



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 06- 34

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, the Squaxin Island Tribal Council directed staff to negotiate for a construction proposal for the purpose of adding a second hotel tower to the Little Creek Casino-Resort; and

**WHEREAS**, staff has negotiated the terms of a contract for construction services with Ambia, Inc. referred to as Architect, as is evidenced by the attached Agreement for Construction Services, AIA Document B163 - 1993; and

**WHEREAS**, in order to induce Architect to complete and execute the Agreement for Construction Services and perform the same, it is necessary for the Tribal Council to ratify and approve the terms of the Agreement for Construction Services; to authorize execution of any and all documents required; to issue a limited waiver of sovereign immunity; to consent that the Tribe be sued in state, federal and tribal courts pertaining to the transaction; and to consent to the application of the substantive laws of the State of Washington.

**NOW, THEREFORE, BE IT RESOLVED AND ENACTED by the Council as follows:**

Section 1. Agreement for Construction Services. The terms and conditions of the above-described drafts of the Agreement for Architectural Services, as amended and as modified by March 27, 2006, letter, are hereby authorized and ratified. The Chairman, or in his absence the Vice-Chairman, or the CEO of the Little Creek Casino-Resort, is hereby authorized to execute and deliver on behalf of the Tribe the Agreement as well as any non-material revisions of the same prior to their execution as they shall determine.

Section 2. Waiver of Sovereign Immunity. The Tribal Council consents to the terms of the Agreement for Architectural Services as set forth below:

3.7 Mediation, Arbitration, and Waiver of Sovereign Immunity.

3.7.1 This paragraph concerns the resolution of any controversies or claims between the Owner and the Architect whether arising in contract, tort or by statute that arise out of or relate to the Contract Documents, including claims relating to the disbursement of the Retained Loan Proceeds as defined in the Owner's Loan Agreement with Bank of America, as amended ("Loan Agreement") or for claims for coverage under Owner's liability or property insurance policies (collectively "Claims").

3.7.2 Owner expressly and irrevocably waives its sovereign immunity from compulsory, mediation, arbitration and judicial enforcement or any arbitration award or awards for Claims by Architect with respect to the obligations and indebtedness that arise out of or relate to the Contract Documents, disbursement of the Retained Loan Proceeds and for the Architect's claims for coverage under Owner's liability or property insurance policies. Provided, the waiver of sovereign immunity expressed herein is limited to the Architect and its successors and assigns. Provided further, the waiver granted the Architect is limited to recovery of the Retained Loan Proceeds in the Loan Agreement, the net gaming revenues of the Owner's Gaming Enterprise, and insurance proceeds available from Owner's liability or property insurance hereunder. Neither Owner nor Owner's insurers shall assert sovereign immunity as a bar to coverage by Architect as an additional named insured on such policies. Mediation, arbitration, and judicial enforcement shall be as specified in Articles 4.5 and 4.6 of the General Conditions of the Contractor for Construction, AIA Document A201-1997, as modified by the Supplemental Terms and Conditions.

3.7.3 The filing of a court action is not intended to constitute a waiver of the right of Owner, or Architect, including the suing party, thereafter to require submittal of Claims to arbitration.

3.7.4 Owner expressly and irrevocably waives its sovereign immunity from suit for Claims by Architect with respect to the obligations and indebtedness Owner may have pursuant to the Contract Documents, disbursement of the Retained Loan Proceeds and for the Architect's claims for coverage under Owner's liability or property insurance policies and consents to be sued in the



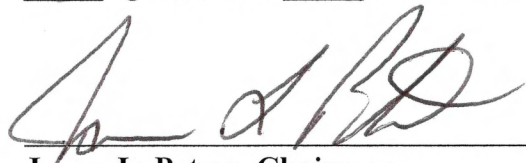
courts of the State of Washington to compel or enforce arbitration. If it is determined that the foregoing court does not enjoy proper jurisdiction, then the Owner consents to suit to compel or enforce arbitration in any federal or tribal court of competent jurisdiction, including the Squaxin Island Tribal Court, if any. Owner hereby waives any requirement of exhaustion of tribal remedies. Provided, the waiver of sovereign immunity expressed herein is limited to the Architect and its successors and assigns. Provided further, recourse of the Architect under this waiver of sovereign immunity is limited to recovery of the Retained Loan Proceeds in the Loan Agreement, the net gaming revenues of the Owner's Gaming Enterprise, and insurance proceeds available from Owner's liability or property insurance hereunder. Neither Owner nor Owner's insurers shall assert sovereign immunity as a bar to coverage by Architect as an additional named insured on such policies. Mediation, arbitration, and judicial enforcement shall be as specified in Articles 4.5 and 4.6 of the General Conditions of the Contractor for Construction, AIA Document A201-1997, as modified by the Supplemental Terms and Conditions.

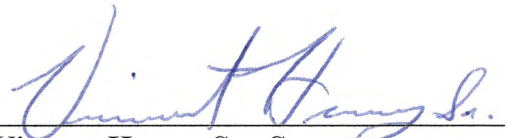
3.7.5 This Agreement and the Contract Document shall be governed by the law of the State of Washington.

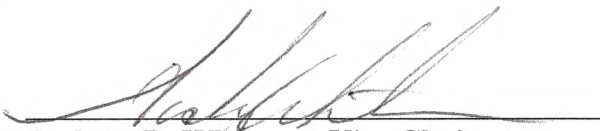
3.7.6 Architect shall be entitled to inspect the Loan Agreement, any amendments to the Loan Agreement and correspondence between Owner and Lender to ensure the Retained Loan Proceeds remain available to fund the Owner's obligations under the Contract Documents.

#### CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 27<sup>th</sup> day of April, 2006, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.

  
\_\_\_\_\_  
**James L. Peters, Chairman**

Attested by:   
\_\_\_\_\_  
**Vincent Henry, Sr., Secretary**

  
\_\_\_\_\_  
**Andrew D. Whitener, Vice Chairman**



# AIA<sup>®</sup> Document B163<sup>™</sup> – 1993

## *Standard Form of Agreement Between Owner and Architect with Descriptions of Designated Services and Terms and Conditions*

### TABLE OF ARTICLES

#### PART 1 - FORM OF AGREEMENT

- 1.1 SCHEDULE OF DESIGNATED SERVICES
- 1.2 COMPENSATION
- 1.3 PAYMENTS
- 1.4 TIME AND COST
- 1.5 ENUMERATION OF DOCUMENTS
- 1.6 OTHER CONDITIONS OR SERVICES

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

#### PART 2 - DESCRIPTIONS OF DESIGNATED SERVICES

- 2.1 DESIGNATED SERVICES
- 2.2 PHASES OF DESIGNATED SERVICES
- 2.3 DESCRIPTIONS OF DESIGNATED SERVICES
- 2.4 DESCRIPTIONS OF SUPPLEMENTAL SERVICES

#### PART 3 - TERMS AND CONDITIONS

- 3.1 ARCHITECT'S RESPONSIBILITIES
- 3.2 OWNER'S RESPONSIBILITIES
- 3.3 CONTRACT ADMINISTRATION
- 3.4 USE OF PROJECT DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS
- 3.5 COST OF THE WORK
- 3.6 PAYMENTS TO THE ARCHITECT
- 3.7 DISPUTE RESOLUTION
- 3.8 MISCELLANEOUS PROVISIONS
- 3.9 TERMINATION, SUSPENSION OR ABANDONMENT



# FORM OF AGREEMENT

## Between Owner and Architect for Designated Services

AGREEMENT made as of the Thirty-first day of January in the year of Two Thousand Six  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name and address)

Squaxin Island Tribe dba  
Little Creek Casino  
Doug Boon, CEO  
91 West, State Route 108  
Shelton, WA 98584-9270

and the Architect:  
(Name and address)

Ambia  
724 Columbia Street NW  
Suite 400  
Olympia, WA 98501

For the following Project:  
(Include a detailed description of Project's location, address and scope.)

### Little Creek Hotel Addition

The Project includes two phases of additions to the existing hotel and casino totaling 154,335 SF. Phase I of the project includes a five story hotel tower, a new port cochere and entry, a second second floor link from the new tower to the casino, a "shelled in" courtyard transition from the new tower to the existing hotel tower lobby including "shelled in" shopping space and a "shelled in" restaurant.

Phase II includes a covered service entry, an enclosed service staging area, new loading docks, enclosed garbage compacting and collection areas, and all work required to finish the Phase I transition/shopping space and restaurant and a two-story administration addition.

The Owner and Architect will each respectfully assume the lead position for the service as shown on the attached schedule. The Architect will provide Architectural Services, Landscape Architectural Services, and hire outside consulting Structural Engineering Services on the Owner's behalf. Civil Engineering, Geotechnical Engineering and Survey Services will be contracted directly by the Owner. The contractor will provide Bidder Design Services for the Mechanical and Electrical work.

The Architect's services will be provided for all phases as more fully described in Article 1.1.

The Owner and the Architect agree as set forth below.

