner Provided Information. Owner has provided, or will provide, to Architect the information or documents listed in Appendix J (“Owner Provided Information”). To the extent Owner Provided Information has not been provided prior to the execution of the Agreement, it shall be provided within the times listed in Appendix J.

## Review of Owner Provided Information. To the extent Owner has provided the Owner Provided Information to Architect prior to the Effective Date, Architect represents that it has reviewed the Owner Provided Information and agrees that it is sufficient and accurate for the Architect to perform the Services in accordance with the Agreement, including meeting all Project Requirements and the Standard of Care. For Owner Provided Information provided by Owner after the Effective Date, Architect shall promptly notify Owner in writing whether it believes such Owner Provided Information does not meet the requirements specified in Appendix J.

## Return of Owner Provided Information. All Owner Provided Information shall at all times remain the property of Owner, and neither Architect nor any of its Subconsultants shall make use of any such information for any other project or for any other purpose than as set forth herein. Upon the termination or expiration of this Agreement and Owner’s written notice, all such information, including all copies thereof, shall be returned to Owner, except that Architect may, subject to its confidentiality obligations under this Agreement, retain one record set of such information.

# **ARCHITECT’S STAFFING AND SUBCONSULTANTS**

## Status of Architect. The relationship of Architect to Owner shall be that of an independent contractor. Any provisions of this Agreement which may appear to give Owner or the Owner Representative the right to direct or control Architect as to details of performing the Services, or to exercise any measure of control over the Services, shall be deemed to mean that Architect shall follow the desires of Owner or the Owner Representative in the results of the Services only and not in the means by which the Services are to be accomplished, and Architect shall have the complete right, obligation and authoritative control over the Services as to the manner, means or details as to how to perform the Services. Nothing herein shall be interpreted to create a master-servant or principal-agent relationship between Architect, or any of its Subconsultants, and Owner. Nevertheless, Architect shall strictly comply with all provisions, terms and conditions of this Agreement, and the fact that Architect is an independent contractor does not relieve it from its responsibility to fully, completely and timely perform the Services in strict compliance with this Agreement.

## Key Personnel. Appendix E-1 sets forth a list of key personnel (“Key Personnel” or “Key Persons”) from Architect’s organization who will be assigned to perform the Services. Key Personnel shall, unless otherwise expressly stated in Appendix E-1, be devoted full-time to the performance of the Services, and Key Personnel shall not be removed or reassigned without Owner’s prior written approval. All requests for the substitution of Key Personnel shall include a detailed explanation and reason for the request and the resumes of professional education and experience for a minimum of two (2) candidates with equal or greater experience and qualifications. Should Owner approve of the replacement of a Key Person, Architect shall allow for an overlap of two (2) weeks during which both the Key Person to be replaced and the Owner-approved new Key Person shall work together full time. The additional cost of any replacement of such Key Personnel and overlap time shall be entirely at Architect’s expense. The Completion Dates shall not be extended due to any replacement of such Key Personnel.

## Subconsultants. Owner acknowledges and agrees that Architect may have portions of the Services accomplished by Subconsultants pursuant to written Subcontracts between Architect and such Subconsultants. All Subconsultants shall be reputable, qualified firms with an established record of successful performance in their respective trades performing identical or substantially similar services. All Subcontracts shall be consistent with the terms or provisions of this Agreement. No Subconsultant is intended to be or shall be deemed a third-party beneficiary of this Agreement. Architect shall be fully responsible to Owner for the acts and omissions of Subconsultants and of Persons directly or indirectly employed by them, as it is for the acts or omissions of Persons directly employed by Architect. The services of any Subconsultant shall be subject to inspection by Owner to the same extent as the services of Architect. Nothing contained herein shall (i) create any contractual relationship between any Subconsultant and Owner, or (ii) obligate Owner to pay or cause the payment to any Subconsultant.

### Approved Subconsultants. Appendix E-2 sets forth a list of Subconsultants (if any) that Architect and Owner have agreed are approved Subconsultants for the portion of the Services specified in Appendix E-2.

### Additional Proposed Subconsultants. In the event that Architect is considering the selection of a Subconsultant not listed on Appendix E-2, Architect shall (i) notify Owner of its proposed Subconsultant as soon as possible during the selection process and furnish to Owner all information reasonably requested by Owner with respect to Architect’s selection criteria (including copies of bid packages furnished to prospective Subconsultants and the qualifications and the bid responses of the proposed Subconsultants), and (ii) notify Owner no less than thirty (30) Business Days prior to the execution of a Subcontract with a Subconsultant not listed on Appendix E-2. Owner shall have the discretion to reject any proposed Subconsultant not listed on Appendix E-2 for a Subcontract. Architect shall not enter into any Subcontract with a proposed Subconsultant that is rejected by Owner in accordance with the preceding sentence. Owner shall undertake in good faith to review the information provided by Architect pursuant to this Section 7.3(b) expeditiously and shall notify Architect of its decision to accept or reject a proposed Subconsultant as soon as practicable after such decision is made.

### Delivery of Subcontracts. Architect shall furnish Owner with a copy of all Subcontracts within ten (10) Days after execution thereof and, within ten (10) Days of Owner’s request, furnish Owner with a copy of any other Subcontracts.

### Terms of Subcontracts. In addition to the requirements set forth above, each Subcontract shall contain the following provisions: (i) the Subcontract may be assigned to Owner without the consent of the respective Subconsultant; and (ii) the Subconsultant shall comply with and perform for the benefit of Owner all requirements and obligations of Architect to Owner under this Agreement, as such requirements and obligations are applicable to the performance of the services under the respective Subcontract, including an indemnity in substance the same as that included in Article 12, the Standard of Care in Article 10, the ownership rights of Design Documents under Article 5, the confidentiality provisions in Article 14 and the insurance requirements in Article 13.

# **CONTRACT PRICE AND PAYMENTS**

## Contract Price. As compensation in full to Architect for the full and complete performance of the Services and all of Architect’s other obligations under this Agreement, Owner shall pay and Architect shall accept [amount in words] U.S. Dollars (US$ [amount in numbers]) (the “Contract Price”), plus reimbursable expenses to the extent permitted under Appendix F. The Contract Price is only subject to adjustment by Change Order, as provided in Article 9, and includes all costs, charges, expenses, and Taxes of whatever nature applicable to the Services.

## Interim Payments.

### Payments. Payments shall be made by Owner to Architect on the basis of the percentage completion of each Phase (as shown on the Payment Schedule) during the preceding Month plus reimbursable expenses which are permitted as set forth in Appendix F, provided that Architect is otherwise in material compliance with the terms of this Agreement. Owner shall also make payments to Architect for any unilateral Change Orders issued in accordance with Section 9.1(b) or 9.2(d). Each payment shall be subject to Owner’s right to withhold payments under this Agreement, including Section 8.5. The Payment Schedule shall be amended only by Change Order pursuant to this Agreement.

### Invoices. Within five (5) Days after the end of each Month, Architect shall submit to Owner an Invoice for payment showing the percent of each Phase of the Services completed during the prior Month, which Invoice shall be in the amount equal to the payment due for such completed Services. Such Monthly Invoice shall also include amounts properly due and owing for Services performed during the prior Month and pursuant to an unilateral Change Order issued pursuant to Section 9.1(b) or 9.2(d). All Invoices, other than the Invoice for Final Payment, shall be in the form of Appendix H-1.

### Interim Lien and Claim Waivers. Each Invoice received by Owner prior to Completion shall be accompanied by fully executed Interim Lien and Claim Waiver and Release forms in the form of Appendix G-1 and Appendix G-2 for all Services performed through the date for which payment is requested, and fully executed Interim Lien and Claim Waiver and Release forms from each Subconsultant in the form of Appendix G-3 and Appendix G-4 for all Services performed through the date for which payment is requested. Interim Lien and Claim Waiver and Release forms, however, shall not be required from Subconsultants until they have performed Services, and Subconsultants shall be required to submit additional Interim Lien and Claim Waiver and Release forms only if they have performed Services not covered by a previous Interim Lien and Claim Waiver. Submission of all Interim Lien and Claim Waiver and Release forms is a condition precedent to payment of any Invoice.

### Review and Approval. Each Invoice shall be reviewed by Owner and, upon Owner’s reasonable request, Architect shall furnish such supporting documentation and provide such further information as may be reasonably requested by Owner. Unless disputed by Owner, each Invoice (less any withholdings allowed under this Agreement) shall be due and payable thirty (30) Days after it, and all required documentation, is received by Owner. If an Invoice is disputed by Owner, then payment shall be made for all undisputed amounts and the Dispute shall be resolved pursuant to Article 15. Payment on disputed amounts shall be made as soon as such Dispute is resolved.

## Final Payment. Upon achieving Completion, including the delivery to Owner of all Design Documents and any other documentation required under this Agreement, Architect shall submit a final Invoice to Owner in the form of Appendix H-2, together with fully executed Final, Unconditional Lien and Claim Waiver and Release forms from Architect in the form of Appendix G-5 and Appendix G-6 and fully executed Final, Unconditional Lien and Claim Waiver and Release forms from each Subconsultant in the form of Appendix G-7 and Appendix G-8. Within thirty (30) Days after (a) receipt of such final Invoice, all such Final Lien and Claim Waivers and all other documentation required under this Agreement, including all Design Documents, (b) resolution of all Disputes, (c) conversion of all unilateral Change Orders into Change Orders, as provided in Section 9.1(b) and 9.2(d), (d) discharge by Architect of all liens or other encumbrances on all or a portion of the Site, the Work or the Project, which are filed by Architect or any Subconsultant or any other Person acting through or under any of them, and (e) Owner’s written approval of Completion, Owner shall pay to Architect the balance of the Contract Price owed to Architect (“Final Payment”). Satisfaction of items (a) through (e) in this Section 8.3 are express conditions precedent to Final Payment.

## Payment or Approval Not Acceptance of Services. No payment made or approval given hereunder shall be considered as acceptance by Owner of any Defective Services, and any such payment or approval shall not in any way act as a waiver of any claim or right Owner may have hereunder and shall not modify, relieve, waive, terminate or otherwise affect the any covenants, obligations or undertakings of Architect set forth in this Agreement. All payments shall be subject to correction or adjustment in subsequent payments.

