

**AMENDED AND RESTATED AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN CITY OF PERRIS AND  
BLUE STONE MANAGEMENT LLC FOR  
SKILLS TRAINING AND JOB PLACEMENT CENTER DESIGN AND  
CONSTRUCTION MANAGEMENT SERVICES**

THIS AMENDED AND RESTATED AGREEMENT FOR PROFESSIONAL SERVICES (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between CITY OF PERRIS, a California municipal corporation (“**City**”) and BLUE STONE MANAGEMENT, LLC a Limited Liability Company (“**Consultant**”). City and Consultant may be referred to individually as “**Party**” or collectively as “**Parties.**”

**RECITALS**

A. Pursuant to the Perris Municipal Code, City has the authority to enter into and execute this Agreement.

B. On March 13, 2019, the Parties entered into an Agreement (“**Original Agreement**”) for design and construction management services related for the skills and job placement center.

C. On June 30, 2021, the Parties entered into a letter agreement referred to as “**Addendum No. 1**” which sought to extend the Original Agreement to an uncertain date around February of 2023 and amend its scope of service and fees (“**Addendum No. 1**”).

D. On November 15, 2022, the Parties entered into a second letter agreement referred to as “**Addendum No. 2**” which sought to further extend the Original Agreement to an uncertain date around January, 2024 (“**Addendum No. 2**”).

E. The Parties desire to clarify and restate the aforementioned agreements and further extend the performance of the work under the Original Agreement in accordance with the terms and conditions set forth herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, Consultant shall provide those services specified in the “**Scope of Services**” attached hereto as **Exhibit A** and incorporated herein by this reference, which may be referred to herein as the “**services**” or “**work**” hereunder. As a material inducement to City entering into this Agreement, Consultant represents and warrants: a) all services set forth in the **Scope of Services** will be performed in a competent and satisfactory manner; b) all materials used for services will be both of good quality as well as fit for the purpose intended; and, c) Consultant shall follow the highest professional standards and practices in performing the services required hereunder. The **Scope of**

Work includes the Original Agreement and Addendum No. 1 and Addendum No. 2 and Consultant's proposed Addendum No. 3, all of which are attached hereto in **Exhibit A** and incorporated herein as if set forth in full. In the event of a conflict between any term or provision of this Agreement and any part of Exhibit "A", the terms of this Agreement shall prevail. In the event of a conflict between any part of Exhibit "A" the most recent document shall take precedence over any earlier document.

**1.2 Prior Agreements.** The Parties agree that all prior agreements related to the Scope of Work are terminated and that this Agreement shall replace and supersede any and all prior agreements regarding the Scope of Work, including but not limited to, the Original Agreement and Addendums No. 1 and 2.

**1.3 Consultant's Proposal.** The Scope of Services shall include the scope of services or work included in Consultant's proposal or bid, which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal or bid, and this Agreement, the terms of this Agreement shall govern. No other terms and conditions from Consultant's proposal or bid, other than description of scope of services or work, shall apply to this Agreement, unless specifically agreed to by City in writing.

**1.4 Compliance with Law.** All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of City and any federal, State or local governmental agency having jurisdiction in effect at the time services are rendered. City, and its officers, employees and agents, shall not be liable at law or in equity for failure of Consultant to comply with this Section.

**1.5 Licenses, Permits, Fees and Assessments.** Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

**1.6 Additional Services and Compensation.** City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes to the work by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order, consistent with both Section 9.4 as well as the Perris Municipal Code ("**PMC**"), is first given by City to Consultant, incorporating therein any adjustment in the Contract Sum for the actual costs of the extra work and/or the time to perform this Agreement, which said adjustments are subject to the written approval of Consultant. Any increase in the Contract Sum of up to ten percent (10%) of the Contract Sum or \$30,000, whichever is less, may be approved by the City Manager pursuant to Section 9.4. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than

Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other consultants.

**1.7 Familiarity with Work.** By executing this Agreement, Consultant represents and warrants Consultant: a) has thoroughly investigated and considered services to be performed, b) has carefully considered how services should be performed, and c) fully understands the facilities, difficulties and restrictions attending performance of services under this Agreement.