ARTICLE 1.1 SCHEDULE OF DESIGNATED SERVICES

PROJECT: Little Creek Hotel Addition		Pre-Design Phase																Remarks and Exceptions
		Site Analysis Phase				Schematic Design Phase				Design Development Phase				Contract Documents Phase				
PROJECT #: 25094.00		1		2		3		4		5		6		7		8		Post-Contract Phase
		R	M	R	M	R	M	R	M	R	M	R	M	R	M	R	M	
DATE:																		
*R: RESPONSIBILITY **M: METHOD OF COMPENSATION																		
Project Admin. & Mgmt. Services	.01 Project Administration					O		O		O		O		O		O		
	.02 Disciplines Coordination/Document Checking					A	3	A	3	A	3	O		A	3	O		Owner Consultant Assist
	.03 Agency Consulting/Review/Approval					A	3	A	3	A	3	A	3	A	3	O		
	.04 Owner-Supplied Data Coordination					A	3	A	3	A	3	A	3	A	3	O		
	.05 Schedule Development/Monitoring					O		O		O		O		O				A Assist and Acceptance
	.06 Preliminary Estimate of Cost of the Work					O		O		O								Contractor to Develop, A to Assist (3)
	.07 Presentation					A	3	A	3	A	3							
Pre-Design Services	.08 Programming	O	3															A Assist (3)
	.09 Space Schematics/Flow Diagrams	A	3															
	.10 Existing Facilities Surveys	A	3															
	.11 Marketing Studies	O																
	.12 Economic Feasibility Studies	O																
	.13 Project Financing	O																
Site Development Services	.14 Site Analysis and Selection			A	3													
	.15 Site Development Planning			A	3													
	.16 Detailed Site Utilization Studies			A	3													
	.17 On-Site Utility Studies			O														A Assist (3)
	.18 Off-Site Utility Studies			O														
	.19 Environmental Studies and Reports			O														
	.20 Zoning Processing Assistance			O														
	.21 Geotechnical Engineering			O														A Assist (3)
	.22 Site Surveying			O														A Assist (3)
	Design Services	.23 Architectural Design/Documentation					A	3	A	3	A	3						
.24 Structural Design/Documentation						A	3	A	3	A	3							
.25 Mechanical Design/Documentation						O		O		O								A Assist (3)
.26 Electrical Design/Documentation						O		O		O								A Assist (3)
.27 Civil Design/Documentation						O		O		O								A Assist (3)
.28 Landscape Design/Documentation						A	3	A	3	A	3							
.29 Interior Design/Documentation						O		O		O								A Assist (3)
.30 Special Design/Documentation						O		O		O								
.31 Materials Research/Specifications						A	3	A	3	A	3							
Negotiation		.32 Bidding Materials												O				
	.33 Addenda												A	3				
	.34 Bidding/Negotiation												O					A Assist (3)

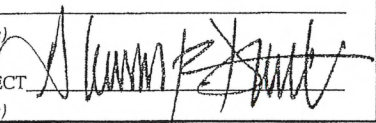




ARTICLE 1.1 SCHEDULE OF DESIGNATED SERVICES (continued)

PROJECT: Little Creek Hotel Addition		Supplemental Services	
PROJECT #: 25094.00			
DATE:		9	
*R: RESPONSIBILITY		R	M
**M: METHOD OF COMPENSATION		Remarks and Exceptions	
SUPPLEMENTAL SERVICES	.54 Special Studies	<input type="radio"/>	
	.55 Tenant-Related Services	<input type="radio"/>	
	.56 Special Furnishings Design	<input type="radio"/>	
	.57 FF&E Services	<input type="radio"/>	
	.58 Special Disciplines Consultation	<input type="radio"/>	
	.59 Special Building Type Consultation	<input type="radio"/>	
	.60 Fine Arts and Crafts	<input type="radio"/>	
	.61 Graphic Design	<input type="radio"/>	Note 1.1b (3)
	.62 Renderings	<input type="radio"/>	Note 1.1b (3)
	.63 Model Construction	<input type="radio"/>	
	.64 Still Photography	<input type="radio"/>	
	.65 Motion Picture and Videotape	<input type="radio"/>	
	.66 Life Cycle Cost Analysis	<input type="radio"/>	A Assist (3)
	.67 Value Analysis	<input type="radio"/>	A Assist (3)
	.68 Energy Studies	<input type="radio"/>	
	.69 Quantity Surveys	<input type="radio"/>	
	.70 Detailed Cost Estimating	<input type="radio"/>	Architect Available as Extra Service 1.6.4 (5)
	.71 Environmental Monitoring	<input type="radio"/>	
	.72 Expert Witness	<input type="radio"/>	
	.73 Materials and Systems Testing	<input type="radio"/>	
	.74 Demolition Services	<input type="radio"/>	
	.75 Mock-Up Services	<input type="radio"/>	
	.76 Coordination of Designated Services	<input type="radio"/>	
.77 FF&E Purchasing/Installation	<input type="radio"/>		
.78 Computer Applications	<input type="radio"/>		
.79 Project Promotion/Public Relations	<input type="radio"/>		
.80 Leasing Brochures	<input type="radio"/>		
.81 Pre-Contract Administration/Management	<input type="radio"/>		
.82 Extended Bidding	<input type="radio"/>		
.83 Extended Contract Administration/Management	<input type="radio"/>		
OTHER SERVICES			



<p>*R: RESPONSIBILITY</p> <p>A Architect</p> <p>O Owner</p> <p>N Not Provided</p>	<p>**M: METHOD OF COMPENSATION</p> <p>Multiple of Direct Personnel Expense</p> <p>1. Professional Fee Plus Expenses</p> <p>2. Percentage of Construction Cost</p> <p>3. Stipulated Sum</p> <p>4. Hourly Billing Rates</p> <p>5. Multiple of Amounts Billed to Architect</p> <p>6. Other:</p> <p>7.</p>	<p>In conjunction with the descriptions of terms and conditions of this Agreement, the Designated Services, where identified above by appropriate initial, shall be provided by the Owner or the Architect or not all. In conjunction with the compensation and payment terms of this Agreement, the Owner shall compensate the Architect for such designated services performed by the Architect on the basis of the Method of Compensation identified above by an appropriately keyed number.</p>
<p>KEY</p> <p><input type="checkbox"/> All services performed in normal chronological order.</p> <p><input type="checkbox"/> Services performed out of normal sequence, or not typically provided during these phases, as in FAST-TRACK construction. Such services may warrant special requirements as to responsibility and/or compensation.</p>		<p>OWNER _____</p> <p>(Signature) </p> <p>ARCHITECT _____</p> <p>(Signature)</p>

1.1a The term "Assist" as used in the remarks column means the Architect will provide a limited amount of coordination. Anything beyond a reasonable amount of hours will be charged as extra services at the rates as defined in Paragraph 1.2.2. The Architect shall notify the owner prior to performing services beyond reasonable.

1.1b The Architect will provide design perspective sketches and graphic design assistance within its skillset as normally provided as a usual part of Ambia's Basic Services design delivery process. However, more extensive services requiring outside professionals to do renderings or models are not included within the Architects scope of work.

**ARTICLE 1.2 COMPENSATION**

The Owner shall compensate the Architect as follows.

§ 1.2.1 For Designated Services, as identified in the Schedule of Designated Services, described in the Description of Designated Services, and any other services included in Article 1.6, compensation shall be computed as follows:  
*(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)*

Basis of compensation	Phase(s) to which applicable
<u>The basis of compensation shall be a fixed fee 4.47% of the Guaranteed Maximum Price of Phase I and II of the project.</u>	<u>Phases I and II</u>

The Guaranteed Maximum Price (GMP) for this contract has not yet been finally determined. Therefore, for purposes of compensating the Architect until the GMP is finally determined, a GMP of \$17.2 million for the first phase and \$5 million for the second phase will be used to calculate the proportionate amounts due under this section. Once the final GMP is determined, adjustments will be made within 30 days thereafter, to compensate the proportionate amounts based on the final GMP of each phase. See Paragraph 1.3.2 for the estimated proportionate amounts.

§ 1.2.2 For Contingent Additional Services of the Architect, as described in the Terms and Conditions, but excluding Contingent Additional Services of Consultants, compensation shall be computed as follows:  
*(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

Staff Hourly Billing Rates

<u>Principals</u>	<u>145.00</u>	<u>- 165.00</u>
<u>Architectural Staff</u>	<u>70.00</u>	<u>- 135.00</u>
<u>Civil Staff</u>	<u>80.00</u>	<u>- 135.00</u>
<u>Landscape Staff</u>	<u>80.00</u>	<u>- 135.00</u>
<u>Cost Estimator</u>	<u>135.00</u>	
<u>Quality Assurance</u>	<u>100.00</u>	<u>- 150.00</u>
<u>IT Technician</u>	<u>90.00</u>	
<u>Professional Support Staff</u>	<u>50.00</u>	<u>- 95.00</u>

Ambia reserves the right to make yearly inflationary adjustments to the above rates as deemed appropriate at our sole discretion. Staff will be assigned to projects based on our judgment related to an individual's qualification or other work load commitments in the office.

§ 1.2.3 For Contingent Additional Services of the Architect's Consultants, including additional structural, mechanical and electrical engineering, and those identified in Article 1.6 and in the Schedule of Designated Services or as part of the Architect's Contingent Additional Services under the Terms and Conditions, compensation shall be computed as a multiple of one point one zero ( 1.10 ) times the amounts billed to the Architect for such services.  
*(Identify specific types of consultants in Article 6 , if required.)*

§ 1.2.4 For Reimbursable Expenses, as described in Article 3.7 of the Terms and Conditions, and any other items included in Article 1.6 as a Reimbursable Expense, the compensations shall be computed as a multiple of one point one zero ( 1.10 ) times the expense incurred by the Architect, the Architect's employees and consultants in the interest of the Project.



§ 1.2.5 If the Designated Services identified in the Schedule of Designated Services have not been completed within ( ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 1.2.2.

§ 1.2.6 The rates and multiples set forth for Contingent Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.

**ARTICLE 1.3 PAYMENTS**

§ 1.3.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for Designated Services shall be made monthly, and where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in the Agreement.

§ 1.3.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Designated Services in each phase shall be made monthly and shall be in proportion to services performed within each Phase of Services, so that Compensation for each Phase shall equal the following amounts or percentages of the total compensation payable for such Designated Services.