## Payments Withheld. In addition to disputed amounts set forth in an Invoice, Owner may, in addition to any other rights under this Agreement, at law or in equity, withhold payment on an Invoice or a portion thereof in an amount and to such extent as may be reasonably necessary to protect Owner from loss due to:

### Defective Services not remedied in accordance with this Agreement;

### liens or other encumbrances on all or a portion of the Site, the Work or the Project, which are filed by Architect or any Subconsultant or any other Person acting through or under any of them;

### any material breach by Architect of any term or provision of this Agreement;

### the assessment of any fines or penalties against Owner as a result of Architect’s failure to comply with Applicable Law or Applicable Codes and Standards;

### amounts paid by Owner to Architect in a preceding Month incorrectly or for which there was insufficient or inaccurate supporting information;

### failure of Architect to make payments to Subconsultants as required under their respective Subcontracts;

### any other costs or liabilities which Owner has incurred or will incur for which Architect may be responsible; or

### any other reason for which Owner is entitled to withhold payment under this Agreement.

## Owner shall pay Architect the withheld amount if Architect (i) pays, satisfies or discharges the applicable claim of Owner against Architect under or by virtue of this Agreement and provides Owner with reasonable evidence of such payment, satisfaction or discharge, (ii) cures all such breaches and defaults in the performance of this Agreement, or (iii) provides Owner with a bank guarantee or bond reasonably satisfactory to Owner in the amount of the withheld payment.

## Payment Error. If an error is made in connection with a payment, the Party receiving the payment in error shall immediately refund the mistaken amount to the paying Party.

## Currency. Unless otherwise specified, all amounts contained herein are in and shall be paid in U.S. Dollars.

# **CHANGE ORDERS**

## Change Orders Requested by Owner.

### Mutually-Agreed Upon Change Orders. Owner may, from time to time, order changes in the Services consisting of additions, deletions, or modifications, with one or more of the Contract Price, Payment Schedule, Time Schedule and Completion Dates being adjusted as applicable (collectively, the “Changed Criteria”). Such changes in the Services shall be authorized in writing using a written change order signed by Owner and Architect, which shall be in the form of Appendix I-1 (“Change Order”).

### Unilateral Change Orders. Should the Parties be unable to agree upon the Changed Criteria for any changes in the Services ordered by Owner, Owner may, by issuance of a written change order signed by it in the form of Appendix I-2 (“unilateral Change Order”), require Architect to commence and perform immediately the changed Services specified in the unilateral Change Order on a time and material basis at Architect’s hourly rates as set forth in Appendix F, with the effect of such unilateral Change Order on the Changed Criteria to be determined as soon as possible. If the Parties cannot agree upon the effect of such unilateral Change Order by the date of Completion, then the Dispute shall be resolved as provided in Article 15. Pending resolution of the Dispute, Architect shall perform the Services in accordance with the terms of this Agreement, any previously agreed Change Orders and the changed Services ordered under the unilateral Change Order. When Owner and Architect agree upon the effect of such unilateral Change Order on all of the Changed Criteria, such agreement shall be recorded by execution of the Parties of a Change Order in the form of Appendix I-1, which shall supersede the unilateral Change Order previously issued and relating to such changed Services.

## Change Orders Requested by Architect.

### Architect shall have the right to a Change Order in the event of any of the following occurrences:

#### Force Majeure to the extent allowed under Section 3.4;

#### acts or omissions of Owner that constitute a material breach by Owner of an express provision of this Agreement and materially and adversely affect Architect’s actual cost (which costs shall be adequately documented and supported) of performance and, with respect to delays, hindrances, disruptions, inefficiencies, impact, obstructions or lost production caused by Owner or any other Person acting on behalf of or under control of Owner, to the extent allowed under Section 3.4;

#### Changes in Law that materially and adversely affect Architect’s actual cost (which costs shall be adequately documented and supported) of performance of the Services under this Agreement; or

#### suspension in Services to the extent permitted under Section 11.3.

### Should Architect desire to request a Change Order under this Section 9.2, Architect shall, pursuant to Section 9.4, notify Owner in writing and issue to Owner, at Architect’s expense, a request for a proposed Change Order in the form attached hereto as Appendix I-3, a reasonably detailed explanation of the proposed change and Architect’s reasons for proposing the change, all documentation necessary to verify the effects of the change on the Changed Criteria, and all other information required by Section 9.4.

### If Owner agrees that a Change Order is necessary and agrees with Architect’s statement regarding the effect of the proposed Change Order on the Changed Criteria, then Owner shall issue such Change Order, which shall be in the form of Appendix I-1, and such Change Order shall become binding on the Parties upon execution thereof by the Parties.

### If the Parties agree that Architect is entitled to a Change Order but cannot agree on the effect of the proposed Change Order on the Changed Criteria, Owner may, by issuance of an unilateral Change Order, require Architect to commence and perform the changed Services specified in the unilateral Change Order on a time and material basis as set forth in Appendix F, with the effect of such unilateral Change Order on the Changed Criteria to be determined as soon as possible. If the Parties cannot agree upon the effect of such unilateral Change Order by the date of Completion, then the Dispute shall be resolved as provided in Article 15. Pending resolution of the Dispute, Architect shall perform the Services in accordance with the terms of this Agreement, any previously agreed Change Orders and the changed Services ordered under the unilateral Change Order. When Owner and Architect agree upon the effect of such unilateral Change Order on all of the Changed Criteria, such agreement shall be recorded by execution by the Parties of a Change Order in the form of Appendix I-1, which shall supersede the unilateral Change Order previously issued and relating to such changed Services.

### If the Parties cannot agree upon whether Architect is entitled to a Change Order within fifteen (15) Business Days of Owner’s receipt of Architect’s written notice and proposed Change Order, then the Dispute shall be resolved as provided in Article 15. Pending resolution of the Dispute, Architect shall continue to perform the Services required under this Agreement, any previously agreed Change Orders and the disputed, proposed Change Order, and Owner shall continue to pay Architect in accordance with the terms of this Agreement and any previously agreed Change Orders.

## Change Orders Act as Accord and Satisfaction. Change Orders agreed upon pursuant to Section 9.1(a) or 9.2(c) by the Parties, and unilateral Change Orders entered into pursuant to Section 9.1(b) or 9.2(d) on a time and materials basis and which the Parties have subsequently agreed upon the effect of such unilateral Change Order and executed a superseding and mutually agreed upon Change Order as provided in Section 9.1(b) or 9.2(d) shall constitute a full and final settlement and accord and satisfaction of all effects of the change as described in the Change Order upon the Changed Criteria and shall compensate Architect fully for such change.

## Timing Requirements for Notifications and Change Order Requests by Architect. Should Architect desire to seek an adjustment to the Contract Price, Payment Schedule, Time Schedule, Completion Dates or any other modification to any other obligation of Architect under this Agreement for any circumstance that Architect has reason to believe may give rise to a right to request the issuance of a Change Order, Architect shall, with respect to each such circumstance:

### notify Owner in writing of the existence of such circumstance within ten (10) Days of the date that Architect knew or reasonably should have known of the first occurrence or beginning of such circumstance. In such notice, Architect shall state in detail all known and presumed facts upon which its claim is based, including the character, duration and extent of the claimed circumstance, the date Architect first knew of the circumstance, any activities impacted by the circumstance, the cost and time consequences of the circumstance and any other details or information that are expressly required under this Agreement. Architect shall only be required to comply with the notice requirements of this Section 9.4(a) once for continuing circumstances, provided the notice expressly states that the circumstance is continuing and includes Architect’s best estimate of the time and cost consequences of the claimed circumstance; and

### submit to Owner a request for a proposed Change Order as soon as reasonably practicable after giving Owner written notice but in no event later than ten (10) Days after the completion of each such circumstance, together with a written statement (i) detailing why Architect believes that a Change Order should be issued, plus all documentation reasonably requested by or necessary for Owner to determine the factors necessitating the possibility of a Change Order and all other information and details expressly required under this Agreement (including detailed estimates and cost records, daily time sheets); and (ii) setting forth the effect, if any, which such proposed Change Order would have for the Services on any of the Changed Criteria.

The Parties acknowledge that Owner will be prejudiced if Architect fails to provide the notices and proposed Change Orders as required under this Section 9.4, and agree that such requirements are an express condition precedent to any right for an adjustment in the Contract Price, Payment Schedule, Time Schedule, Completion Dates or any other modification to any other obligation of Architect under this Agreement. Oral notice, shortness of time, or Owner’s actual knowledge of a particular circumstance shall not waive, satisfy, discharge or otherwise excuse Architect’s strict compliance with this Section 9.4.

## Adjustment Only Through Change Order. No change in the requirements of this Agreement, whether an addition to, deletion from, suspension of or modification to this Agreement, including any Services, shall be the basis for an adjustment for any change in the Contract Price, Payment Schedule, Time Schedule, Completion Dates, or any other obligations of Architect under this Agreement unless and until such addition, deletion or modification has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of this Article 9. Architect shall not perform any change in the Services unless and until such change is authorized pursuant to this Article 9, and should Architect perform or claim to perform any changes in the Services prior to authorization by Change Order, all such costs and expenses incurred by Architect shall be for Architect’s account. No course of conduct or dealings between the Parties, nor express or implied acceptance of additions, deletions or modifications to this Agreement, including any Services, and no claim that Owner has been unjustly enriched by any such addition, deletion or modification to this Agreement, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim for an adjustment in the Contract Price, Payment Schedule, Time Schedule, Completion Dates, any Services, or any other obligations of Architect under this Agreement.

# **STANDARD OF CARE**

## Standard of Care. Architect hereby agrees that the Services shall be: (a) in accordance with Good Design Practices; (b) in accordance with Applicable Law and Applicable Codes and Standards; (c) performed in accordance with all requirements of this Agreement, including the Project Requirements; (d) free from defects in design and engineering; and (e) with respect to any equipment or component thereof specified, composed of only proven technology, in commercial operation at the Effective Date of this Agreement, with conditions substantially similar to those contained herein (such obligations under Section 10.1 (a) through (e) individually referred to as the “Standard of Care”). Any Services or portion thereof not in conformity with the Standard of Care is defective (“Defective”) and contains a defect (“Defect”).