**1.8 Prevailing Wages.** If services include any “public work” or “maintenance work,” as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT**

**2.1 Contract Sum.** Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the **Exhibit A** and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, inclusive of all work done pursuant to the entirety of Exhibit “A,” including any payments already made pursuant to the Original Agreement and any prior Addendums thereto, as well as any proposed addendum, shall not exceed One Million, One Hundred and Sixty-Three Thousand, Two Hundred and Four Dollars (\$1,163,204) (“**Contract Sum**”), unless additional compensation is approved pursuant to Section 1.6. Compensation may include reimbursement, for actual and necessary expenditures, if both specified in the Schedule of Compensation, as well as approved by City in advance. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by City.

Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

**2.2 Method of Payment.** Unless some other method of payment is specified in the Schedule of Compensation, in any month in which Consultant wishes to receive payment, no later than the first (1st) working day of such month, Consultant shall submit to the City, in a form approved by the City's Director of Finance, an invoice for services rendered prior to the date of the invoice. Except as provided in Section 7.5, City shall pay Consultant for all expenses stated thereon which are approved by City pursuant to this Agreement generally within thirty (30) days, and no later than forty-five (45) days, from the submission of an invoice in an approved form

## **ARTICLE 3. PERFORMANCE SCHEDULE**

**3.1 Time of Essence.** Time is of the essence in the performance of this Agreement.

**3.2 Term.** Unless earlier terminated in accordance with Article 7 of this Agreement,

this Agreement shall continue in full force and effect until completion of the services, which shall be no later than December 31, 2024 (“**Term**”).

**3.3 Schedule of Performance.** Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the “Schedule of Performance” included in Exhibit “A” and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

**3.4 Force Majeure.** The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Consultant shall within ten (10) days of the commencement of such delay notify City in writing of the causes of the delay. City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City’s determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Consultant’s sole remedy being extension of this Agreement pursuant to this Section.

#### **ARTICLE 4. COORDINATION OF WORK**

**4.1 Representative of Consultant.** Kurt Bendler, Managing Director is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work or services specified herein and to make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of the representative was a substantial inducement for City to enter into this Agreement. Therefore, the representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the representative may not be replaced nor may his responsibilities be substantially reduced by Consultant without the express written approval of City

**4.2 Contract Officer for City.** The City's City Manager is hereby designated as the representative of the City authorized to act in its behalf with respect to the work and services and to make all decisions in connection therewith ("Contract Officer"). It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by

City to the Contract Officer. The City may designate another Contract Officer by providing written notice to Consultant.

**4.3 Approvals from City.** City approvals or actions, pursuant to the authority of this Agreement, are to be made (unless otherwise specified) either by the City Manager or by their delegate as provided for in writing.

**4.4 Independent Contractor.** Neither City, nor any of its officers, employees or agents, shall have any control over the manner or means by which Consultant, or its officers, employees, agents or subcontractors, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it, or any of its officers, employees, agents or subcontractors, are officers, employees or agents of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Consultant represents and warrants that the personnel used to provide services to City pursuant to this Agreement shall at all times be under Consultant's exclusive control and direction. No City employee benefits shall be available to Consultant, its officers, employees, agents or subcontractors, in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, agents or subcontractors, for injury or sickness arising out of performing services hereunder. In the event that Consultant or any officer, employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System, to be classified as other than an independent contractor for City, then Consultant shall indemnify, defend, and hold harmless City for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to City as a consequence of, or in any way attributable to, the assertion that Consultant, or any officer, employee, agent, or subcontractor Consultant used to provide services under this Agreement, is/are employees of City.

**4.5 Subcontracting or Assignment.** The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred or assigned without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant taking all transfers into account on a cumulative basis. A prohibited transfer or assignment shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City

## **ARTICLE 5. INSURANCE AND INDEMNIFICATION**

**5.1 Insurance Coverages.** Prior to commencement of any services under this Agreement, and without limiting Consultant's indemnification obligation to City, Consultant shall

procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts below, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City, which shall cover all elected and appointed officers, employees and agents of City. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

(a) **Commercial General Liability Insurance.** A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(b) **Worker's Compensation Insurance.** A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) **Reserved.**

(d) **Professional Liability.** Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis and must include coverage for contractual liability. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage. Limits shall be no less than \$1,000,000 per claim and no less than \$1,000,000 general aggregate.