*(Insert or delete phases as appropriate.)*

Pre-Design Phase:		percent (		%)
Site Analysis Phase:		percent (		%)
Schematic Design Phase:		percent (		%)
Design Development Phase:		percent (		%)
Contract Documents Phase:		percent (		%)
Bidding or Negotiation Phase:		percent (		%)
Contract Administration Phase:		percent (		%)
Post-Contract Phase:		percent (		%)

	<u>Phase I</u>		<u>Phase II</u>			
Pre-Design Phase:	7,689		2,235	percent (	<u>1</u>	%)
Site Analysis Phase:	7,689		2,235	percent (	<u>1</u>	%)
Schematic Design Phase:	99,949		29,055	percent (	<u>13</u>	%)
Design Development Phase:	153,768		44,700	percent (	<u>20</u>	%)
Contract Documents Phase:	307,536		89,400	percent (	<u>40</u>	%)
Bidding or Negotiation Phase:	23,065		6,705	percent (	<u>3</u>	%)
Contract Administration Phase:	161,456		46,935	percent (	<u>21</u>	%)
Post-Contract Phase:	7,688		2,235	percent (	<u>1</u>	%)

§ 1.3.3 Payments are due and payable thirty ( 30 ) days from the date of the Architect's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect.

           per annum

Statements for work progress will be submitted to the Owner monthly with payment on account of said statements due within thirty (30) days from the date of Ambia's invoice. Any amount outstanding sixty (60) days or more from date of statement will carry interest charged at 1.5% per month. Should the project be abandoned by the Owner at any time during the progress of our work, billing will be rendered for work completed and/or time expended up to the date of said abandonment and shall immediately become due and payable.

The Architect reserves the right to suspend any or all work on the project if payment due the Architect is not made in full ninety (90) days of the invoice date.

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion or modifications, and also regarding requirements such as written disclosures or waivers.)*

#### ARTICLE 1.4 TIME AND COST

§ 1.4.1 Unless otherwise indicated, the Owner and the Architect shall perform their respective obligations as expeditiously as is consistent with normal skill and care and the orderly progress of the Project. Upon the request of the Owner, the Architect shall prepare a schedule for the performance of the Designated Services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule upon approval by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner. If the Architect is delayed in the performance of services under this Agreement by the Owner, the Owner's Consultants, or any other cause not within the control of the Architect, any applicable schedule shall be adjusted accordingly.

*(Insert time requirements, if any.)*

Construction of Phase I work is to be completed by November 6, 2006. The Architect will have sufficient construction documents to start fast tract construction on the tower no later than February 28, 2006.

§ 1.4.2 The Owner shall establish and update an overall budget for the Project, which shall include the Cost of the Work; contingencies for design, bidding and changes in the Work during construction; compensation of the Architect, Architect's consultants and the Owner's other consultants; cost of the land, rights-of-way and financing; and other costs that are the responsibility of the Owner as indicated by the Terms and Conditions or Designated Services. Prior to the establishment of such a budget, the Owner and the Architect may agree on Designated Services that include the utilization of the Architect's or other consultants' services to assist the Owner with market, financing and feasibility studies deemed necessary for development of such a budget for the Project.

§ 1.4.3 No fixed limit of the Cost of the Work shall be established as condition of this Agreement by the furnishing, proposal or establishment of a Project budget unless such fixed limit has been agreed to below or by separate Amendment made in writing and signed by the parties hereto. Any fixed limit of the Cost of the Work shall be subject to the limitations and definitions contained in the Terms and Conditions under Part 3 of this Agreement.  
*(If no fixed limit, leave blank.)*

#### ARTICLE 1.5 ENUMERATION OF DOCUMENTS

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

§ 1.5.2 The parts of this Agreement between the Owner and Architect, except for amendments issued after execution of this Agreement, are enumerated as follows:

§ 1.5.2.1 Form of Agreement Between Owner and Architect, AIA Document B163 - Part 1, 1993 Edition;

§ 1.5.2.2 Descriptions of Designated Services for AIA Document B163, AIA Document B163 - Part 2, 1993 Edition;

§ 1.5.2.3 Terms and Conditions of AIA Document B163, AIA Document B163 - Part 3, 1993 Edition.

§ 1.5.2.4 Other Documents, if any, forming a part of the contract are as follows:

*(Insert any additional documents, but only if they are intended to be part of the contract between the Owner and the Architect.)*

ARTICLE 1.6 OTHER CONDITIONS OR SERVICES

(Insert modifications to the Descriptions of Services contained in Part 2 and to the Terms and Conditions contained in Part 3 of this Agreement.)

§ 1.6.1 The Architect is enlisting additional professional Subconsulting services on behalf of and for the benefit of the Owner. The Owner maintains ultimate responsibility for payments of said Subconsultant's services. In no circumstance is the Architect liable for non-payment of services. The Subconsultant is an independent service provider of this Project, responsible for methods and means used in performing the Subconsultant's services under this Agreement, and is not an employee, agent or partner of the Architect.

§ 1.6.2 Fast Track Construction: Upon receipt of the Owner's written authorization for construction activities to commence prior to completion of the Architect's design services, the Architect shall provide construction observation services that overlap with design services in order to expedite the Owner's early occupancy of all or a portion of the Project. The Owner shall furnish to the Architect in a timely manner information obtained from all Contractors and prospective contractors regarding anticipated market conditions and construction cost; availability of labor, materials and equipment; and their proposed methods, sequences and time schedules for construction of the Work. Upon receipt of their proposed construction schedules, the Architect shall prepare a schedule for providing services (see Paragraph 1.4.1). In the event of a conflict between the proposed construction schedules and the Architect's proposed schedule, the Architect shall inform the Owner of such conflict.

§ 1.6.3 Ownership of Architect's Drawings, etc

Ownership. Upon full payment of all sums due or anticipated to be due the Architect under this Agreement and upon performance of all the Owner's obligations under this Agreement, the latest original Drawings, Specifications and the latest electronic data prepared by the Architect for the Project shall become the property of the Owner. This conveyance shall not deprive the Architect of the right to retain electronic data or other reproducible copies of the Drawings and Specifications or the right to reuse information contained in them in the normal course of the Architect's professional activities. The Architect shall be deemed the author of such electronic data, documents and design, and shall retain all rights not specifically conveyed, and shall be given appropriate credit in any public display of such documents.

Reuse of Documents. Reuse without the Architect's professional involvement will be at the Owner's sole risk and without liability to the Architect.

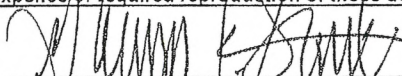
Transfer of Ownership. The transfer of ownership of the Drawings, Specifications, electronic data or other Instruments of Service shall be deemed to be a sale by the Architect, and the Architect makes no warranties, express or implied, of merchantability or of fitness for a particular purpose.

§ 1.6.4 Cost Estimating by Ambia, as requested by the Owner, shall be considered to be an additional service provided by the Architect and will be billed separately in accordance with our rates in Paragraph 1.2.2.

§ 1.6.5 Reproduction of Contract Documents shall be considered a reimbursable expense (See Paragraph 3.6.2). Due to the fast-track nature of the job, ongoing reproduction of documents will be required. The Architect will assist the Owner's representative in predicting and monitoring the expense of required reproduction of these documents.

\_\_\_\_\_  
OWNER (Signature)

Doug Boon, CEO  
(Printed name and title)

  
\_\_\_\_\_  
ARCHITECT (Signature)

Glenn R. Duarte, President/CEO  
(Printed name and title)

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



## **DESCRIPTIONS OF DESIGNATED SERVICES**

### *for the Agreement Between Owner and Architect*

The current edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted by reference under the Construction Phase of this document. Do not use with other general conditions unless this document is modified.

#### **ARTICLE 2.1 DESIGNATED SERVICES**

§ 2.1.1 In accordance with the Schedule of Designated Services completed under Part 1 of this Agreement, the Owner and Architect shall provide the phases and services designated therein and described herein. Unless the responsibility for a Project phase or service is specifically allocated in the Schedule of Designated Services to the Owner or Architect, such phase or service shall not be a requirement of this Agreement.

#### **ARTICLE 2.2 PHASES OF DESIGNATED SERVICES**

§ 2.2.1 Pre-Design Phase. The Pre-Design Phase is the stage in which the Owner's program, the financial and time requirements, and the scope of the Project are established.

§ 2.2.2 Site Analysis Phase. The Site Analysis Phase is the stage in which site-related limitations and requirements for the Project are established.

§ 2.2.3 Schematic Design Phase. The Schematic Design Phase is the stage in which the general scope, conceptual design, and the scale and relationship of components of the Project are established.

§ 2.2.4 Design Development Phase. The Design Development Phase is the stage in which the size and character of the Project are further refined and described, including architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate.

§ 2.2.5 Contract Documents Phase. The Contract Documents Phase is the stage in which the requirements for the Work are set forth in detail.

§ 2.2.6 Bidding or Negotiations Phase. The Bidding or Negotiation Phase is the stage in which bids or negotiated proposals are solicited and obtained and in which contracts are awarded.

§ 2.2.7 Contract Administration Phase. The Contract Administration Phase is the stage in which the Work is performed by one or more Contractors.

§ 2.2.8 Post-Contract Phase. The Post-Contract Phase is the stage in which assistance in the Owner's use and occupancy of the Project is provided.

§ 2.2.9 Sequence of Phases. The services for the above phases are generally performed in a chronological sequence following the order of phases shown in Paragraphs 2.2.1 through 2.2.8.

§ 2.2.9.1 Normal Sequence. The Owner and Architect shall commence the performance of their respective responsibilities with the services assigned to the foremost sequential phase under the completed Schedule of Designated Services of Part 1 to this Agreement. Except as provided under Subparagraphs 2.2.9.2 and 2.2.9.3, subsequent phases shall not be commenced until the Owner has approved the results of the Architect's services for the preceding phase. Such approvals shall not be unreasonably withheld. When phases or services are to be combined or compressed, their chronology shall continue to follow that shown above, unless otherwise provided in this Agreement.

§ 2.2.9.2 Fast Track. Upon the receipt of the Owner's written authorization for Work to commence prior to completion of the Architect's Contract Documents Phase, the Architect shall provide the services designated in an overlapping manner rather than in the normal chronological sequence in order to expedite the Owner's early occupancy of all or a portion of the Project. The Owner shall furnish to the Architect in a timely manner information obtained from all Contractors and prospective contractors regarding anticipated market conditions and

construction cost, availability of labor, materials and equipment, and their proposed methods, sequences and time schedules for construction of the Work. Upon receipt of their proposed Work schedules, the Architect shall prepare a schedule for providing services. In the event of a conflict between the proposed Work schedules and the Architect's proposed schedule, the Architect shall inform the Owner of such conflict.