## Remedy for Defective Services. In addition to any liabilities of Architect or rights of Owner under this Agreement or Applicable Law, if any Services are Defective, Architect shall, at its own expense, promptly re-perform any Services as necessary to correct such Defective condition, and be liable to Owner for all Damages incurred by Owner arising out of resulting from such Defect, including paying Owner for the reconstruction of any part of the Work affected by such Defect and the removal of any previously completed Work resulting from such Defect.

# **TERMINATION OR SUSPENSION BY OWNER**

## Termination for Default.

### Default. If Architect shall at any time (i) refuse or fail to provide sufficiently skilled and qualified design professionals and other personnel; (ii) fail in any material respect to prosecute the Services according to the Time Schedule; (iii) cause, by any act or omission, the stoppage or delay of or interference with any work or services of Owner or consultants working on behalf of Owner; (iv) fail to make payment to Subconsultants in accordance with the respective Subcontracts; (v) disregard Applicable Law or Applicable Codes and Standards; (vi) materially fail to comply with any provision of this Agreement; or (vii) become insolvent, have a receiver appointed, or make a general assignment for the benefit of its creditors, in which such case of insolvency, receivership or assignment the cure provisions found below shall not apply, (each of the foregoing being a “Default”) then, following Owner’s written notice to Architect specifying the general nature of the Default, unless Architect cures such condition within seven (7) Days, or if the Default is impossible to cure within such seven (7) Days but Architect has commenced corrective action and cures such condition within an additional fourteen (14) Days, Owner, at its sole option and, without prejudice to any other rights that it has under this Agreement, at law or in equity and, without further notice to Architect, may take such steps as are necessary to overcome the condition, in which case Architect shall be liable to Owner for all Damages incurred by Owner in connection therewith, or terminate for Default Architect’s performance of all or any part of the Services. In the event of termination for Default under this Section 11.1, Architect shall not be entitled to any further compensation under this Agreement until the Services have been fully completed and accepted by Owner and any Disputes in connection with such completion are resolved. At such time, if the unpaid balance of the Contract Price shall exceed all Damages incurred by Owner (including payments made to a substitute architect to complete the Services, and any and all Damages for failure of performance, including delay, and cost of financing or interest on such expense from the date such expense was incurred by Owner at the maximum legal rate), then such excess shall be paid by Owner to Architect. If such amount shall exceed such unpaid balance, then Architect shall pay Owner the difference on demand.

### Additional Rights and Obligations upon Termination. In the event Owner terminates this Agreement in whole or in part for Default, Architect shall (i) immediately discontinue Services on the date and to the extent specified in the notice, (ii) place no further orders for Subcontracts except for those Services not so terminated, if any, (iii) cooperate with Owner for efficient transition of the terminated Services, (iv) cooperate with Owner in the transfer of all Design Documents relating to such terminated Services, whether completed or uncompleted, and (v) thereafter execute only that portion of the Services not terminated, if any. Owner, at its sole option, may take assignment of any or all of the Subcontracts upon its written notice to any Subconsultant.

### Erroneous Termination for Default. If any termination for Default by Owner is found to be not in accordance with the provisions of this Agreement or is otherwise deemed to be unenforceable, then such termination for Default shall be deemed to be a termination for convenience under Section 11.2.

## Termination for Convenience. Owner shall have the right to terminate for convenience Architect’s performance of all or any part of the Services by providing Architect with a written notice of termination, to be effective upon receipt by Architect. Upon termination for convenience, Architect shall (a) immediately discontinue the Services on the date and to the extent specified in such notice, (b) place no further orders for Subcontracts except as may be necessary for completion of such portion of the Services as is not discontinued, (c) cooperate with Owner for the efficient transition of the terminated Services, (d) cooperate with Owner in the transfer of all Design Documents relating to such terminated Services, whether completed or uncompleted, and (e) thereafter execute only that portion of the Services not terminated (if any). Architect shall be paid the reasonable value of the Services performed (the basis of payment being the based on the terms of this Agreement) prior to termination, but in no event shall Architect be entitled to receive any amount for unabsorbed overhead or anticipatory profit. Owner, at its sole option, may take assignment of any or all of the Subcontracts upon its written notice to any Subconsultant.

## Suspension of Services. It is understood and acknowledged that Owner may suspend performance of any or all of the Services under this Agreement upon seven (7) days' written notice. If the Services are suspended, Architect shall immediately suspend the carrying out of such suspended Services for such time or times and in such manner as Owner may require, and Architect shall be compensated for all Services properly performed prior to receipt of written notice from Owner of such suspension. Upon receipt of notice to resume the suspended Services, Architect shall immediately resume performance of the Services to the extent required in the notice. In no event shall Architect be entitled to any Damages due to such suspension; however, Architect shall be entitled to a time extension in the Time Schedule for such suspension to the extent permitted under Section 3.4, which shall be reflected in a Change Order.

# **INDEMNIFICATION**

## General Indemnification. Architect shall indemnify, hold harmless, and defend Owner Indemnified Parties from and against any and all Damages directly or indirectly arising out of or resulting from or related to any of the following:

### failure of Architect or any of its Subconsultants to comply with Applicable Law or Applicable Codes and Standards;

### actual or asserted violation or infringement of any domestic or foreign patents, copyrights or trademarks or other intellectual property, or any improper use of Confidential Information or other proprietary rights, that may be attributable to Architect or any Subconsultant in connection with the Services;

### claims by any Governmental Authority as a result of a failure to pay any Tax in any way connected with the Services;

### failure of Architect to make payments to any Subconsultant in accordance with the respective Subcontract;

### Defective Services;

### personal injury or death of any Person or damage to or destruction to property (including the Work) in any way directly or indirectly arising out of or resulting from or related to the Services, but only to the extent caused by a breach by Architect of this Agreement or the willful misconduct or negligence of Architect, any of its Subconsultants or any of their respective directors, officers, agents, employees or representatives; or

### breach of any other provision in this Agreement.

## Patent and Copyright Indemnification. In the event that any suit, claim, temporary restraining order or preliminary injunction is granted in connection with Section 12.1(b),Architect shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If, in any such suit or claim, the Services, the Work relating to such Services, or any part, combination or process thereof, is held to constitute an infringement and its use is preliminarily or permanently enjoined, Architect shall promptly make every reasonable effort to secure for Owner a license, at no cost to Owner, authorizing continued use of the infringing Services or equipment or materials specified by Architect or any of its Subconsultants. If Architect is unable to secure such a license within a reasonable time, Architect shall, at its own expense and without impairing performance requirements, re-perform the affected Services so that the Services and affected Work are not infringing. In addition, Architect shall be liable to Owner for any Damages arising out of or relating to Section 12.1(b).

## Lien Indemnification. Should any Subconsultant or any other Person acting through or under Architect or any Subconsultant file a lien or other encumbrance against all or any portion of the Work, the Site or the Project, Architect shall, at its sole cost and expense, remove and discharge, by payment, bond or otherwise, such lien and encumbrance within ten (10) Days of the filing of such lien or encumbrance. If Architect fails to remove and discharge any such lien or encumbrance within such ten (10) Day period, then Owner may, in its sole discretion, take any one or more of the following actions:

### remove and discharge such lien and encumbrance using whatever means that Owner, in its sole discretion, deems appropriate, including the payment of settlement amounts that it determines in its sole discretion as being necessary to discharge such lien or encumbrance. In such circumstance, Architect shall be liable to Owner for all Damages (including settlement payments) incurred by Owner arising out of or relating to such removal and discharge. All such Damages shall be paid by Architect no later than thirty (30) Days after receipt of each invoice from Owner;

### seek and obtain an order granting specific performance from a court of competent jurisdiction, requiring that Architect immediately discharge and remove, by bond, payment or otherwise, such lien or encumbrance. The Parties expressly agree that Owner shall be entitled to such specific performance and that Architect shall be liable to Owner for all Damages incurred by Owner arising out of or relating to such specific performance action. Architect agrees that the failure to discharge and remove any such lien or encumbrance will give rise to irreparable injury to Owner and Owner’s Affiliates, and further, that Owner and such Owner Affiliates will not be adequately compensated by damages; or

### conduct the defense of any action in respect of (and any counterclaims related to) such liens or encumbrances as set forth in Section 12.4, without regard to Architect’s rights under such section.

## Legal Defense.Not later than fifteen (15) Days after receipt by Architect of written notice from an Owner Indemnified Party of any claims, demands, actions or causes of action asserted against such Owner Indemnified Party for which Architect has indemnification, defense and hold harmless obligations under this Agreement, whether such claim, demand, action or cause of action is asserted in a legal, judicial, arbitral or administrative proceeding or action or by notice without institution of such legal, judicial, arbitral or administrative proceeding or action, Architect shall affirm in writing by notice to such Owner Indemnified Party that Architect will indemnify, defend and hold harmless such Owner Indemnified Party and shall, at Architect’s own cost and expense, assume on behalf of the Owner Indemnified Party and conduct with due diligence and in good faith the defense thereof with counsel selected by Architect and reasonably satisfactory to such Owner Indemnified Party; provided, however, that such Owner Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection, and at its own expense; and provided further that if the defendants in any such action or proceeding include Architect and an Owner Indemnified Party and the Owner Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to Architect, such Owner Indemnified Party shall have the right to select up to one (1) separate counsel to participate in the defense of such action or proceeding on its own behalf at the expense of Architect. In the event of the failure of Architect to perform fully in accordance with the defense obligations under this Section 12.4, such Owner Indemnified Party may, at its option, and without relieving Architect of its obligations hereunder, so perform, but all Damages so incurred by such Owner Indemnified Party in that event shall be reimbursed by Architect to such Owner Indemnified Party, together with interest on same from the date any such cost and expense was paid by such Owner Indemnified Party until reimbursed by Architect at the interest rate set forth in this Agreement.