(e) **Cyber Liability.** Cyber liability insurance appropriate to Consultant's profession and the services hereunder, written on a per occurrence basis, with limits not less than \$1,000,000 per occurrence/loss, and \$1,000,000 in the aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Consultant pursuant to this Agreement and shall include, but not be limited to, claims involving: infringement of intellectual property; copyright; trademark; invasion of privacy violations; data breach; electronic information theft, loss, damage, destruction, alteration or misuse; release of private information; extortion; and,

network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

(f) **Reserved.**

(g) **Subcontractors.** In the event Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, Consultant shall either: 1) include each subcontractor as insureds under its policies of insurance required herein; or, 2) Consultant shall furnish to City all documentation, required in Article 5 for Consultant, for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

## 5.2 **General Insurance Requirements.**

(a) **Proof of Insurance, Enforcement and Notice.** No work or services under this Agreement shall commence until both Consultant has provided City with insurance certificates, endorsement forms and appropriate insurance binders evidencing the above insurance coverages, as well as said documentation is approved by City. City reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to subsection (b) below), or does not comply with Article 5, then: 1) City has the right but not the duty to obtain insurance required herein and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments; or, 2) City, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required insurance policies.

(b) **Cancellation/Amendment.** All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment) to City. In the event any of said policies of insurance are amended or cancelled, Consultant shall, five (5) business days prior to the cancellation date, submit new evidence of insurance in conformance with this Agreement to City.

(c) **Additional Insureds.** The commercial general liability policy provided for in Section 5.1(a) and the automobile liability policy provided for in Section 5.1(c) both shall name City and its elected and appointed officers, employees and agents ("**City Parties**") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to City and City Parties. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and policies of insurance shall not contain any cross-liability exclusions.

(d) **Primary, Subrogation, Contribution and Coverage.** All of the above policies of insurance shall be primary insurance. The insurers for the above policies, Consultant

and any subcontractors are all deemed hereof to waive all rights of subrogation and contribution they may have against City or City Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by City or City Parties will apply in excess of, and not contribute with, Consultant's insurance. If Consultant maintains broader coverage and/or higher limits than the minimum amounts provided herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City and City Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. Requirements of specific coverage features or limits contained herein are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(e) **Limitations, Self- Insured Retention and Deductibles.** Consultant agrees that requirements of Article 5 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant's indemnification liabilities as provided in Section 5.3. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City Parties, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorneys' fees, defense expenses and claims.

### **5.3 Indemnification.**

(a) **Indemnity for Professional Liability.** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and the City's Parties from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees of subcontractors (or any entity or individual for which Consultant shall bear legal liability) in the performance of professional services under this Agreement.

(b) **Indemnity for Other Than Professional Liability.** Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City and City's Parties from and against any liability (including liability for claims, suits, actions, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, defense costs and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity



for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

## **ARTICLE 6. RECORDS, REPORTS AND RELEASE OF INFORMATION**

**6.1 Records.** Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (“**books and records**”) as shall be necessary to perform the services required by this Agreement and enable City to evaluate the performance of such services. Any and all such books and records shall be maintained in accordance with generally accepted accounting principles, shall be complete and detailed, and shall be readily accessible. City shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts. Such books and records shall be maintained for a period of three (3) years following completion of the services hereunder. City shall have access to such books and records in the event any audit is required. Consultant shall fully cooperate with City in providing access to any and all Consultant records and documents if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

**6.2 Ownership of Documents.** All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (“**documents and materials**”) prepared by Consultant, its officers, employees, agents and subcontractors in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of City and/or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership, use, reuse, or assignment of the documents and materials hereunder. Consultant may retain copies of such documents and materials for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents and materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, with respect to any Consultant documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for City.