§ 2.2.9.3 Supplemental Services. Supplemental Services may be provided, however, during a single phase or several phases and may not necessarily follow the normal chronological sequence.

## ARTICLE 2.3 DESCRIPTIONS OF DESIGNATED SERVICES

### PROJECT ADMINISTRATION AND MANAGEMENT SERVICES

- .01 Project Administration services consisting of administrative functions including:
  - .01 Consultation
  - .02 Research
  - .03 Conferences
  - .04 Communications
  - .05 Travel time
  - .06 Progress reports
  - .07 Direction of the work of in-house architectural personnel
  - .08 Coordination of work by the Owner's forces.
  
- .02 Disciplines Coordination/Document Checking consisting of:
  - .01 Coordination between the architectural work and the work of engineering and other disciplines involved in the Project
  - .02 Review and checking of documents prepared for the Project by the Architect and the Architect's Consultants.
  
- .03 Agency Consulting/Review/Approval services, including:
  - .01 Agency consultations
  - .02 Research of critical applicable regulations
  - .03 ~~Research of community attitudes~~
  - .04 Preparation of written and graphic explanatory materials
  - .05 Appearances on Owner's behalf at agency and community meetings.

The services apply to applicable laws, statutes, regulations and codes of regulating entities and to reviews required of user or community groups with limited or no statutory authority but significant influence on approving agencies and individuals, including:

  - .06 Local political subdivisions
  - .07 Planning boards
  - .08 County agencies
  - .09 Regional agencies
  - .10 Federal agencies
  - .11 User organizations
  - .12 Community organizations
  - .13 Consumer interest organizations
  - .14 Environmental interest groups.
  
- .04 Owner-Supplied Data Coordination, including:
  - .01 Review and coordination of data furnished for the Project as a responsibility of the Owner
  - .02 Assistance in establishing criteria
  - .03 Assistance in obtaining data, including, where applicable, documentation of existing conditions.
  
- .05 Schedule Development/Monitoring services, including:
  - .01 Establishment of initial schedule for Architect's services, decision-making, design, documentation, contracting and construction, based on determination of scope of Architect's services
  - .02 Review and update of previously established schedules during subsequent phases.

- .06 Preliminary Estimate of the Cost of the Work, including:
  - .01 Preparation of a preliminary estimate of the Cost of the Work
  - .02 Review and update the preliminary estimate of the Cost of the Work during subsequent phases.
- .07 Presentation services consisting of presentations and recommendations by the Architect to the following client representatives:
  - .01 Owner
  - .02 Building committee(s)
  - .03 Staff committee(s)
  - .04 User group(s)
  - .05 Board(s) of Directors
  - .06 Financing entity (entities)
  - .07 Owner's consultant(s).

**PRE-DESIGN SERVICES**

- .08 Programming services consisting of consultation to establish and document the following detailed requirements for the Project:
  - .01 Design objectives, limitations and criteria
  - .02 Development of initial approximate gross facility areas and space requirements
  - .03 Space relations
  - .04 Number of functional responsibilities personnel
  - .05 Flexibility and expandability
  - .06 Special equipment and systems
  - .07 Site requirements
  - .08 Development of a preliminary budget for the Work based on programming and scheduling studies
  - .09 Operating procedures
  - .10 Security criteria
  - .11 Communications relationships
  - .12 Project schedule.
- .09 Space Schematics/Flow Diagrams consisting of diagrammatic studies and pertinent descriptive text for:
  - .01 Conversion of programmed requirements to net area requirements
  - .02 Internal functions
  - .03 Human, vehicular and material flow patterns
  - .04 General space allocations
  - .05 Analysis of operating functions
  - .06 Adjacency
  - .07 Special facilities and equipment
  - .08 Flexibility and expandability.
- .10 Existing Facilities Surveys consisting of researching, assembling, reviewing and supplementing information for Projects involving alterations and additions to existing facilities or determining new space usage in conjunction with a new building program and including:
  - .01 Photography
  - .02 Field measurements
  - .03 Review of existing design data
  - .04 Analysis of existing structural capabilities
  - .05 ~~Analysis of existing mechanical capabilities~~
  - .06 ~~Analysis of existing electrical capabilities~~
  - .07 ~~Review of existing drawings for critical inaccuracies, and the development of required measured drawings.~~
- .11 Marketing Studies relating to determination of social, economic and political need for and acceptability of the Project and consisting of:
  - .01 Determination with Owner of the scope, parameters, schedule and budget for marketing studies
  - .02 Identification, assembly, review and organization of existing pertinent data
  - .03 Arrangement of clearances for use of existing data



- .04 Mail survey studies
  - .05 Personal survey studies
  - .06 Analysis of data
  - .07 Assistance in obtaining computerized analysis and modeling
  - .08 Computerized analysis and modeling
  - .09 Preparation of interim reports
  - .10 Preparation of final report
  - .11 Assistance in production of final report.
- .12 Economic Feasibility Studies consisting of the preparation of economic analysis and feasibility evaluation of the Project based on estimates of:
- .01 Total Project cost
  - .02 Operation and ownership cost
  - .03 Financing requirements
  - .04 Cash flow for design, construction and operation
  - .05 Return on investment studies
  - .06 Equity requirements.
- .13 Project Financing services as required in connection with:
- .01 Assistance to Owner in preparing and submitting data, supplementary drawings and documentation
  - .02 Research of financing availability
  - .03 Direct solicitation of financing sources by the Architect.

Project financing services are required for:

- .04 Development costs
- .05 Site control and/or acquisition
- .06 Predesign and site analysis services
- .07 Planning, design, documentation and bidding services
- .08 Interim or construction financing
- .09 Permanent or long-term financing.

#### SITE DEVELOPMENT SERVICES

- .14 Site Analysis and Selection consisting of:
- .01 Identification of potential site(s)
  - .02 On-site observations
  - .03 Movement systems, traffic and parking studies
  - .04 Topography analysis
  - .05 Analysis of deed, zoning and other legal restrictions
  - .06 Studies of availability of labor force to staff Owner's facility
  - .07 Studies of availability of construction materials, equipment and labor
  - .08 Studies of construction market
  - .09 Overall site analysis and evaluation
  - .10 Comparative site studies.
- .15 Site Development Planning consisting of preliminary site analysis, and preparation and comparative evaluation of conceptual site development designs, based on:
- .01 Land utilization
  - .02 Structures placement
  - .03 Facilities development
  - .04 Development phasing
  - .05 Movement systems, circulation and parking
  - .06 Utilities systems
  - .07 Surface and subsurface conditions
  - .08 Ecological requirements
  - .09 Deeds, zoning and other legal restrictions
  - .10 Landscape concepts and forms.

- .16 Detailed Site Utilization Studies consisting of detailed site analyses, based on the approved conceptual site development design, including:
  - .01 Land utilization
  - .02 Structures placement
  - .03 Facilities development
  - .04 Development phasing
  - .05 Movement systems, circulation and parking
  - .06 Utilities systems
  - .07 Surface and subsurface conditions
  - .08 Review of soils report
  - .09 Vegetation
  - .10 Slope analysis
  - .11 Ecological studies
  - .12 Deeds, zoning and other legal restrictions
  - .13 Landscape forms and materials.
  
- .17 On-Site Utility Studies consisting of establishing requirements and preparing initial designs for on-site:
  - .01 Electrical service and distribution
  - .02 Gas service and distribution
  - .03 Water supply and distribution
  - .04 Site drainage
  - .05 Sanitary sewer collection and disposal
  - .06 Process waste water treatment
  - .07 Storm water collection and disposal
  - .08 Central-plant mechanical systems
  - .09 Fire systems
  - .10 Emergency systems
  - .11 Security
  - .12 Pollution control
  - .13 Site illumination
  - .14 Communications systems.
  
- .18 Off-Site Utility Studies consisting of:
  - .01 Confirmation of location, size and adequacy of utilities serving the site
  - .02 Determination of requirements for connections to utilities
  - .03 Planning for off-site utility extensions and facilities
  - .04 Design of off-site utility extensions and facilities.
  
- .19 Environmental Studies and Reports consisting of:
  - .01 Determination of need or requirements for environmental monitoring, assessment and/or impact statements
  - .02 Ecological studies
  - .03 Preparation of environmental assessment reports
  - .04 Preparation of environmental impact reports
  - .05 Attendance at public meetings and hearings
  - .06 Presentations to governing authorities.
  
- .20 Zoning Processing Assistance consisting of:
  - .01 Assistance in preparing applications
  - .02 Development of supporting data
  - .03 Preparation of presentation materials
  - .04 Attendance at public meetings and hearings.
  
- .21 Geotechnical Engineering services, including, but not limited to:

- .01 Test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions
  - .02 Reports and appropriate professional recommendations.
- .22 Site Surveying services, to include:
- .01 Furnishing a survey by a licensed surveyor, describing the physical characteristics, legal limitations and utility locations for the site of the Project, including a written legal description of the site
  - .02 Include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information shall be referenced to a project benchmark.

#### DESIGN SERVICES

- .23 Architectural Design/Documentation:
- .01 During the Schematic Design Phase, responding to program requirements and preparing:
    - .01 Review of Owner's Program and Budget
    - .02 Conceptual site and building plans
    - .03 Preliminary sections and elevations
    - .04 Preliminary selection of building systems and materials
    - .05 Development of approximate dimensions, areas and volumes
    - .06 Perspective sketch(es)
    - .07 Study model(s).
  - .02 During the Design Development Phase consisting of continued development and expansion of architectural Schematic Design Documents to establish the final scope, relationships, forms, size and appearance of the Project through:
    - .01 Plans, sections and elevations
    - .02 Typical construction details
    - .03 Three-dimensional sketch(es)
    - .04 Study model(s)
    - .05 Final materials selection
    - .06 Equipment layouts.
  - .03 during the Contract Documents Phase consisting of preparation of Drawings based on approved Design Development Documents setting forth in detail the architectural construction requirements for the Project.
- .24 Structural Design/Documentation:
- .01 During the Schematic Design Phase consisting of recommendations regarding basic structural materials and systems, analyses, and development of conceptual design solutions for:
    - .01 A predetermined structural system
    - .02 Alternate structural systems.
  - .02 During the Design Development Phase consisting of continued development of the specific structural system(s) and Schematic Design Documents in sufficient detail to establish:
    - .01 Basic structural system and dimensions
    - .02 Final structural design criteria
    - .03 Foundation design criteria
    - .04 Preliminary sizing of major structural components
    - .05 Critical coordination clearances
    - .06 Outline Specifications or materials lists.