## Enforceability. Except as otherwise set forth above, the indemnity, defense and hold harmless obligations for personal injury or death or property damage under this Agreement shall apply regardless of whether the Owner Indemnified Party was concurrently negligent (whether actively or passively), it being agreed by the Parties that in this event, Architect’s respective liability or responsibility for such Damages under this Article 12 shall be determined in accordance with principles of comparative negligence. In the event that any indemnity provisions in this Agreement are contrary to Applicable Law, then the indemnity obligations applicable hereunder shall be applied to the maximum extent allowed by Applicable Law. Each Party acknowledges specific payment of Ten and No/100 U.S. Dollars (US $10.00) as legal consideration for the indemnity obligations as may be provided in this Agreement.

# **INSURANCE**

## Types and Amounts of Insurance. Architect shall, at its own cost and expense, procure and maintain in full force and effect at all times from the Effective Date of this Agreement through Completion (and in the case of professional liability or errors and omissions insurance, for a further reporting period of five (5) years) the following insurances on an occurrence basis (except for professional liability or errors and omissions insurance, which shall be on a “claims made” basis):

### workers’ compensation insurance in statutory limits as provided by Applicable Law, and employer’s liability insurance in an amount not less than $1,000,000 each accident, $1,000,000 disease each employee and $1,000,000 disease policy limit;

### commercial general liability insurance with a combined single limit for personal injury (including bodily injury and death) and property damage (including loss of use) of not less than $1,000,000 per occurrence, $2,000,000 products and completed operations aggregate and $2,000,000 general aggregate, and such coverage shall include the indemnity obligations assumed by Architect under Section 12.1(f), products and completed operations coverage for a period of three (3) years following Final Completion of the Work, premises and operations coverage, broad form property damage coverage, and sudden and accidental pollution liability coverage and deletion of any explosion, collapse or underground exclusions;

### commercial automobile liability insurance for any automobile (including owned, hired, rented and non-owned automobiles) with a combined single limit each accident of not less than $1,000,000;

### umbrella or excess liability insurance on a “following form” basis, which shall provide coverage in excess of the coverages required to be provided by Architect for employer’s liability insurance, commercial general liability insurance and commercial automobile liability insurance, with limits of not less than $10,000,000 combined single limit each occurrence and $10,000,000 aggregate limit; and

### professional liability or errors or omissions insurance covering all liability arising out of or based upon any negligent design, engineering, planning, consulting or architectural Services, with a limit of not less than $5,000,000 per claim and $8,000,000 annual aggregate. Such insurance shall have a retroactive date prior to the performance of any Services to be provided under the Agreement and shall have a policy period of five (5) years following Completion.

## Insurance Companies. All insurance required to be obtained by Architect pursuant to this Agreement shall be from an insurer or insurers permitted to conduct business as required by Applicable Law and shall be rated with either an “A- (A minus)” or better by Best’s Insurance Guide Ratings or “A” or better by Standard and Poors.

## Subconsultants Insurance Requirements. Architect shall ensure that each Subconsultant shall either be covered by the insurance provided by Architect pursuant to this Agreement, or by insurance procured by such Subconsultant. Should a Subconsultant be responsible for procuring its own insurance coverage, Architect shall ensure that each such Subconsultant shall procure and maintain insurance to the full extent required of Architect under this Agreement and shall be required to comply with all of the requirements imposed on Architect with respect to such Architect-provided insurance on the same terms as Architect. As between Owner and Architect, all such insurance shall be provided for at the sole cost of Architect.

## Additional Insured. Except for workers’ compensation and professional liability or errors and omissions policies, all insurance policies provided by Architect or any of its Subconsultants pursuant to this Agreement shall include Owner and Owner’s Affiliates as additional insureds.

## Waiver of Subrogation. All policies of insurance provided by Architect or any of its Subconsultants pursuant to this Agreement shall include clauses providing that each underwriter shall waive its rights of recovery, under subrogation or otherwise, against Owner and its Affiliates and their respective agents, officers, directors and employees.

## Architect’s Insurance is Primary. The insurance policies of Architect and its Subconsultants shall state that such coverage is primary to any other insurance available to or provided by Owner.

## Severability. The insurance policies of Architect and of its Subconsultants shall, where applicable, contain a severability of interest clause or a standard cross liability endorsement.

## Copy of Policy. At Owner’s request, Architect shall promptly provide Owner with certified copies of each of the insurance policies of Architect and its Subconsultants, or if the policies have not yet been received by Architect, then with binders of insurance, duly executed by the insurance agent, broker or underwriter fully describing the insurance coverages effected.

## Limitation of Liability. Types and limits of insurance shall not in any way limit any of Architect’s obligations, responsibilities or liabilities under this Agreement.

## Certificate of Insurance Requirements. Prior to the commencement of any Services under this Agreement, Architect shall deliver to Owner certificates of insurance reflecting all of the insurance required of Architect and each Subconsultant under this Agreement; provided that Architect shall not be required to deliver certificates of insurance for any insurance provided by any Subconsultants until the earlier of the execution of the relevant Subcontract or the commencement of any Services by such Subconsultant. All certificates of insurance and associated notices and correspondence concerning such insurance shall be addressed to the notice contacts for Owner, as specified in Article 16, and to the following: [if any]. In addition, each such certificate of insurance shall include the following language:

“Additional Insured: Owner, [others, if any] and each of their respective subsidiaries, affiliates, partners, co-venturers, agents, officers, directors and employees are named as Additional Insureds (on all policies except Workers’ Compensation and Professional Liability or Errors and Omissions). The coverage afforded the Additional Insureds under these policies shall be primary insurance. If any Additional Insured has other insurance which is applicable to a loss or claim, such other insurance shall be on an excess or contingent basis.”

“Waiver of Subrogation in favor of Additional Insureds as respects all policies required hereunder.”

## No Cancellation. All polices providing coverage hereunder shall contain a provision that at least thirty (30) Days’ prior written notice shall be given to Owner and additional insureds prior to cancellation, non-renewal or material change in coverage.

## Policy Form. All policies of insurance required to be maintained by Architect or its Subconsultants shall be written on reasonable and customary terms, conditions and exclusions for facilities of similar size and scope as the Project.

## Deductibles. Architect shall bear the costs of all deductibles provided by Architect under this Agreement, and as between Owner and Architect, Architect shall bear the cost of all deductibles provided by Architect’s Subconsultants under this Agreement.

## Failure to Provide Insurance. Owner shall have no obligation to make any payments under this Agreement until Architect and its Subconsultants have procured the insurance required under this Agreement and provided certificates of insurance evidencing same to Owner. In addition, if Architect fails to maintain insurance as required herein, including any insurance required to cover its Subconsultants, Owner shall have the right but not the obligation to purchase such insurance at Architect’s cost and expense, and in such event, the Contract Price shall be reduced by the amount paid for such insurance.

## Miscellaneous. Architect and its Subconsultants shall do nothing to void or make voidable any of the insurance policies purchased and maintained by Architect or its Subconsultants. Architect shall promptly give Owner notice in writing of the occurrence of any casualty, claim, event, circumstance, or occurrence that may give rise to a claim under an insurance policy hereunder and arising out of or relating to the performance of the Services. In addition, Architect shall keep Owner fully informed of any subsequent action and developments concerning the same, and assist in the investigation of any such casualty, claim, event, circumstance or occurrence.

# **CONFIDENTIALITY**

## Confidential Information.

### Definition. “Confidential Information” means all information (whether or not specifically labeled or identified as confidential), in any form or medium, which is disclosed to or learned by Architect in the performance of this Agreement, or acquired directly or indirectly such as in the course of discussions or investigations by Architect, and which relates to the business, products, services, research or development, suppliers, distributors, clients, or customers of Owner or of any Owner Affiliate, or which relates to similar information of a third party who has entrusted such information to Owner or any Owner Affiliate, including specialized know-how, technical or non-technical data, formula, pattern, compilation, program, device, method, technique, drawing, process, financial or business information, models, list of actual or potential customers or suppliers, novel analysis, work papers, studies or other documents which contain, reflect, or are based on such information.

### Treatment of Confidential Information. As part of Architect’s engagement hereunder, Architect shall have access and contribute to information and materials of a highly sensitive nature (including Confidential Information). Architect hereby agrees that it and its employees, officers and agents shall not (without in each instance obtaining Owner’s prior written consent) disclose, make commercial or other use of, or give or sell to any Person any Confidential Information received directly or indirectly from Owner or an Owner Affiliate or acquired or developed in the course of this Agreement unless: (i) Architect is required to do so pursuant to law (and then only after Architect has given Owner prompt written notice of the legal compulsion and provided Owner with cooperation in any attempt Owner may make to gain a protective order acceptable to Owner); (ii) it is rightfully in the possession of Architect from a source other than Owner or an Owner Affiliate prior to the time of disclosure of the information to Architect under this Agreement; (iii) it was in the public domain prior to the time of receipt; (iv) it became part of the public domain after the time of receipt by any means other than an unauthorized act or omission on the part of Architect; (v) it is supplied to Architect after the time of receipt without action by a third party who is under no obligation to Owner or an Owner Affiliate to maintain such information in confidence; or (vi) it was independently developed by Architect prior to the time of receipt. Architect’s confidentiality and non-disclosure obligations shall survive the expiration or termination of this Agreement for a period of ten (10) years following the expiration or earlier termination of this Agreement. All Confidential Information, regardless of form, shall be the property of Owner or the applicable Owner Affiliate, and shall be returned to Owner or the applicable Owner Affiliate at the expiration or earlier termination of this Agreement and Owner’s written notice; provided, however, Architect may, with Owner’s written consent, be entitled to retain one copy of such Confidential Information for its records, provided that adequate protections continue to remain place to protect such Confidential Information.

## Permitted Disclosure of Confidential Information. Subject to Section 14.1, Architect may disclose Confidential Information without the prior written consent of Owner only to those directors, officers, employees, Affiliates, partners, shareholders, Subconsultants, agents or other representatives of Architect as need to know such information solely for the purpose of fulfilling Architect’s obligations under this Agreement or as otherwise permitted hereby, and Architect further agrees that (i) all such Persons who receive Confidential Information shall be informed of the confidential nature of such information and the requirement that it not be used other than in connection with the fulfillment of its obligations under this Agreement; and (ii) Architect shall be responsible for any breach of these confidentiality obligations by all such Persons.