**6.3 Confidentiality and Release of Information.** All information gained or work product produced by Consultant in its performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from City. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from City or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant immediately gives City notice of such court order or subpoena. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including

attorneys' fees, caused by or incurred as a result of Consultant's conduct. As concerning, regarding or related to, in any way, this Agreement and the work performed thereunder: a) Consultant shall immediately notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party; b) City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding; and, c) Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant, however, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

**7.1 California Law.** This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Riverside, State of California.

**7.2 Suspension, or Termination, Prior to Expiration of Term.** This Section shall govern any termination of this Agreement except as specifically provided in Section 7.4 for termination for cause. City reserves the right to terminate or suspend this Agreement, or any portion hereof, at any time, for any reason, with or without cause, upon thirty (30) days' notice to Consultant, except that where termination or suspension is due to the fault of Consultant, the period of notice may be such shorter time as determined by City. Upon receipt of any notice of termination or suspension, Consultant shall immediately cease all services hereunder, unless the notice provides otherwise, or except such as specifically approved by City. Upon submittal of an invoice consistent with Section 2.2, Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination or suspension and for any services authorized by City thereafter in accordance with the Schedule of Compensation, or such as may be approved by City, except as provided in Section 7.5. In event of termination, or suspension, without cause pursuant to this Section, there is no need to provide opportunity to cure pursuant to Section 7.3.

**7.3 Default of Consultant and Opportunity to Cure.** In the event that Consultant is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively ten (10) days, but may be extended, or reduced, if circumstances warrant, as determined by City. During the period of time that Consultant is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices, without liability for interest. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default by conclusion of noticed timeframe, City may immediately both terminate this Agreement with notice to Consultant as well

as pursue the remedy in Section 7.4, without prejudice to any other remedy to which City may be entitled at law, in equity or under this Agreement. Any failure on the part of City to give notice of Consultant's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

**7.4 Termination for Default of Consultant.** If termination is due to the failure of Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.3, take over the work and prosecute the same to completion by contract or otherwise, and Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed to City as previously stated.

**7.5 Retention of Funds.** Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Consultant to insure, indemnify, and protect City as elsewhere provided herein.

**7.6 Waiver.** Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement of this Agreement imposes no additional obligations on City nor does it waive any rights hereunder. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

**7.7 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**7.8 Legal Action.** In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any

default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code sections 905 *et seq.* and 910 *et seq.*, in order to pursue a legal action under this Agreement.

**7.9 Attorneys' Fees.** If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, consultants' fees, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. Such fees and costs shall be enforceable whether or not such action is prosecuted to judgment.

## **ARTICLE 8. INDIVIDUAL LIABILITY, CONFLICTS AND NON-DISCRIMINATION**

**8.1 Non-liability of City Officers and Employees.** No officer or employee of City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

**8.2 Conflict of Interest.** Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of City. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict of interest exists upon sending Consultant written notice describing the conflict. No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects their financial interest or the financial interest of any corporation, partnership or association in which they are, directly or indirectly, interested, in violation of any State statute or regulation. Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

**8.3 Covenant Against Discrimination.** Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

## ARTICLE 9. MISCELLANEOUS PROVISIONS

**9.1 Notices.** Any notice or other communication either Party desires or is required to give to the other Party or any other person in regards to this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, in the case of City addressed to the Contract Officer at City of Perris, 101 N. "D" Street, Perris, CA 92570, and in the case of Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

**9.2 Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement, headings used, or any other rule of construction which might otherwise apply.

**9.3 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

**9.4 Integration; Amendment.** This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties as to the Agreement. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all prior and contemporaneous negotiations, arrangements, agreements and understandings, if any, between the Parties, concerning this Agreement, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Consultant and by City, provided that City's approval thereof shall only be valid if made in a manner consistent with the PMC.

**9.5 Severability.** Should a portion of this Agreement be declared invalid or unenforceable by a judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

**9.6 No Undue Influence.** Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of City has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to remedies in Section 7.4 and any and all remedies at law or equity.