- .03 During the Contract Documents Phase consisting of preparation of final structural engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the structural construction requirements for the Project.
- .25 Mechanical Design/Documentation:
  - .01 During the Schematic Design Phase consisting of consideration of alternate materials, systems and equipment, and development of conceptual design solutions for:
    - .01 Energy source(s)
    - .02 Energy conservation
    - .03 Heating and ventilating
    - .04 Air conditioning
    - .05 Plumbing
    - .06 Fire protection
    - .07 General space requirements.
  - .02 During the Design Development Phase consisting of continued development and expansion of mechanical Schematic Design Documents and development of outline Specifications or materials lists to establish:
    - .01 Approximate equipment sizes and capacities
    - .02 Preliminary equipment layouts
    - .03 Required space for equipment
    - .04 Required chases and clearances
    - .05 Acoustical and vibration control
    - .06 Visual impacts
    - .07 Energy conservation measures.
  - .03 During the Contract Documents Phase consisting of preparation of final mechanical engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the mechanical construction requirements for the Project.
- .26 Electrical Design/Documentation:
  - .01 During the Schematic Design Phase consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analyses, and development of conceptual solutions for:
    - .01 Power service and distribution
    - .02 Lighting
    - .03 Telephones
    - .04 Fire detection and alarms
    - .05 Security systems
    - .06 Electronic communications
    - .07 Special electrical systems
    - .08 General space requirements.
  - .02 During the Design Development Phase consisting of continued development and expansion of electrical Schematic Design Documents and development of outline Specifications or materials lists to establish:
    - .01 Criteria for lighting, electrical and communications systems
    - .02 Approximate sizes and capacities of major components
    - .03 Preliminary equipment layouts
    - .04 Required space for equipment
    - .05 Required chases and clearances.
  - .03 During the Contract Documents Phase consisting of preparation of final electrical engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the electrical requirements for the Project.
- .27 Civil Design/Documentation:

- .01 During the Schematic Design Phase consisting of consideration of alternate materials and systems and development of conceptual design solutions for:
  - .01 On-site utility systems
  - .02 Fire protection systems
  - .03 Drainage systems
  - .04 Paving.
- .02 During the Design Development Phase consisting of continued development and expansion of civil Schematic Design Documents and development of outline Specifications or materials lists to establish the final scope of and preliminary details for on-site and off-site civil engineering work
- .03 During the Contract Documents Phase consisting of preparation of final civil engineering calculations, Drawings and Specifications based on approved Design Development Documents, setting forth in detail the civil construction requirements for the Project.
- .28 Landscape Design/Documentation:
  - .01 During the Schematic Design Phase consisting of consideration of alternate materials, systems and equipment and development of conceptual design solutions for land forms, lawns and plantings based on program requirements, physical site characteristics, design objectives and environmental determinants
  - .02 During the Design Development Phase consisting of continued development and expansion of landscape Schematic Design Documents and development of outline Specifications or materials lists to establish final scope and preliminary details for landscape work
  - .03 During the Contract Documents Phase consisting of preparation of Drawings and Specifications based on approved Design Development Documents, setting forth in detail the landscape requirements for the Project.
- .29 Interior Design/Documentation:
  - .01 During the Schematic Design Phase consisting of space allocation and utilization plans based on functional relationships, consideration of alternate materials, systems and equipment and development of conceptual design solutions for architectural, mechanical, electrical and equipment requirements in order to establish:
    - .01 Partition locations
    - .02 Furniture and equipment layouts
    - .03 Types and qualities of finishes for materials and furniture, furnishings and equipment.
  - .02 During the Design Development Phase consisting of continued development and expansion of interior Schematic Design Documents and development of outline Specifications or materials lists to establish final scope and preliminary details relative to:
    - .01 Interior construction of the Project
    - .02 Special interior design features
    - .03 Furniture, furnishings and equipment selections
    - .04 Materials, finishes and colors.
  - .03 During the Contract Documents Phase consisting of preparation of Drawings, Specifications and other documents based on approved Design Development Documents, setting forth in detail the requirements for interior construction and for furniture, furnishings and equipment for the Project.
- .30 Special Design/Documentation, including:
  - .01 Preparation and coordination of special Drawings and Specifications for obtaining bids or prices on alternate subdivisions of the Work
  - .02 Preparation and coordination of special Drawings and Specifications for obtaining alternate bids or prices on changes in the scope of the Work
  - .03 Preparation and coordination of Drawings, Specifications, Bidding Documents and schedules for out-of-sequence bidding or pricing of subdivisions of the Work
  - .04 Preparation and coordination of Drawings, Specifications and Bidding Documents for multiple prime contracts for subdivisions of the Work.

- .31 Materials Research/Specifications:
  - .01 During the Schematic Design Phase consisting of:
    - .01 Identification of potential architectural materials, systems and equipment and their criteria and quality standards consistent with the conceptual design
    - .02 Investigation of availability and suitability of alternative architectural materials, systems and equipment
    - .03 Coordination of similar activities of other disciplines.
  - .02 During the Design Development Phase consisting of activities by in-house architectural personnel in:
    - .01 Presentation of proposed General and Supplementary Conditions of the Contract for Owner's approval
    - .02 Development of architectural outline Specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment, including their criteria and quality standards
    - .03 Coordination of similar activities of other disciplines
    - .04 Production of design manual including design criteria and outline Specifications or materials lists.
  - .03 During the Contract Documents Phase consisting of activities of in-house architectural personnel in:
    - .01 Assistance to the Owner in development and preparation of bidding and procurement information which describes the time, place and conditions of bidding, bidding forms, and the form(s) of Agreement between the Owner and Contractor(s)
    - .02 Assistance to the Owner in development and preparation of the Conditions of the Contract (General, Supplementary and other Conditions)
    - .03 Development and preparation of architectural Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project
    - .04 Coordination of the development of Specifications by other disciplines
    - .05 Compilation of Project Manual including Conditions of the Contract, bidding and procurement information and Specifications.

#### BIDDING OR NEGOTIATION SERVICES

- .32 Bidding Materials services consisting of organizing and handling Bidding Documents for:
  - .01 Coordination
  - .02 Reproduction
  - .03 Completeness review
  - .04 Distribution
  - .05 Distribution records
  - .06 Retrieval
  - .07 Receipt and return of document deposits
  - .08 Review, repair and reassembly of returned materials.
- .33 Addenda services consisting of preparation and distribution of Addenda as may be required during bidding or negotiation and including supplementary Drawings, Specifications, instructions and notice(s) of changes in the bidding schedule and procedure.
- .34 Bidding/Negotiation services consisting of:
  - .01 Assistance to Owner in establishing list of Bidders or proposers
  - .02 Prequalification of Bidders or proposers
  - .03 Participation in pre-bid conferences
  - .04 Responses to questions from Bidders or proposers and clarifications or interpretations of the Bidding Documents
  - .05 Attendance at bid opening(s)
  - .06 Documentation and distribution of bidding results.



- .35 Analysis of Alternates/Substitutions consisting of consideration, analyses, comparisons, and recommendations relative to alternates or substitutions proposed by Bidders or proposers either prior or subsequent to receipt of Bids or proposals.
- .36 Special Bidding services consisting of:
  - .01 Attendance at bid openings, participation in negotiations, and documentation of decisions for multiple contracts or phased Work
  - .02 Technical evaluation of proposals for building systems
  - .03 Participation in detailed evaluation procedures for building systems proposals.
- .37 Bid Evaluation services consisting of:
  - .01 Validation of bids or proposals
  - .02 Participation in reviews of bids or proposals
  - .03 Evaluation of bids or proposals
  - .04 Recommendation on award of Contract(s)
  - .05 Participation in negotiations prior to or following decisions on award of the Contract(s).
- .38 Contract Award services consisting of:
  - .01 Notification of Contract award(s)
  - .02 Assistance in preparation of construction contract Agreement forms for approval by Owner
  - .03 Preparation and distribution of sets of Contract Documents for execution by parties to the Contract(s)
  - .04 Receipt, distribution and processing, for Owner's approval, of required certificates of insurance, bonds and similar documents
  - .05 Preparation and distribution to Contractor(s), on behalf of the Owner, of notice(s) to proceed with the Work.