# **CLAIMS AND DISPUTE RESOLUTION**

## Negotiation. In the event that any claim, dispute or controversy arising out of or relating to this Agreement (including the breach, termination or invalidity thereof, and whether arising out of tort or contract) (“Dispute”) arises between the parties arising out of or relating to this Agreement, the aggrieved party shall provide notice of the Dispute to the other party. Within thirty (30) Days after the receipt of such notice, or such longer time as mutually agreed to by the parties, the parties shall meet, and the meeting shall be attended by representatives of the parties with decision-making authority regarding the Dispute, to attempt in good faith to negotiate a resolution of the Dispute.

## Mediation. In the event that the management representatives are unable to resolve the Dispute within thirty (30) Days (or such longer time, if agreed in writing by the Parties) of receipt of the notice given in Section 15.1, then either Party may request a mandatory, non-binding mediation of the Dispute by providing the other Party written notice requesting mediation of the Dispute. The mediation shall be held in Atlanta, Georgia unless the Parties agree otherwise, and shall be conducted before a single mediator, who shall be mutually selected by the Parties. Should the Parties be unable to agree upon a mediator within ten (10) Days of the date that the written notice for mediation is received, either Party may petition the Atlanta, Georgia Office of the American Arbitration Association (“AAA”) for the appointment of a mediator, and the mediation, including the selection of the mediator, shall then occur pursuant to the AAA’s Construction Industry Dispute Resolution Procedures then in effect (“AAA Rules”). The mediation shall be concluded within forty-five (45) Days of receipt of the mediation request, unless the Parties otherwise agree in writing. In no event shall Section 15.1 or 15.2 be construed to limit Owner’s right to take any action under this Agreement, including Owner’s rights under Article 11.

## Arbitration. The Parties agree that any Dispute not resolved pursuant to Section 15.1 or 15.2 shall be settled by arbitration if the Owner, in its sole discretion, elects to arbitrate the controversy or claim in lieu of litigation. Any arbitration held under this Agreement shall be held in Atlanta, Georgia unless otherwise agreed by the parties, shall be administered by the Atlanta, Georgia office of the American Arbitration Association (“AAA”) and shall, except as otherwise modified by this Section, be governed by the AAA’s Construction Industry Arbitration Rules and Mediation Procedures (including Procedures for Large, Complex Construction Disputes) (the “AAA Rules”).  Any Dispute over One Million Dollars ($1,000,000) shall be heard by three (3) arbitrators, who will be chosen as follows: each party shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall appoint the third arbitrator as the chairperson.  Each party is permitted to communicate *ex parte* with its appointed arbitrator until the third arbitrator is appointed.  If a party fails to appoint an arbitrator within thirty (30) Days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty (30) Days after their appointment, the appointment shall be made, upon request of a party, by the AAA pursuant to the AAA Rules, *provided that* that the time periods set forth above shall reset with respect to a replacement arbitrator if an arbitrator is struck for cause or otherwise removed from the panel.  For the avoidance of doubt, if a party-appointed arbitrator is struck for cause or otherwise removed from the panel, then the party that appointed such arbitrator is entitled to appoint that arbitrator’s replacement.  If the chairperson is to be appointed by the AAA, then the AAA shall appoint an arbitrator who has experience as a chairperson of a AAA construction arbitration panel.  All Disputes of One Million Dollars ($1,000,000) or less shall be decided by a single arbitrator appointed in accordance with the AAA Rules. The arbitrator(s) shall determine the rights and obligations of the parties according to the substantive law of the State of Georgia, excluding its conflict of law principles, as would a court for the State of Georgia; *provided, however*, the law applicable to the validity of this Section, the conduct of the arbitration, including resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act, 9 U.S.C.A. § 2, *et seq*.  Issues concerning the arbitrability of a matter in dispute shall be decided by the arbitrators.  Notwithstanding any provision of law or rule of arbitration to the contrary, the parties to the arbitration may obtain document discovery in the same manner as provided in the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of Georgia.  In addition, the parties shall be entitled to take depositions to the same extent as permitted under the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of Georgia.  Unless otherwise agreed by the parties to the arbitration, a party shall communicate to the arbitrator(s) and the opposing party(ies) the names and addresses of each witness whose testimony it intends to present in the arbitration proceeding, and the subject matter upon which they will testify, at least forty-five (45) days prior to the date scheduled for commencement of the arbitration hearing.  All disputes regarding discovery shall be promptly resolved by the arbitrators.  This Agreement to arbitrate is binding upon the parties and the successors and permitted assigns of any of them.  At either party’s option, any other party may be joined as an additional party to any arbitration conducted under this Section, *provided that* the party to be joined is or may be liable to either party in connection with all or any part of the Dispute between the parties. Requests for joinder of any other party as an additional party to the arbitration between the parties shall be submitted to the AAA within sixty (60) Days after the establishment of the panel (including the appointment of the third arbitrator and the resolution of any challenges for cause).  The arbitration award shall be final and binding, in writing, signed by all arbitrators, and shall state the reasons upon which the award thereof is based.  The parties agree that judgment on the arbitration award may be entered by any court having jurisdiction thereof. The prevailing party in any action or proceeding shall be entitled to recover from the other party all of its reasonable costs and expenses incurred in connection with such action or proceeding including reasonable attorneys’ fees and costs at arbitration.

## Continuation of Services During Dispute. Notwithstanding any Dispute, it shall be the responsibility of Architect to continue to prosecute all of the Services diligently and in a good and workmanlike manner in conformity with this Agreement. Architect shall have no right to cease performance hereunder or to permit the prosecution of the Services to be delayed. Owner shall, subject to its right to withhold amounts pursuant to this Agreement, continue to pay Architect undisputed amounts in accordance with this Agreement; provided, however, in no event shall the occurrence of any negotiation, mediation or litigation prevent or affect Owner from exercising its rights under this Agreement, at law or in equity, including Owner’s right to terminate pursuant to Article 11.

# **NOTICE REQUIREMENTS**

## Any notice required or permitted to be given pursuant to this Agreement shall be in writing and signed by the Party giving such notice, and may be (1) delivered in person to any Party or (2) may be sent by registered or certified U.S. mail, with postage prepaid, return receipt requested to the addresses specified in this Agreement or (3) delivered by reputable national or local courier (such as United Parcel Service or Federal Express). Any such notice or other written communication shall be deemed received by the party to whom it is sent (i) in the case of delivery by hand or delivery by reputable national or local courier (such as United Parcel Service or Federal Express), on the date of delivery to the party to whom such notice is addressed, (ii) in the case of registered or certified mail, the date receipt is acknowledged on the return receipt for such notice. Each party shall have the right to change the address to which notice shall be sent or delivered by notice sent as specified in this Article to the other party. In addition to hard copy notices, notices shall also be sent via email to Owner and Architect at the email addresses listed in this Agreement.

# **MISCELLANEOUS**

## Entire Agreement. This Agreement, including the Appendices, contains the entire understanding of the Parties with respect to the subject matter hereof and incorporates and supersedes any and all prior agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions, and neither Party has relied upon any representation, express or implied, not contained in this Agreement. General or special conditions included in any of Architect’s price lists, invoices, tickets, receipts or other such documents presented to Owner shall have no applicability to Owner with respect to this Agreement.

## Amendments. Other than unilateral Change Orders issued by Owner to Architect pursuant to Section 9.1(b) or Section 9.2(d), no change, amendment or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment or modification is in writing and duly executed by both Parties hereto.

## Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other.

## Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained herein.

## Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

## Assignment. This Agreement or any of the rights and obligations hereunder may be assigned to other Persons only upon the prior written consent of the non-assigning Party hereto, except Owner may assign this Agreement, in whole or part, to any of its Affiliates or to any Lender without Architect’s consent. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee; provided that any assignment by Architect pursuant to this Section 17.6 shall not relieve Architect of any of its obligations under this Agreement. Any assignment not in accordance with this Section 17.6 shall be void and without force or effect, and any attempt to assign this Agreement in violation of this provision shall grant the non-assigning Party the right, but not the obligation, to terminate this Agreement at its option for default.

## No Waiver. Any failure of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provisions.

## Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the state of Georgia (without giving effect to the principles thereof relating to conflicts of law).

## Successors and Assigns. This Agreement shall be binding upon the Parties hereto, their successors and permitted assigns.

## Appendices. All Appendices shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

## Obligations. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Architect and Owner.

## Further Assurances. Architect and Owner agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations greater than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

## Priority. The documents that form this Agreement are listed below in order of priority, with the document having the highest priority listed first and the one with the lowest priority listed last. Subject to Section 1.1(e) regarding conflicts between any Applicable Codes and Standards, in the event of any conflict or inconsistency between a provision in one document and a provision in another document, the document with the higher priority shall control. In the event of a conflict or inconsistency between provisions contained within the same document, then the provision that requires the highest standard of performance on the part of Architect shall control. The Agreement is composed of the following documents, which are listed in order of priority:

### Change Orders or written amendments to this Agreement;

### This Agreement; and

### Appendices to this Agreement.

## Restrictions on Public Announcements. Neither Architect nor its Subconsultants shall issue a press release, advertisement, publicity material, prospectus, financial document or similar matter or participate in a media interview that mentions or refers to the Services, the Work or the Project without the prior written consent of Owner.

## Books, Records and Audits. Architect shall keep full and detailed books, records, daily reports, accounts, payroll records, receipts, statements, electronic files, correspondence and other pertinent documents as may be necessary for proper financial management under this Agreement, as required under Applicable Law or this Agreement, and in any way relating to this Agreement (“Books and Records”). Architect shall maintain all such Books and Records in accordance with generally accepted accounting principles applicable in the United States and shall retain all such Books and Records for a minimum period of three (3) years after Completion of the Project, or such greater period of time as may be required under Applicable Law. Upon reasonable notice, Owner shall have the right to audit or to have audited Architect’s Books and Records. When requested by Owner, Architect shall provide the auditors with reasonable access to all such Books and Records, and Architect’s personnel shall cooperate with the auditors to effectuate the audit or audits hereunder. The auditors shall have the right to copy all such Books and Records. Architect shall bear at its own cost and expense all costs incurred by it in assisting Owner with audits performed pursuant to this Section 17.15. Architect shall include audit provisions identical to this Section 17.15 in all Subcontracts.