**9.7 Corporate Authority.** The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**  
CITY OF PERRIS, a California municipal corporation

\_\_\_\_\_  
Clara Miramontes  
City Manager

**ATTEST:**

\_\_\_\_\_  
Nancy A. Salazar, City Clerk

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Robert Khuu, City Attorney

**CONSULTANT:**  
BLUE STONE MANAGEMENT LLC, a California Limited Liability Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairperson of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. (Cal. Corp. Code § 313.) APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT’S BUSINESS ENTITY.**

**EXHIBIT A**  
**SCOPE OF SERVICES**

Attached:

Addendum No. 3 Proposal

Addendum No. 2

Addendum No. 1

Exhibit A “Scope of Services” to the Original Agreement, which contains:

AIA Document B101-2017

Standard Form of Agreement Between Owner and Architect

AIA Document B144/ARCH-CM-1993

Standard Form of Amendment for the Agreement Between Owner and Architect where the  
Architect Provides Construction Management Services as an Adviser to the Owner

AIA Document A201-2017

General Conditions of the Contract for Construction





January 31 2024

Attn: Michelle Ogawa

**City of Perris**

101 N. D Street

Perris, Ca 92570

**Subject: City of Perris Skills Training & Job Placement Facility – Proposed Addendum #3**

Dear Michelle,

We thank you for the opportunity to submit our fee extension and the opportunity to continue and further serve as your team to undertake Project Management services for the City of Perris Skills Training & Job Placement Facility. The prior approved contract Addendum 2, presumed a January 2024 project completion date. Following the Revised Scheduled issued by ACT 1 Construction and Delay notice, we herein request approval of a fee extension from January 30 2024 to May 30 2024 (4 months) through Substantial Completion of the project and, including necessary support in June/July of 2024 for switch gear install and final handover of the building. Additionally, herein we submit additional Architectural and MEP consultant design fees for re-design services as noted in breakdown below.

**Fee Extension request:**

- a. Additional fee request for PM services: \$12,000 times 4 months = \$48,000.00
  
- b. Additional Fee request for AOR and MEP Eng. Services: \$28,508 (refer to breakdown included below)

**Total Fee extension request: \$76,508**



AOR & MEP Eng. Breakdown fees:

Architectural : SIDLEY JONES, INC. ARCHITECTS	\$ 6,325
1. Re-design of fencing / wall pilasters / rolling gate based on pushback from Perris Planning Department during plan check process. Design Evaluation of different stair schemes for the rear second floor exit per Planning's request.	
Civil Engineering: C.W. HOWE PARTNERS, INC.	\$ 2,090
1. Re-design of fencing / wall pilaster as requested by Planning Department.	
Structural Engineering: INNOVATIVE STRUCTURAL ENGINEERING	
1. Re-design of fencing / wall pilaster As requested by Planning Department adding CMU block pilasters and low wall details and calculations.	\$ 1,705
2. Drawing revisions for lowering of low roof surface and stair revisions as requested by Planning Department comments during final plan check	\$ 1,544
3. Construction Administration Fees C.A. fees for structural engineer were not included in original proposal.	\$ 13,750
Mechanical / Plumbing: JAYCO CAL CONSULTING ENGINEERS	\$ 1,444
1. Revisions to low roof plumbing design based on plan check corrections requiring redesign, re-routing and re-location of roof drains and overflows.	
Fire Protection: ALERT FIRE SYSTEMS	\$ 1,650*
1. Revised Fire Sprinkler design based on General Contractor's request to deviate from the approved plans with regards to location of new connection to main line in the street.	

Schedule

Fees do not cover work that extends beyond 1 month from the assumed project duration noted below.

Construction time extension (4 months):	February 1 <sup>st</sup> 2024 to May 30 <sup>th</sup> 2024
Final power connection and close out:	July 2024



## Exclusions

Refer to approved proposal and Addendum 1 and 2.

## Standard Terms & Conditions

Refer to approved proposal and Addendum 1 and 2.

Please do not hesitate to contact us with any questions at +1 808 634 9594 or via email: [yveronese@bsmail.com](mailto:yveronese@bsmail.com)

Thank you.

A handwritten signature in black ink, appearing to read "Yara Veronese Machado".