#### CONTRACT ADMINISTRATION SERVICES

- .39 Submittal Services consisting of:
  - .01 Processing of submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents
  - .02 Distribution of submittals to Owner, Contractor and/or Architect's field representative as required
  - .03 Maintenance of master file of submittals
  - .04 Related communications.
- .40 Observation Services consisting of visits to the site at intervals appropriate to the stage of the work or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work when completed will be in accordance with Contract Documents; preparing related reports and communications.
- .41 Project Representation consisting of selection, employment and direction of:
  - .01 Project Representative(s) whose specific duties, responsibilities and limitations of authority shall be as described in the edition of AIA Document B352 current as of the date of this Agreement or as set forth in an exhibit to be incorporated in this Agreement under Article 1.6.
- .42 Testing and Inspection Administration relating to independent inspection and testing agencies, consisting of:
  - .01 Administration and coordination of field testing required by the Contract Documents
  - .02 Recommending scope, standards, procedures and frequency of testing and inspections
  - .03 Arranging for testing and inspection on Owner's behalf
  - .04 Notifying inspection and testing agencies of status of Work requiring testing and inspection
  - .05 Evaluating compliance by testing and inspection agencies with required scope, standards, procedures and frequency
  - .06 Review of reports on inspections and tests and notifications to Owner and Contractor(s) of observed deficiencies in the Work.
- .43 Supplemental Documentation services consisting of:

- .01 Preparation, reproduction and distribution of supplemental Drawings, Specifications and interpretations in response to requests for clarification by Contractor(s) or the Owner
  - .02 Forwarding Owner's instructions and providing guidance to the Contractor(s) on the Owner's behalf relative to changed requirements and schedule revisions.
- .44 Quotation Requests/Change Orders consisting of:
- .01 Preparation, reproduction and distribution of Drawings and Specifications to describe Work to be added, deleted or modified
  - .02 Review of proposals from Contractor(s) for reasonableness of quantities and costs of labor and materials
  - .03 Review and recommendations relative to changes in time for Substantial Completion
  - .04 Negotiations with Contractor(s) on Owner's behalf relative to costs of Work proposed to be added, deleted or modified
  - .05 Assisting in the preparation of appropriate Modifications of the Contract(s) for Construction
  - .06 Coordination of communications, approvals, notifications and record-keeping relative to changes in the Work.
- .45 Contract Cost Accounting services consisting of:
- .01 Maintenance of records of payments on account of the Contract Sum and all changes thereto
  - .02 Evaluation of Applications for Payment and certification thereof
  - .03 Review and evaluation of expense data submitted by the Contractor(s) for Work performed under cost-plus-fee arrangements.
- .46 Furniture, Furnishings and Equipment Installation Administration consisting of:
- .01 Assistance to the Owner in coordinating schedules for delivery and installation of the Work
  - .02 Review of final placement and inspection for damage, quality, assembly and function to determine that furniture, furnishings and equipment are in accordance with the requirements of the Contract Documents.
- .47 Interpretations and Decisions consisting of:
- .01 Review of claims, disputes or other matters between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents
  - .02 Rendering written decisions within a reasonable time and following the procedures as set forth in the General Conditions of the Contract for Construction, AIA Document A201, current as of the date of this Agreement, or the General Conditions of the Contract for Furniture, Furnishings and Equipment, AIA Document A271, current as of the date of this Agreement, for Resolution of Claims and disputes.
- .48 Project Closeout services initiated upon notice from the Contractor(s) that the Work, or a designated portion thereof which is acceptable to the Owner, is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended, and consisting of:
- .01 A detailed inspection with the Owner's representative for conformity of the Work to the Contract Documents to verify the list submitted by the Contractor(s) of items to be completed or corrected
  - .02 Determination of the amounts to be withheld until final completion
  - .03 Securing and receipt of consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment(s)
  - .04 Issuance of Certificate(s) of Substantial Completion
  - .05 Inspection(s) upon notice by the Contractor(s) that the Work is ready for final inspection and acceptance
  - .06 Notification to Owner and Contractor(s) of deficiencies found in follow-up inspection(s), if any
  - .07 Final inspection with the Owner's representative to verify final completion of the Work
  - .08 Receipt and transmittal of warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying the Owner against liens
  - .09 Securing and receipt of consent of surety or sureties, if any, to the making of final payment(s)
  - .10 Issuance of final Certificate(s) for Payment.

## POST-CONTRACT SERVICES

- .49 Maintenance and Operational Programming services consisting of:
  - .01 Assistance in the establishment by the Owner of in-house or contract program(s) of operation and maintenance of the physical plant and equipment
  - .02 Arranging for and coordinating instructions on operations and maintenance of equipment in conjunction with manufacturer's representatives
  - .03 Assistance in the preparation of operations and maintenance manual(s) for the Owner's use.
- .50 Start-Up Assistance consisting of:
  - .01 On-site assistance in the operation of building systems during initial occupancy
  - .02 Assistance in the training of the Owner's operation and maintenance personnel in proper operations, schedules and procedures
  - .03 Administration and coordination of remedial work by the Contractor(s) after final completion.
- .51 Record Drawing services consisting of:
  - .01 Making arrangements for obtaining from Contractor(s) information in the form of marked-up prints, drawings and other data certified by them on changes made during performance of the Work
  - .02 Review of general accuracy of information submitted and certified by the Contractor(s)
  - .03 Preparation of record drawings, based on certified information furnished by the Contractor(s)
  - .04 Transmittal of record drawings and general data, appropriately identified, to the Owner and others as directed.
- .52 Warranty Review consisting of:
  - .01 Consultation and recommendation to the Owner during the duration of warranties in connection with inadequate performance of materials, systems and equipment under warranty
  - .02 Inspection(s) prior to expiration of the warranty period(s) to ascertain adequacy of performance of materials, systems and equipment
  - .03 Documenting defects or deficiencies and assisting the Owner in preparing instruction to the Contractor(s) for correction of noted defects.
- .53 Post-Contract Evaluation consisting of a Project inspection at least one year after completion of the Work; review with appropriate supervisory, operating and maintenance personnel, and analysis of operating costs and related data for evaluation of:
  - .01 The initial Project programming versus actual facility use
  - .02 The functional effectiveness of planned spaces and relationships
  - .03 The operational effectiveness of systems and materials installed.

## ARTICLE 2.4 DESCRIPTIONS OF SUPPLEMENTAL SERVICES SUPPLEMENTAL SERVICES

- .54 Special Studies consisting of investigation, research and analysis of the Owner's special requirements for the Project and documentation of findings, conclusions and recommendations for:
  - .01 Master planning to provide design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project during the Construction Phase
  - .02 Providing special studies for the project such as analyzing acoustical or lighting requirements, record retention, communications and security systems.
- .55 Tenant-Related Services consisting of design and documentation services for tenants or potential tenants relating to:
  - .01 Space planning, partition and furnishings locations, and furniture and equipment layouts
  - .02 Material and color selections and coordination
  - .03 Adaptation of mechanical, electrical and other building systems to meet tenant needs
  - .04 Preliminary estimate of Construction Cost.
- .56 Special Furnishings Design services relating to Architect-designed special furnishings and/or equipment incorporated into or provided for the Project and consisting of:
  - .01 Design and documentation
  - .02 Specifications or standards



- .03 Management of procurement
  - .04 Coordination of installation
  - .05 Purchase on the Owner's behalf.
- .57 Furniture, Furnishings and Equipment Services relating to equipment and furnishings not incorporated into the construction of the Project and consisting of:
- .01 Establishment of needs and criteria
  - .02 Preparation of requirements, Specifications and bidding or purchasing procedures
  - .03 Management of procurement
  - .04 Coordination of delivery and installation.
- .58 Special Disciplines Consultation, consisting of retaining, directing and coordinating the work of special disciplines consultants identified from the following list and as more specifically described in Article 1.6, whose specialized training, experience and knowledge relative to specific elements and features of the Project are required for the Project:
- .01 Acoustics
  - .02 Audio-Visual
  - .03 CPM Scheduling
  - .04 Code Interpretation
  - .05 Communications
  - .06 Computer Technology
  - .07 Concrete
  - .08 Cost Estimating
  - .09 Demography
  - .10 Display
  - .11 Ecology
  - .12 Economics
  - .13 Editorial
  - .14 Elevators/Escalators
  - .15 Fallout Shelters
  - .16 Financial
  - .17 Fire Protection
  - .18 Food Service
  - .19 Insurance
  - .20 Historic Preservation
  - .21 Legal
  - .22 Life Safety
  - .23 Lighting
  - .24 Management
  - .25 Materials Handling
  - .26 Psychology
  - .27 Public Relations
  - .28 Radiation Shielding
  - .29 Real Estate
  - .30 Reprographics
  - .31 Safety
  - .32 Sociology
  - .33 Soils/Foundation
  - .34 Space Planning
  - .35 Specifications
  - .36 Traffic/Parking
  - .37 Transportation
  - .38 Security
  - .39 Record Retention

- .59 Special Building Type Consultation, consisting of retaining, directing and coordinating the work of special building type consultants whose specialized training, experience and knowledge relative to the requirements, planning and design of the Project are required for the Project.
- .60 Fine Arts and Crafts services relating to acquisition of fine arts or crafts to be a part of the Project and consisting of:
- .01 Consultations on selection, commissioning and/or execution
  - .02 Design integration
  - .03 Managing procurement
  - .04 Purchasing fine arts or crafts on the Owner's behalf.
- .61 Graphic Design services consisting of:
- .01 Design and selection of interior and exterior signs and identifying symbols
  - .02 Material and color selections and coordination
  - .03 Documentation of requirements for procurement of graphics work
  - .04 Managing procurement of graphics work
  - .05 Coordination of delivery and installation.
- .62 Renderings relating to graphic pictorial representations, as required by the Owner, of the proposed Project and consisting of:
- .01 Black and white elevation view(s)
  - .02 Black and white perspective view(s)
  - .03 Elevation view(s) in color
  - .04 Perspective view(s) in color.
- .63 Model Construction consisting of preparation of:
- .01 Small-scale block model(s) showing relationship of structure(s) to site
  - .02 Moderate-scale block model(s) of structure(s) designed for the Project
  - .03 Moderate-scale detailed model(s) of structure(s) designed for the Project showing both interior and exterior design
  - .04 Large-scale models of designated interior or exterior components of the Project.
- .64 Still Photography consisting of:
- .01 Documentation of existing conditions
  - .02 Aerial site photography
  - .03 Photographic recording for study purposes of facilities similar to the Project
  - .04 Periscopic photography of models for the Project
  - .05 Presentation photography of renderings(s) and model(s) for the Project
  - .06 Construction progress photography
  - .07 Architectural photography of the completed Project.
- .65 Motion Pictures and Videotape services relating to preparation of promotional or explanatory presentations of the Project during the design and/or construction phases.
- .66 Life Cycle Cost Analysis consisting of assessment, on the basis of established relevant economic consequences over a given period of time, of:
- .01 A given planning and design solution for the Project
  - .02 Alternative planning and design solutions for the Project
  - .03 Selected systems, subsystems or building components proposed for the Project.
- .67 Value Analysis consisting of the review during design phases of the cost, quality and time influences of proposed building materials, systems and construction methods relative to design objectives in order to identify options for obtaining value for the Owner.
- .68 Energy Studies consisting of special analyses of mechanical systems, fuel costs, on-site energy generation and energy conservation options for the Owner's consideration.