## Language. This Agreement and all notices, communications and submittals between the Parties pursuant to this Agreement shall be in the English language, unless otherwise directed by Owner.

## Lender. In addition to other assurances provided in this Agreement, Architect acknowledges that Owner may obtain financing associated with the Project and Architect agrees to cooperate with Owner and Lender in connection with such financing, including entering into direct agreements with Lender, as required by Lender, covering matters that are customary in financings of this type such as Lender assignment or security rights with respect to this Agreement, direct notices to Lender and its consultants, step-in/step-out rights, access by Lender’s representative, and other matters applicable to such financing.

## Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by each of the Parties. Facsimile signatures shall be deemed as effective as original signatures.

## Survival. Articles 5, 10, 11, 12, 13, 14, 15 and 16, Sections 6.3, 17.6, 17.8, 17.9, 17.15, and this Section 17.19 shall survive termination or expiration of this Agreement, in addition to any other provisions which by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

| **Architect:**Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| --- |
| **Owner:**Signed:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

APPENDIX A

**PROJECT REQUIREMENTS**

**APPENDIX B**

**SCOPE OF SERVICES**

**APPENDIX C**

**TIME SCHEDULE**

| **Phase** | **Completion Date** |
| --- | --- |
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**APPENDIX D**

**PAYMENT SCHEDULE**

| **PHASE** | **AMOUNT OF CONTRACT PRICE ALLOCATED TO PHASE** |
| --- | --- |
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**APPENDIX E**

**KEY PERSONNEL AND APPROVED SUBCONSULTANTS**

**APPENDIX E-1**

**KEY PERSONNEL**

Listed below are key personnel assigned to perform Services. Such persons may not be removed except as allowed under the Agreement.

| **Position** | **Name** |
| --- | --- |
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**APPENDIX E-2**

**APPROVED SUBCONSULTANTS**

Listed below are Subconsultants that Architect and Owner have agreed are approved Subconsultants for the portion of the Services specified.

| **Name** | **Portion of Services** |
| --- | --- |
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**APPENDIX F**

**HOURLY RATES AND REIMBURSABLE EXPENSES**

**FOR UNILATERAL CHANGE ORDERS**

**I. Hourly Rates**

| **Position** | **$ / Hour** |
| --- | --- |
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**II. Reimbursable Expenses**

Owner will reimburse Architect, without any markup, for the following expenses reasonably incurred in and necessary for performance of the Services, and for other expenses that are specifically approved or authorized by the Owner in writing:

1. Ground and economy class air transportation outside of the [ metropolitan area]. Air travel will only be reimbursed at the economy tourist class air travel rate, unless otherwise approved in writing by Owner in advance of travel;
2. Living expenses (food and lodging) in connection with out-of-town travel;
3. Plotting reproductions of documents in accordance with the rates set forth below;
4. Photography, long distance telecommunications and facsimile charges at the rate set forth below;
5. Video conference calls and/or presentations at the rate set forth below, web-enabled online data/drawing transfer services; or
6. Shipping, postage, messenger or courier service charges.

The total amount of reimbursable expenses to be charged to and paid by Owner shall not exceed the amount of [ U.S. Dollars (US$ )] without prior written authorization from Owner.

**APPENDIX G**

**LIEN AND CLAIM WAIVER FORMS**

**APPENDIX G-1**

**ARCHITECT’S INTERIM LIEN WAIVER
AND RELEASE UPON PROGRESS PAYMENT**(To be provided by Architect with each Invoice for progress payment)

**STATE OF GEORGIA**

**COUNTY OF**

 **THE UNDERSIGNED, \_\_\_\_\_\_\_\_ (“ARCHITECT”), HAS BEEN ENGAGED UNDER AN AGREEMENT WITH \_\_\_\_\_\_\_\_\_ (“OWNER”) TO FURNISH CERTAIN MATERIALS, EQUIPMENT, SERVICES, AND/OR LABOR FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS THE \_\_\_\_\_\_ PROJECT, TOGETHER WITH ALL IMPROVEMENTS AND APPURTENANCES ATTENDANT THERETO (“PROJECT”), WHICH IS OWNED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“PROPERTY OWNER”) AND IS LOCATED IN THE CITY OF , COUNTY OF , STATE OF GEORGIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

 **\_\_\_\_.**

**(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)**

 **UPON RECEIPT OF THE SUM OF $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, THE ARCHITECT WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY THROUGH THE DATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , \_\_\_\_ (“CURRENT DATE”) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE ARCHITECT MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF MATERIALS, EQUIPMENT, SERVICES AND LABOR FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID ARCHITECT FOR SAID BUILDING OR PREMISES. EXCEPTIONS AS FOLLOWS:**

**(IF NO EXCEPTION OR “NONE” IS ENTERED ABOVE, UNDERSIGNED SHALL BE DEEMED NOT TO HAVE RESERVED ANY RIGHTS OR LIENS.)**

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NON PAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

 **ARCHITECT AGREES THAT THIS WAIVER AND RELEASE FORM IS IN COMPLIANCE WITH O.C.G.A. § 44-14-366(C).**

**FOR ARCHITECT:**

Applicable to invoice no(s).

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the architect and that this document was signed under oath personally and on behalf of the architect.

Notary public

My commission expires:

**APPENDIX G-2

ARCHITECT’S INTERIM CLAIM WAIVER AND
RELEASE UPON PROGRESS PAYMENT**

(To be provided by Architectwith each Invoice for progress payment)

STATE OF GEORGIA

COUNTY OF

 The undersigned,  (“Architect”), has been engaged under an agreement with (“Owner”) to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the project, together with all improvements and appurtenances attendant thereto (“Project”), which is owned by (“Property Owner”) and is located in the City of , County of , State of Georgia, and more particularly described as follows:

 .

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.

 Upon receipt of the sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Architect waives and releases any and all claims, demands, actions, causes of action or other rights (except those concerning lien rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Architect’s Interim Lien Waiver and Release Upon Progress Payment form, which is executed concurrently with this form) against Owner and Property Owner through the date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ (“Current Date”) and reserving those rights that the Architect might have in any retained amounts, on account of materials, equipment, services and/or labor furnished by the undersigned to or on account of Owner or any other entity for said Project. Exceptions as follows:

(if no exception or “none” is entered above, undersigned shall be deemed not to have reserved any claim.)

 Architect affirms, warrants, and represents that the list attached hereto as “Attachment 1” and made a part hereof contains the names of all of the Subconsultants, laborers, materialmen, mechanics, manufacturers, suppliers, and subcontractors who have furnished services, labor, equipment, or materials, or any one of these items to the Architect, and the Architect further affirms, warrants, and represents (a) that all persons or entities listed on “Attachment 1” have been paid in full for all work performed and all materials, equipment, labor or services supplied to the Architect for use at the Project through and including \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (date of Architect’s last prior invoice), and (b) that the Architect is not indebted to any person or entity for labor, equipment, services or materials used in connection with or as a part of such Project in any amount whatsoever through and including the date hereof, except as noted on “Attachment 2” attached hereto and made a part hereof.

 Architect further affirms, warrants, and represents that there are no outstanding claims of any nature, contractual or otherwise, or for any personal injury, death or property damage, arising from or associated with the performance of the Architect’s work through and including the date hereof which might be the basis of any claim, suit, lien, or demand that could be asserted against either Owner, Property Owner, the Project, and all property, real and personal, related to the Project.

This Waiver and Release is freely and voluntarily given and the undersigned acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release, and that it has voluntary chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above. Architect agrees to indemnify, hold harmless and defend Owner and Property Owner against any and all loss, claims, damages, costs or expense, of any nature whatsoever, including attorneys’ fees, arising out of any claims or demands (except those concerning lien rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Architect’s Interim Lien Waiver and Release Upon Progress Payment form, which is executed concurrently with this form) made by any of its employees, laborers, materialmen, subcontractors and Subconsultants, of any tier, for materials, services, equipment and labor supplied to the Project through the Current Date.

 The undersigned further agrees that making and receipt of payment and execution of this Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, including any obligations of the undersigned to Owner.

**FOR ARCHITECT:**

Applicable to Invoice no(s).

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the Architect and that this document was signed under oath personally and on behalf of the Architect.

Notary Public

My Commission Expires:

“**Attachment 1**”

List Of All Subconsultants, Subcontractors, Suppliers, Materialmen, Laborers, Mechanics and Manufacturers Providing Goods or

Services To Architect For The Project

“**Attachment 2**”

List Of Persons Or Entities Identified

On “Attachment 1” To Whom Architect Owes Money

 Party Amount

**APPENDIX G-3

SUBCONSULTANT’S INTERIM LIEN WAIVER AND RELEASE**

 **UPON PROGRESS PAYMENT**

(To be provided by Subconsultants with each Invoice for progress payment)

**STATE OF GEORGIA**

**COUNTY OF**

 **THE UNDERSIGNED, \_\_\_ (“SUBCONSULTANT”), HAS BEEN ENGAGED UNDER AN AGREEMENT WITH \_\_\_\_\_ (“ARCHITECT”) TO FURNISH CERTAIN MATERIALS, EQUIPMENT, SERVICES, AND/OR LABOR FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS THE \_\_\_\_\_\_ PROJECT, TOGETHER WITH ALL IMPROVEMENTS AND APPURTENANCES ATTENDANT THERETO (“PROJECT”), WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_\_\_\_\_\_\_, COUNTY OF , STATE OF GEORGIA, AND IS OWNED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“PROPERTY OWNER”) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

 **\_\_\_\_.**

**(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)**

 **UPON RECEIPT OF THE SUM OF $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, THE SUBCONSULTANT WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY THROUGH THE DATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , \_\_\_\_ (“CURRENT DATE”) AND EXCEPTING THOSE RIGHTS AND LIENS THAT SUBCONSULTANT MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF MATERIALS, EQUIPMENT, SERVICES AND LABOR FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID ARCHITECT FOR SAID BUILDING OR PREMISES. EXCEPTIONS AS FOLLOWS:**

**(IF NO EXCEPTION OR “NONE” IS ENTERED ABOVE, UNDERSIGNED SHALL BE DEEMED NOT TO HAVE RESERVED ANY RIGHTS OR LIENS.)**

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NON PAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

 **SUBCONSULTANT AGREES THAT THIS WAIVER AND RELEASE FORM IS IN COMPLIANCE WITH O.C.G.A. § 44-14-366(C).**

**FOR SUBCONSULTANT:**

Applicable to invoice no(s).