Yara Veronese Machado  
Director of Project Management

The Above is Agreed and Accepted:

---

Name:

Date

Title:

**City of Perris**



November 15 2022

Attn: Michelle Ogawa

**City of Perris**

101 N. D Street

Perris, Ca 92570

**Subject: City of Perris Skills Training & Job Placement Facility – Proposed Addendum #2**

Dear Michelle,

Prior approved Addendum 1 presumed 18month project with a construction completion projected for February of 2023. The project is 10 months behind original schedule.

Following award of Contractor on November 8<sup>th</sup> for above subject project, Construction Schedule is now established.

We humbly request approval of a fee extension to cover scheduled construction period, as awarded, December 2022 thru January 2024 (12 months of construction, 1 month of pre-construction and 1 month of closeout).

**Fee Extension request:**

Additional fee request: Sixty Thousand US Dollars (\$60,000.00).

### **Schedule**

This proposal assumes a Construction duration of 12 months. Fees do not cover work that extends beyond 1 month from the assumed duration.

Pre-Construction	1 Month	December 2022
Construction Project Management	12 Months	January 2023 – December 2023
Close out	1 Month	January 2024



**Exclusions**


Refer to approved proposal and Addendum 1.

**Standard Terms & Conditions**

Refer to approved proposal and Addendum 1.


We very much look forward to working with you on this exciting project! Please do not hesitate to contact us with any questions at +1 808 634 9594 or via email: [yveronese@gmail.com](mailto:yveronese@gmail.com)

Thank you.



Yara Veronése Machado  
Director of Project Management



The Above is Agreed and Accepted:	
	12/5/2022
Name: Michèle Ogawa	Date
Title: Economic Development and Housing City of Perris	Manager



BLUE STONE  
MANAGEMENT

June 30, 2021

Attn: Michelle Ogawa

**City of Perris**

101 N. D Street

Perris, Ca 92570

**Subject: City of Perris Skills Training & Job Placement Facility – Proposed Addendum 1**

Dear Michelle,

Following the direction of the Ad HOC Committee Meeting of 11/12/20, and latest email correspondence with the City of Perris, dated 6/23/2021, we thank you for the opportunity to submit Addendum 1 to the original Contract for Project Design Services, project management, and Construction Management of the EDA Approved Valued Engineered Design for the Skills Training & Job Placement Facility in the City of Perris, with reduced Building Square footage of 13,722 SF.

Clarifications:

Outstanding work and fees from the original contract are voided.

Additional costs and scope are described herein.

Included Appendixes in this Addendum Proposal:

1. Appendix 1 – Request for Clarification notes. \* Proposed Addendum is subject to change dependent on answers provided to Appendix 2 by the City of Perris.
2. Appendix 2 – Architectural Services provided by Sidley Jones
3. Appendix 3 – Draft VE Plan as submitted to EDA
4. Appendix 4 – Schedule of Payments
5. Appendix 5 – Blue Stone Management's Hourly rates
6. Appendix 6 – Original Executed AIA contract

## Schedule

This proposal assumes a project duration of **18 months**. \* Fees do not cover work that extends beyond 1 month from the assumed duration.



<b>Phase</b>	<b>Duration</b>	<b>Timeline</b>
Design - Refer to attached Design Proposal by Sidley Jones (Permit , Bid Set)	2 Months	August – September , 2021
City and EDA Review	1 Month	October, 2021
Bidding (Mandatory)	1 Month	November,2021
Award (Post Mandatory Bidding Period)	1 Month	December 2021
Contracting	1 Month	January, 2022
Construction & Construction Administration	12 Months	February 2022 – February 2023

## Design Scope

- Refer to Exhibit 1

## Construction

### *Architecture & Engineering*

- Respond to requests for information (RFI's) and coordination issues arising during construction
- Review and approve shop drawings and coordinate with other
- Review and approve materials and equipment submitted by contractors
- Coordination of Architectural, MEP, Lighting and Fixture packages
- Conduct site inspections of Main Contract and Direct Supply package works.