- .69 Quantity Surveys consisting of:
  - .01 A detailed determination of the quantities of materials to be used in the Project to establish the basis for price determination by bidding or negotiations
  - .02 Making investigations, inventories of materials or furniture, furnishings and equipment, or valuations and detailed appraisals of existing facilities, furniture, furnishings and equipment, and the relocation thereof.
  
- .70 Detailed Cost Estimating services consisting of:
  - .01 Development, when the Contract Documents are approximately 90% complete, of a Detailed Estimate of the Cost of the Work based on quantity take-offs and unit cost pricing of materials, labor, tools, equipment and services required for the Work plus estimates for the Contractor's supervision cost, Work required by General and Supplementary Conditions, and an allowance for a reasonable Contractor's overhead and profit; or
  - .02 Continuous development during all phases of design and documentation, of an Estimate of the Cost of the Work for the purpose of greater cost control, culminating in a Detailed Estimate of the Cost of the Work or detailed quantity surveys or inventories of material, equipment and labor.
  
- .71 Environmental Monitoring services consisting of:
  - .01 Monitoring of air, water and other designated components of the environment to establish existing conditions, and the preparation of related analyses and reports.
  
- .72 Expert Witness services consisting of preparing to serve and/or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.
  
- .73 Materials and Systems Testing relating to testing of components of the completed Project for conformance with Contract requirements and consisting of:
  - .01 Establishment of requirements
  - .02 Procurement of testing services
  - .03 Monitoring testing
  - .04 Review, analysis and reporting of testing results.
  
- .74 Demolition Services consisting of:
  - .01 Preparation of Contract Documents for demolition of existing structures
  - .02 Managing the bidding/negotiation/award process
  - .03 Providing field observation and general administration services during demolition.
  
- .75 Mock-Up Services relating to the construction of full-size details of components of the Project for study and testing during the design phases and consisting of:
  - .01 Design and documentation for the required mock-up(s)
  - .02 Management and coordination of pricing and contracting for mock-up services
  - .03 Construction administration of mock-up construction activities
  - .04 Arrangements for testing and monitoring performance of mock-up(s)
  - .05 Administration of testing and monitoring services
  - .06 Review, analysis and reporting of results of testing and monitoring services.
  
- .76 Coordination of Designated Services with those of non-design professionals, such as economists, sociologists, attorneys and accountants, consisting of:
  - .01 Preparation of economic studies
  - .02 Condominium documentation
  - .03 Sociological impact studies.
  
- .77 Furniture, Furnishings and Equipment Purchasing/Installation, consisting of:
  - .01 Purchasing furniture, furnishings and equipment on behalf of the Owner with funds provided by the Owner
  - .02 Receipt, inspection and acceptance on behalf of the Owner of furniture, furnishings and equipment at the time of their delivery to the premises and installation



- .03 Providing services including travel for the purpose of evaluating materials, furniture, furnishings and equipment proposed for the Project.
  
- .78 Computer Applications consisting of computer program development and/or computer program search and acquisition, plus on-line computer time charges, for:
  - .01 Programming
  - .02 Economic feasibility
  - .03 Financial analysis
  - .04 Site analysis
  - .05 Construction cost estimating
  - .06 Detailed Project scheduling
  - .07 Market analysis
  - .08 Architectural analysis and design
  - .09 Structural analysis and design
  - .10 Mechanical analysis and design
  - .11 Electrical analysis and design
  - .12 Production of Drawings
  - .13 Construction cost accounting
  
- .79 Project Promotion/Public Relations relating to presentation of the Project to the public or identified groups and consisting of:
  - .01 Preparation of press releases
  - .02 Preparation of special brochures and/or promotional pieces
  - .03 Assistance in production and distribution of promotional materials
  - .04 Presentations at public relations and/or promotional meetings.
  
- .80 Leasing Brochures, including preparation of special material to assist the Owner in leasing the Project and consisting of:
  - .01 Design
  - .02 Preparation of illustrations and text
  - .03 Arranging for and managing production.
  
- .81 Pre-Contract Administration/Management, consisting of:
  - .01 Evaluating feasibility of Owner's program, schedule and budget for the Work, each in terms of the other
  - .02 Preparing, updating and monitoring Detailed Project Schedule, including services and contract Work, identifying critical and long-lead items
  - .03 Preparing, updating and monitoring Detailed Estimates of the Cost of the Work prior to completion of each design phase.
  - .04 Assisting the Owner in selecting, retaining and coordinating the professional services of surveyors, testing labs and other special consultants as designated
  - .05 Assisting the Owner in evaluating relative feasibility of methods of executing the Work, methods of project delivery, availability of materials and labor, time requirements for procurement, installation and delivery, and utilization of the site for mobilization and staging
  - .06 Assisting the Owner in determining the method of contracting for the Work; evaluating single versus multiple contracts; advising on categories of separate contracts and provisions for coordinating responsibilities.
  
- .82 Extended Bidding services, consisting of:
  - .01 Developing Bidders' interest in Project and establishing bidding schedules
  - .02 Receiving and analyzing bids and recommend Owner's acceptance or rejection of bids
  - .03 Advising the Owner on acceptance of Contractors
  - .04 Conducting pre-award conferences.
  
- .83 Extended Contract Administration Management, consisting of:
  - .01 Assisting Owner in obtaining building permits

- .02 Updating and monitoring actual costs against estimates of final cost; assisting Owner in monitoring cash flow
- .03 Providing a detailed schedule showing time periods for each Contractor, including long-lead items and Owner's occupancy requirements; updating and monitoring periodically; recommending corrective action when required
- .04 Endeavoring to achieve satisfactory performance of Contractors through development and implementation of a quality control program; assisting Owner in determining compliance with schedule, cost and Contract Documents
- .05 Scheduling and conducting periodic project meetings with the Owner, Contractor and Subcontractors
- .06 Assisting Owner in maintaining cost accounting records
- .07 Maintaining a daily log including conditions at site and job progress, periodically indicating percentage of completion of each contract
- .08 Assisting the Owner in coordinating and scheduling activities of the separate Contractors
- .09 Maintaining and periodically update a record of all significant changes made during construction; maintain record copies of Contract Documents; maintaining samples and lay-out drawings at the job site.

## TERMS AND CONDITIONS

### *of the Agreement Between Owner and Architect for Designated Services*

#### ARTICLE 3.1 ARCHITECT'S RESPONSIBILITIES

§ 3.1.1 Designated Services. Unless otherwise provided, the Architect's designated services consist of those services identified in the Schedule of Designated Services as being performed by the Architect, Architect's employees and Architect's consultants, and as described in the Descriptions of Designated Services.

§ 3.1.2 Contingent Additional Services. Contingent Additional Services described in Subparagraphs 3.1.2.1 through 3.1.2.7 are not included in the Architect's Designated Services, but may be required due to circumstances beyond the Architect's control. The Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

§ 3.1.2.1 Document Revisions. Services required to revise Drawings, Specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the owner's failure to render decisions in a timely manner.

§ 3.1.2.2 Changes in Project Scope. Services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 1.6.

§ 3.1.2.3 Replacement of Damaged Work. Consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.1.2.4 Default by Others. Services made necessary by the default of the Owner's consultants or the Contractor, by major defects or deficiencies in their services or the Work, or by failure of performance of any of them under their respective contracts.

§ 3.1.2.5 Correction Period. Advice and consultation to the Owner during the correction period described in the Contracts for Construction or Furniture, Furnishings and Equipment.

§ 3.1.2.6 Purchasing of Furniture, Furnishings and Equipment by the Architect. If the Owner and Architect agree that the Architect will purchase furniture, furnishings and equipment on behalf of the Owner with the funds provided by the Owner, the duties related to such services shall be set forth in Article 1.6 of this Agreement. The Owner shall provide and maintain working funds with the Architect, if required, to pay invoices charged to the Project for materials and furnishings, to secure cash discounts and for required deposits.

§ 3.1.2.7 Services Related to Separate Consultants. The Architect shall provide information to and incorporate information received in a timely manner from those separate consultants retained by the Owner and identified in this Agreement whose activities directly relate to the Project.

#### ARTICLE 3.2 OWNER'S RESPONSIBILITIES

§ 3.2.1 Representative. The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.



§ 3.2.2 Notice. Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

§ 3.2.3 Designated Services. The Owner's responsibilities consist of those services identified in the Schedule of Designated Services as being performed by the Owner, Owner's employees and Owner's consultants.

§ 3.2.4 Information. The Owner shall provide full information regarding requirements for the Project.

§ 3.2.5 Owner's Financial Arrangements. If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations to the Architect under this Agreement.

§ 3.2.6 Tests, Inspections and Reports Furnished by Owner. The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents, or unless otherwise provided in this Agreement.

§ 3.2.7 Legal, Accounting and Insurance Services Furnished by Owner. The Owner shall furnish all legal, accounting and insurance counseling services required for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

§ 3.2.8 Space Arrangements. The Owner shall provide suitable space for the receipt, inspection and storage of materials, furniture, furnishings and equipment.

§ 3.2.9 Removal of Existing Facilities. The Owner shall be responsible for the relocation or removal of existing facilities, furniture, furnishings and equipment, and the contents thereof, unless otherwise provided by this Agreement.

§ 3.2.10 Responsibility for Services. The drawings, specifications, services, information, surveys and reports required of the Owner under the Agreement shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

§ 3.2.11 Certificates and Certifications. The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services of the Architect or the Architect's Consultants beyond the scope of this Agreement.

§ 3.2.12 Communications and Security Systems. The Owner shall contract for all temporary and permanent telephone, communications and security systems required for the Project so as not to delay the performance of the Architect's services.

### ARTICLE 3.3 CONTRACT ADMINISTRATION

§ 3.3.1 General. The following terms and conditions shall apply to the relevant Contract Administration Phase services, if any, as may be included in the Schedule of Designated Services.