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the Subconsultant and that this document was signed under oath personally and on behalf of the Subconsultant.

Notary public

My commission expires:

**APPENDIX G-4**

**SUBCONSULTANT’S INTERIM CLAIM WAIVER AND
RELEASE UPON PROGRESS PAYMENT**

(To be provided by Subconsultants with each Invoice for progress payment)

STATE OF GEORGIA

COUNTY OF

The undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Subconsultant”), has been engaged under contract with (“Architect”) to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the project, together with all improvements and appurtenances attendant thereto (“Project”), which is located in the City of , County of , State of Georgia, and is owned by (“Property Owner”) and is more particularly described as follows:

 .

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

 Upon receipt of the sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the Subconsultant waives and releases any and all claims, demands, actions, causes of action or other rights (except those concerning lien rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Subconsultant’s Interim Lien Waiver and Release Upon Progress Payment form, which is executed concurrently with this form) (“Owner”), Property Owner and Architect through the date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ (“Current Date”) and reserving those rights that the Subconsultant might have in any retained amounts, on account of materials, equipment, services and/or labor furnished by the undersigned to or on account of Architect for said Project. Exceptions as follows:

(if no exception or “none” is entered above, Subconsultant shall be deemed not to have reserved any claim.)

 Subconsultant affirms, warrants, and represents that the list attached hereto as “Attachment 1” and made a part hereof contains the names of all of the laborers, materialmen, mechanics, manufacturers, suppliers, and sub-subconsultants who have furnished services, labor, equipment, or materials, or any one of these items to Subconsultant, and the Subconsultant further affirms, warrants, and represents (a) that all persons or entities listed on “Attachment 1” have been paid in full for all work performed and all materials, equipment, labor or services supplied to the Architect for use at the Project through and including \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_ (date of Subconsultant’s last prior invoice), and (b) that the Subconsultant is not indebted to any person or entity for labor, equipment, services or materials used in connection with or as a part of such Project in any amount whatsoever through and including the date hereof, except as noted on “Attachment 2” attached hereto and made a part hereof.

The Subconsultant further affirms, warrants, and represents that there are no outstanding claims of any nature, contractual or otherwise, or for any personal injury, death or property damage, arising from or associated with the performance of the Subconsultant’s work through and including the date hereof which might be the basis of any claim, suit, lien, or demand that could be asserted against either Owner, Property Owner, Architect, the Project, and all property, real and personal, related to the Project.

 This Waiver and Release is freely and voluntarily given and the Subconsultant acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release, and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above.

 The undersigned understands that the failure to complete correctly or fully any of the blank spaces in this document shall not invalidate the document so long as the subject matter of this Waiver and Release may reasonably be determined.

**FOR SUBCONSULTANT:**

Applicable to Invoice no(s). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the Subconsultant and that this document was signed under oath personally and on behalf of the Subconsultant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

“**Attachment 1**”

List Of All Sub-subconsultants, Suppliers, Materialmen, Laborers, Mechanics, and Manufacturers Providing Goods or

Services To Subconsultant For The Project

**“Attachment 2”**

List Of Persons Or Entities Identified

On “Attachment 1” To Whom Subconsultant Owes Money

 Party Amount

**APPENDIX G-5

ARCHITECT’S FINAL, UNCONDITIONAL LIEN
WAIVER AND RELEASE UPON FINAL PAYMENT**

(To be provided by Architect at the time of Final Payment)

**STATE OF GEORGIA**

**COUNTY OF**

 **THE UNDERSIGNED, (“ARCHITECT”), HAS BEEN ENGAGED UNDER AN AGREEMENT WITH \_\_\_\_\_\_\_ (“OWNER”) TO FURNISH CERTAIN MATERIALS, EQUIPMENT, SERVICES AND/OR LABOR FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PROJECT, TOGETHER WITH ALL IMPROVEMENTS AND APPURTENANCES ATTENDANT THERETO (“PROJECT”), WHICH IS OWNED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“PROPERTY OWNER”) AND IS LOCATED IN THE CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, COUNTY OF , STATE OF GEORGIA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

 **\_\_\_\_.**

**(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)**

 **UPON RECEIPT OF THE SUM OF $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, THE ARCHITECT WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS OR ANY RIGHT AGAINST ANY LABOR AND/OR MATERIAL BOND IT HAS UPON THE FOREGOING DESCRIBED PROPERTY.**

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NON PAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

 **ARCHITECT AGREES THAT THIS WAIVER AND RELEASE FORM IS IN COMPLIANCE WITH O.C.G.A. § 44-14-366(D).**

**FOR ARCHITECT:**

Applicable to invoice no(s). All \*

\*If all, print “all.”

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the architect and that this document was signed under oath personally and on behalf of the architect.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX G-6

ARCHITECT’S FINAL, UNCONDITIONAL
CLAIM WAIVER AND RELEASE UPON FINAL PAYMENT**

(To be provided by Architect at Final Payment)

STATE OF GEORGIA

COUNTY OF

 The undersigned, (“Architect”), has been engaged under an agreement with (“Owner”) to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the project, together with all improvements and appurtenances attendant thereto (“Project”), which is owned by (“Property Owner”) and is located in the City of , County of , State of Georgia, and is more particularly described as follows:

 .

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

 Architect represents that, pursuant to O.C.G.A. § 44-14-361.2(a)(2), it has been paid in full for all labor, services, equipment and material furnished to the Project, and Architect hereby waives and releases any and all claims, demands, actions, causes of action or other rights against Owner and Property Owner, at law, in contract, tort, equity or otherwise (except those concerning lien rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Architect’s Final, Unconditional Lien Waiver and Release Upon Final Payment form, which is executed concurrently with this form), which Architect has, may have had or may have in the future arising out of Architect’s performance of work on the Project.

 This Waiver and Release applies to all facts, acts, events, circumstances, changes, constructive or actual delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred prior to the date of this Waiver and Release, whether or not known to the Architect at the time of execution of this Waiver and Release.

 The Architect further represents that all of its obligations, legal, equitable, or otherwise, relating to or arising out of its work on the Project have been fully satisfied, including, but not limited to obligations relating to:

* Subconsultants, employees, laborers, materialmen and subcontractors employed by the Architect;
* Labor, materials, equipment and supplies furnished by others to the Architect; and
* Sales and use taxes, social security taxes, income tax withholding, unemployment insurance, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

 This Waiver and Release is freely and voluntarily given, and the Architect acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver and Release and that it is fully informed with respect to the legal effect of this Waiver and Release. The Architect understands, agrees and acknowledges that, upon the execution of this document, this document waives rights unconditionally and is fully enforceable to extinguish all claims (except those concerning lien rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Architect’s Final, Unconditional Lien Waiver and Release Upon Final Payment form, which is executed concurrently with this form) of the Architect. Architect agrees to indemnify, hold harmless and defend Owner and Property Owner against any and all loss, claims, damages, costs or expense, of any nature whatsoever (except those relating to lien rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Architect’s Final, Unconditional Lien Waiver and Release Upon Final Payment form, which is executed concurrently with this form), including attorneys’ fees, arising out of any claims or demands made by any of its employers, laborers, materialmen, subcontractors and Subconsultants, of any tier, for materials, services, equipment and labor supplied to the Project.

**FOR ARCHITECT:**

Applicable to Invoice no(s). All \*

\*If all, print “all.”

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the Architect and that this document was signed under oath personally and on behalf of the Architect.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX G-7

SUBCONSULTANT’S FINAL, UNCONDITIONAL LIEN
WAIVER AND RELEASE UPON FINAL PAYMENT**(To be provided by Subconsultants at Final Payment)

**STATE OF GEORGIA**

**COUNTY OF**

 **THE UNDERSIGNED, \_\_ (“SUBCONSULTANT”), HAS BEEN ENGAGED UNDER AN AGREEMENT WITH \_ (“ARCHITECT”) TO FURNISH CERTAIN MATERIALS, EQUIPMENT, SERVICES AND/OR LABOR FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PROJECT, TOGETHER WITH ALL IMPROVEMENTS AND APPURTENANCES ATTENDANT THERETO (“PROJECT”), WHICH IS LOCATED IN THE CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, COUNTY OF , STATE OF GEORGIA, AND IS OWNED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“PROPERTY OWNER”) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

 **\_\_\_\_.**

**(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)**

 **UPON RECEIPT OF THE SUM OF $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, THE SUBCONSULTANT WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS OR ANY RIGHT AGAINST ANY LABOR AND/OR MATERIAL BOND IT HAS UPON THE FOREGOING DESCRIBED PROPERTY.**

**NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED SUCH PAYMENT, 60 DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NON PAYMENT OR A CLAIM OF LIEN PRIOR TO THE EXPIRATION OF SUCH 60 DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER O.C.G.A. SECTION 44-14-366.**

 **SUBCONSULTANT AGREES THAT THIS WAIVER AND RELEASE FORM IS IN COMPLIANCE WITH O.C.G.A. § 44-14-366(D).**

**FOR SUBCONSULTANT:**

Applicable to invoice no(s). All \*

\*If all, print “all.”

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the above-referenced Subconsultant and that this document was signed under oath personally and on behalf of the Subconsultant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX G-8**

 **SUBCONSULTANT’S FINAL, UNCONDITIONAL CLAIM
WAIVER AND RELEASE UPON FINAL PAYMENT**(To be provided by Subconsultants at Final Payment)

STATE OF GEORGIA

COUNTY OF \_\_\_\_\_\_\_\_\_\_

 The undersigned, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Subconsultant”), has been engaged under an agreement with (“Architect”) to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the project, together with all improvements and appurtenances attendant thereto (“Project”), which is located in the City of , County of \_\_\_\_\_\_\_\_\_\_, State of Georgia, and is owned by (“Property Owner”) and is more particularly described as follows:

 .