§ 3.3.1.1 Interpretations and Decisions: Timing. To the extent that the following services of the Architect have been designated in the Schedule of Designated Services, the Architect shall interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

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

§ 3.3.1.3 Decisions on Aesthetic Effect. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.3.1.4 Architect's Decisions Subject to Arbitration. The Architect's decisions on claims, disputes or other matters, including those in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Section 3.3.1.3, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

§ 3.3.2 Duration of Contract Administration Phase. The Architect's responsibility to provide services for the Contract Administration Phase under this Agreement commences with the award of the initial Contract for Construction or for Furnishings, Furniture and Equipment, and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

§ 3.3.3 Contract(s) for the Work. The Architect shall provide administration of Contract(s) for Construction or Furniture, Furnishings and Equipment as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, or AIA Document A271, General Conditions of the Contract for Furniture, Furnishings and Equipment, current as of the date of this Agreement.

§ 3.3.4 Modification of Responsibilities. Duties, responsibilities, and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with the consent of the Contractor; which consent shall not be unreasonably withheld.

§ 3.3.5 Authority of Architect. The Architect shall be a representative of and shall advise and consult with the Owner (1) during the Contract Administration Phase, and (2) by an amendment to this Agreement, from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

#### § 3.3.6 CONSTRUCTION OBSERVATION SERVICES

§ 3.3.6.1 Architect's Responsibility for Observation. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

§ 3.3.6.2 Project Representation. The furnishing of Project representation services shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

§ 3.3.6.3 Means and Methods. The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction and the Contract for Furniture, Furnishings and Equipment. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

§ 3.3.6.4 Access to Work. The Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 3.3.6.5 Communications. Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

§ 3.3.6.6 Minor Changes. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

§ 3.3.6.7 Coordination of Furniture, Furnishings and Equipment Delivery and Installation. When the Architect assists the Owner in coordinating schedules for delivery and installation of furniture, furnishings and equipment, the

Architect shall not be responsible for malfeasance, neglect or failure of a Contractor, Subcontractor Sub-subcontractor or material supplier to meet their schedules for completion or to perform their respective duties and responsibilities.

### § 3.3.7 COST ACCOUNTING SERVICES

§ 3.3.7.1 Certificates for Payment. If certification of the Contractor's Applications for Payment is required by this Agreement, the Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Section 3.3.6.1 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect.

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

### § 3.3.8 INSPECTION AND TESTING ADMINISTRATION SERVICES

§ 3.3.8.1 Rejection of Work. Except as provided in Section 3.3.8.3, the Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

§ 3.3.8.2 Review and Inspection of Work. The Architect shall review final placement and inspect for damage, quality, assembly and function in order to determine that furniture, furnishings and equipment are in accordance with the requirements of the Contract Documents.

§ 3.3.8.3 Rejection of Work Involving Furniture, Furnishings and Equipment. Unless otherwise designated, the Architect's duties shall not extend to the receipt, inspection and acceptance on behalf of the Owner of furniture, furnishings and equipment at the time of their delivery to the premises and installation. The Architect is not authorized to reject nonconforming furniture, furnishings and equipment, sign Change Orders on behalf of the Owner, stop the Work, or terminate a Contract on behalf of the Owner. However, the Architect shall recommend to the Owner rejection of furniture, furnishings and equipment which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of furniture, furnishings and equipment in accordance with the provisions of the Contract Documents, whether or not such furniture, furnishings and equipment is fabricated, installed or completed.

### § 3.3.9 SUBMITTAL SERVICES

§ 3.3.9.1 Submittal Review. To the extent required by this Agreement, the Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.3.9.2 Limitations. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the



Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.3.10 Reliance on Professional Certification. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

#### ARTICLE 3.4 USE OF PROJECT DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

§ 3.4.1 Architect's Reserved Rights. The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright.

§ 3.4.2 Limitations on Use. The Owner shall be permitted to retain copies, including reproducible copies, of the Project Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Project Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

§ 3.4.3 Unpublished Works. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

#### ARTICLE 3.5 COST OF THE WORK

##### § 3.5.1 DEFINITION

§ 3.5.1.1 Total Cost. The Cost of the Work shall be the total cost or estimated cost to the Owner of all elements of the Project to be included in the Contract Documents.

§ 3.5.1.2 Items Included. The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designated, specified, selected or specially provided for by the Architect in the Contract Documents, including the costs of the Contractors' management or supervision of construction or installation, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

§ 3.5.1.3 Items Excluded. The Cost of the Work does not include the compensation of the Architect and the Owner's or Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 3.2.

##### § 3.5.2 RESPONSIBILITY FOR COST OF THE WORK

§ 3.5.2.1 Limitation of Responsibility. Evaluations of the Owner's Project budget, preliminary estimates of the Cost of the Work and detailed estimates of the Cost of the Work, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 3.5.2.2 Fixed Limit of the Cost of the Work. If a fixed limit of the Cost of the Work has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, furniture, furnishings and equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract

Documents alternate bids to adjust the Cost of the Work to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

§ 3.5.2.3 Adjustments. If the Bidding or Negotiation Phase has not commenced within 90 days after the Contract Documents are submitted to the Owner, the Project budget or fixed limit of the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Contract Documents to the Owner and the date on which bids or negotiated proposals are sought.

§ 3.5.2.4 Owner's Responsibility to Meet Fixed Limit. If a fixed limit of the Cost of the Work (adjusted as provided in Section 3.5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Section 3.9; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 3.5.2.5 Architect's Responsibility to Meet Fixed Limit. If the Owner chooses to proceed under Section 3.5.2.4.4, the Architect, without additional compensation, shall modify the documents which the Architect is responsible for preparing under the Designated Services portion of this Agreement as necessary to comply with the fixed limit. The modification of such documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

#### ARTICLE 3.6 PAYMENTS TO THE ARCHITECT

§ 3.6.1 Direct Personnel Expense. Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

§ 3.6.2 Reimbursable Expenses. Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel, long-distance communications, and fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 reproductions, postage and handling of Drawings, Specifications and other documents;
- .3 facsimile services, courier services, overnight deliveries or other similar project related expenditures;
- .4 if authorized in advance by the Owner, expense of overtime work requiring higher than regular rates;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants; and
- .7 expense of computer-aided design and drafting equipment time when used in connection with the Project.

§ 3.6.3 Payments for Contingent Additional Services and Reimbursable Expenses. Payments on account of the Architect's Contingent Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.



§ 3.6.4 Extended Time. If and to the extent that the time initially established in this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Article 1.6.

§ 3.6.5 Changes Affecting Percentage Compensation Method. When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Part 1, Section 1.3.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

§ 3.6.6 Payments Withheld. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

§ 3.6.7 Architect's Accounting Records. Records of Reimbursable Expenses, of expenses pertaining to Contingent Additional Services, and of and services performed on the basis of a multiple of direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

#### ARTICLE 3.7 DISPUTE RESOLUTION

§ 3.7.1 Claims and Disputes. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by mediation and arbitration in accordance with the Construction Industry Mediation and Arbitration Rules of the American Arbitration Association currently in effect.

§ 3.7.2 Mediation. In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

§ 3.7.3 Arbitration. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 3.7.4 Consolidation and Joinder. An arbitration pursuant to this section may be joined with an arbitration involving common issues of law or fact between the Architect and any person or entity with whom the Architect has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 3.7.5 Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### ARTICLE 3.8 MISCELLANEOUS PROVISIONS

§ 3.8.1 Governing Law. This Agreement shall be governed by the law of the place of the Project.



§ 3.8.2 Definitions. Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, and AIA Document A271, General Conditions of the Contract for Furniture, Furnishings and Equipment, current as of the date of this Agreement.

§ 3.8.3 Statutes of Repose or Limitations. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of repose or limitations shall commence to run not later than either the Date of Substantial Completion for acts or failures occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

§ 3.8.4 Waivers of Subrogation. The Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the editions of AIA Document A201, General Conditions of the Contract for Construction, and AIA Document A271, General Conditions of the Contract for Furniture, Furnishings and Equipment, current as of the date of this Agreement. The Owner and Architect shall each require similar waivers from their contractors, consultants and agents.

§ 3.8.5 Successors and Assigns. The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

§ 3.8.6 Titles and Headings. The titles and headings in this Agreement are for convenience and shall not be interpreted as supplementing or superseding the intent of the parties as expressed in the body of this Agreement.

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

§ 3.8.8 Hazardous Materials. Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site. If the Architect is required to perform services related to hazardous materials, the Owner agrees to indemnify and hold harmless the Architect, the Architect's consultants and their agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of services by the Architect, the Architect's consultants or their agents or employees related to such services, except where such liability arises from the sole negligence or willful misconduct of the person or entity seeking indemnification.

§ 3.8.9 Publicity. The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

§ 3.8.10 Conflict of Interest. Except with the Owner's knowledge and consent, the Architect shall not (1) accept trade discounts, (2) have a substantial direct or indirect financial interest in the project, or (3) undertake any activity or employment or accept any contribution, if it would reasonably appear that such activity, employment, interest or contribution could compromise the Architect's professional judgment or prevent the Architect from serving the best interest of the Owner.

#### ARTICLE 3.9 TERMINATION, SUSPENSION OR ABANDONMENT

§ 3.9.1 Termination for Breach. This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement, through no fault of the party initiating the termination. Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

§ 3.9.2 Suspension. If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

§ 3.9.3 Termination on Abandonment. This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice to the Owner.

§ 3.9.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial non-performance and cause for termination.

§ 3.9.5 Suspension by Architect. If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

§ 3.9.6 Compensation of Architect. In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 3.9.7.

§ 3.9.7 Termination Expenses. Termination expenses are in addition to compensation for the Architect's services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for all services earned to the time of termination, as follows:

- .1 Twenty percent of the total compensation for all services earned to date if termination occurs before or during the Predesign, Site Analysis or Schematic Design Phases; or
- .2 Ten percent of the total compensation for all services earned to date if termination occurs during the Design Development Phase; or
- .3 Five percent of the total compensation for all services earned to date if termination occurs during any subsequent phase.