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

 Subconsultant has been paid in full for all labor, services, equipment and material furnished to the Project, and Subconsultant hereby waives and releases any and all claims, demands, actions, causes of action or other rights against (“Owner”), Property Owner and Architect, at law, in contract, tort, equity or otherwise (except those concerning lien or bond rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Subconsultants’ Final, Unconditional Lien Waiver and Release Upon Final Payment form, which is executed concurrently with this form), and any and all rights Subconsultant has, may have had or may have in the future arising out of Subconsultant’s performance of work on the Project.

 This Waiver and Release applies to all facts, acts, events, circumstances, changes, constructive or actual delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred prior to the date of this Waiver and Release, whether or not known to the Subconsultant at the time of execution of this Waiver and Release.

 The Subconsultant further represents that all of its obligations, legal, equitable, or otherwise, relating to or arising out of its work on the Project have been fully satisfied, including, but not limited to obligations relating to:

* Sub-subconsultants, employees, laborers, materialmen and subcontractors employed by the Subconsultant;
* Labor, materials, equipment and supplies furnished by others to the Subconsultant; and
* Sales and use taxes, social security taxes, income tax withholding, unemployment insurance, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

 This Waiver and Release is freely and voluntarily given and the Subconsultant acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver and Release and that it is fully informed with respect to the legal effect of this Waiver and Release. The Subconsultant understands, agrees and acknowledges that, upon the execution of this document, this document waives rights unconditionally and is fully enforceable to extinguish all claims (except those concerning lien rights which are separately waived pursuant to O.C.G.A. §44-14-366 by the Subconsultant’s Final, Unconditional Lien Waiver and Release Upon Final Payment form, which is executed concurrently with this form) of the Subconsultant. The Subconsultant understands that the failure to complete correctly any of the blank spaces in this document shall not invalidate the document so long as the subject matter of this Waiver and Release may reasonably be determined.

**FOR SUBCONSULTANT:**

Applicable to invoice no(s). All \*

\*If all, print “all.”

Signed:

By:

Title:

Date:

**AFFIDAVIT**

On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the above-referenced Subconsultant and that this document was signed under oath personally and on behalf of the Subconsultant.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX H**

**INVOICE FORMS**

**APPENDIX H-1**

**INVOICE FORM FOR INTERIM PAYMENTS**

| **PROJECT NAME:** **OWNER:** **ARCHITECT:** **DATE OF AGREEMENT:**  | **INVOICE NUMBER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**DATE OF INVOICE:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_ |
| --- | --- |

This Invoice covers the period from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (“Current Date”).

Architect hereby makes application for payment to Owner as shown below in connection with the above referenced Agreement between the Parties.

**[TO BE MODIFIED]**

Architect certifies under penalty of perjury that (i) the Services are progressing in accordance with the Time Schedule and, (ii) the Services described in or relating to this Invoice have been performed, (iii) all quantities and prices in this Invoice are correct and in accordance with the Agreement, (iv) Architect is entitled to payment of the amount set forth as “Total Amount Due” in this Invoice, and such Total Amount Due constitutes in full all amounts due and owing as of the Current Date, (v) the Project, the Site and the Services and any portion thereof described in or relating to this Invoice and all previous Invoices are free and clear of all liens, security interests and encumbrances, (vi) all Subconsultants have been paid the monies due and payable for Services performed in connection with the Project, (vii) fully completed and executed Interim Lien and Claim Waivers from Architect, and from all Subconsultants who performed Services relating to this Invoice, are attached to this Invoice, and (viii) this Invoice is signed by an authorized representative of Architect.

| ARCHITECTSigned: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 200\_\_ | Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 200\_\_.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary PublicMy Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ |
| --- | --- |

 **PROJECT**

**INVOICE NUMBER \_\_\_\_\_\_ INVOICE DATE \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_**

OWNER APPROVAL

AMOUNT APPROVED by Owner for Payment: US $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OWNER

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_

The AMOUNT APPROVED by Owner is without prejudice to any rights of Owner under the Agreement.

Explanation is listed below or attached if the AMOUNT APPROVED is less than the amount requested by Architect under this Invoice:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**APPENDIX H-2**

**INVOICE FORM FOR FINAL PAYMENT**

| **PROJECT NAME:** **OWNER:** **ARCHITECT:** **DATE OF AGREEMENT:** \_ | **INVOICE NUMBER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**DATE OF INVOICE:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_ |
| --- | --- |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This Invoice is the final Invoice for the Project, covers the period from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (“Current Date”).

Architect hereby makes this final application for payment to Owner as shown below in connection with the above referenced Agreement between the Parties.

**[TO BE MODIFIED]**

Architect certifies under penalty of perjury that (i) the Services described in or relating to this Invoice have been performed and supplied in full accordance with the Agreement, (ii) all quantities and prices in this Invoice or attached Appendices are correct and in accordance with the Agreement, (iii) Architect is entitled to payment of the amount set forth as “Total Amount Due” in this Invoice, and such Total Amount Due constitutes in full all amounts due and owing under the Agreement and the Project, (iv) the Project, the Site and the Services and any portion thereof are free and clear of all liens, security interests and encumbrances, (v) all Subconsultants have been paid the monies due and payable for Services performed in connection with the Project, (vi) fully completed and executed Final Lien and Claim Waivers from Architect, and from all Subconsultants who performed Services relating to the Project, are attached to this Invoice, and (vii) this Invoice is signed by an authorized representative of Architect.

| ARCHITECTSigned: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 200\_\_ | Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 200\_\_.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Notary PublicMy Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ |
| --- | --- |

 **PROJECT**

**INVOICE NUMBER \_\_\_\_\_\_ INVOICE DATE \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_**

OWNER APPROVAL

AMOUNT APPROVED by Owner for Payment: US $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OWNER

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 200\_\_

The AMOUNT APPROVED by Owner is without prejudice to any rights of Owner under the Agreement.

Explanation is listed below or attached if the AMOUNT APPROVED is less than the amount requested by Architect under this Invoice:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**APPENDIX I**

**CHANGE ORDER FORMS**

**APPENDIX I-1**

**CHANGE ORDER FORM**

(for use when the Parties mutually agree upon and execute the Change Order pursuant to Section 9.1(a) or 9.2(c))

| **PROJECT NAME:** **OWNER:** **ARCHITECT:** **DATE OF AGREEMENT:** | **CHANGE ORDER NUMBER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**DATE OF CHANGE ORDER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| --- | --- |

**The Agreement between the Parties listed above is changed as follows:** *(attach additional documentation if necessary)*

**Adjustment to Contract Price**

The original Contract Price was $\_\_\_\_\_\_\_\_\_\_\_\_

Net change by previously authorized Change Orders (#\_\_\_\_\_\_\_\_) $\_\_\_\_\_\_\_\_\_\_\_\_

The Contract Price prior to this Change Order was $\_\_\_\_\_\_\_\_\_\_\_\_

The Contract Price will be (increased) (decreased) (unchanged) by this Change Order

in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_

The new Contract Price including this Change Order will be $\_\_\_\_\_\_\_\_\_\_\_\_

**Adjustment to dates in Time Schedule**

The following dates are modified *(list all dates modified; insert N/A if no dates modified)*:

The Completion Date for [ ] will be (increased)(decreased)(unchanged) by (\_\_) Days.

The Completion Date for [ ] as of the date of this Change Order therefore is , 20\_\_.

The Completion Date for [ ] will be (increased)(decreased)(unchanged) by (\_\_) Days.

The Completion Date for [ ] as of the date of this Change Order therefore is , 20\_\_.

*(attach additional documentation if necessary)*

Impact to other Changed Criteria *(insert N/A if no changes or impact; attach additional documentation if necessary)*

Impact on Time Schedule:

Impact on Payment Schedule:

Other Impacts to Agreement:

Upon execution of this Change Order by Owner and Architect, the above-referenced change shall become a valid and binding part of the original Agreement without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties’ duly authorized representatives.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner Architect

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Signing Date of Signing

**APPENDIX I-2**

**UNILATERAL CHANGE ORDER FORM**

 (for use when only Owner executes the Change Order pursuant to Section 9.1(b) or 9.2(d))

| **PROJECT NAME:** **OWNER:** **ARCHITECT:**  **DATE OF AGREEMENT:**  | **CHANGE ORDER NUMBER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**DATE OF CHANGE ORDER:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| --- | --- |

**You are hereby directed to make the following change(s) in this Agreement:** *(attach additional documentation if necessary)*

Compensation for the changes specified in this Change Order are on a time and materials basis as provided in Section 9.1(b) and 9.1(d) of the Agreement.

When signed by Owner and received by Architect, this document becomes effective IMMEDIATELY as a unilateral Change Order, and Architect shall commence with the performance of the change(s) described above within three (3) Business Days of its receipt unless another time is expressly stated above. This Change Order is signed by Owner’s duly authorized representative.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Signing

**APPENDIX I-3**

**ARCHITECT’S CHANGE ORDER REQUEST FORM**

| **PROJECT NAME:** **OWNER:** **ARCHITECT:** **DATE OF AGREEMENT:**  | **CHANGE ORDER REQUEST NUMBER:** \_\_\_\_\_\_\_\_\_\_\_**DATE OF CHANGE ORDER REQUEST:** \_\_\_\_\_\_\_\_\_\_\_ |
| --- | --- |

**Architect proposes the following change(s) in the Agreement:** *(attach additional documentation, if necessary)*

**Detailed Reasons for Proposed Change(s)** *(provide detailed reasons for the proposed change, and attach all supporting documentation required under the Agreement)*

**Proposed Adjustments to Agreement** *(attach additional documentation, if necessary)*

Contract Price Adjustment:

Adjustment to Time Schedule, including Completion Dates:

Adjustment to Payment Schedule:

Other Adjustments to Agreement:

This request for Change Order is signed by Architect’s duly authorized representative.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Architect

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Signing

**APPENDIX J**

**OWNER PROVIDED INFORMATION**