### *Project Management & Construction Administration*

- Review Contractors' Plans & Performance and make recommendations on the proposed Action Plan
- Manage Project Staging and Phasing
- Manage Document Control System
- Manage, monitor and control all Client or Contractor changes
- Prepare and implement a Project Quality Assurance & Control Program
- Track Budget vs. Actual Costs
- Track Sources & Uses
- Administer Contracts and Certification of Completed Works
- Certify Invoices
- Evaluate and Negotiate Change Orders
- Assess Cost Impact of changes to Project Schedule



## Completion & Handover

### *Architecture & Engineering*

- Assist in resolving final design corrections
- Attend all necessary testing and commissioning Inspections and punch list sign off

### *Project Management & Construction Administration &*

- Inspect completed work, prepare a Defects List, and create and manage a Rectification Plan
- Collect and complete Final Project Documentation
- Coordinate with Authorities and the General Contractor to prepare and issue a Certificate of Occupancy;
- Manage Contractor Defect Liability Period (DLP) Close-Out Process
- Make recommendations for the release of Contractor/Supplier Retention and Performance Bonds

## Fees

	Per Discipline
Architecture & Engineering	USD \$261,800
Project Management & Construction Adm	USD \$150,000
<b>Fee Total</b>	<b>USD \$411,800</b>

**FOUR HUNDRED ELEVEN THOUSAND AND EIGHT HUNDRED US DOLLARS**

*NOTE: See Exclusions and Standard Terms & Conditions below.*

## Exclusions

1. **Entitlement Fees:** fees for site, utility, permitting, and license applications
2. **Consultant Fees:** fees for project managers, architects, engineers, attorneys or specialty consultants other than those expressly included within this proposal
3. **Expense:** expense for local travel from BSM office to job site is included in above lump sum fee. Other specific requested client instructed travel thereafter is excluded and will be reimbursed by Client at cost. Schedule of travel allowance throughout project duration refers to Table 2: Fee Payment Schedule of the Proposal Form.
4. **Power line burial and/or utility work:** beyond site boundaries.
5. **LEED** accreditation.
6. **Quantity Surveying:** and cost manager services.
7. **Bidding, Awarding and Contracting:** of the General Contractor





## Standard Terms & Conditions


1. The following miscellaneous reimbursable expenses will be billed monthly at cost incurred plus 10%: electronic scanning, postage and courier services, printing, and plotting.
2. The fees outlined above include Architecture, Structural / Mechanical / Electrical / Plumbing / Civil Engineers, Cost Estimation and Construction Administration services.
3. Billing will occur monthly based on the percentage of phase completion. Payments are due upon presentation of the invoices. Accounts unpaid 30 days after the invoice date shall be assessed a monthly service charge of 1.5% on the then unpaid invoice. In the event any portion or all of an account remains unpaid 90 days after billing the Client shall pay all costs of collection and associated fees.
4. Liability is capped at an amount equal to the fee value.
5. Invoices are to be paid into Blue Stone Managements USA bank account in US Dollars.
6. Services beyond the Scope of Work shall be considered Additional Services. No additional costs will be incurred, or services rendered without prior direction of the Client. Overtime shall be compensated at overtime rates and will be charged if the Client requires overtime work or if the project schedule is revised requiring such work. Additional Services will be compensated in accordance with Blue Stone current hourly rates (See Appendix A).
7. Blue Stone Management bears no responsibility for the actions or omissions of Client's personnel, a project team member, or 3<sup>rd</sup> party personnel.
8. Binding agreements and all matters relating thereto shall be governed by and construed in accordance with the laws of California and each party agrees to submit to the non-exclusive jurisdiction of the local Courts.

We very much look forward to working with you on this exciting project! Please do not hesitate to contact us with any questions at +1 310 410 9892 or via email: [jmalespin@bsmemail.com](mailto:jmalespin@bsmemail.com)

Thank you.  



Javier Malespin  
 Managing Partner

The Above is Agreed and Accepted:	
	7/28/21
Name: Michele Ogawa	Date
Title: Economic Development and Housing Manager	
City of Perris	

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**Attached:**

**(A.1) AIA Document B101-2017  
Standard Form of Agreement Between Owner and Architect;**

**(A.2) AIA Document B144/ARCH-CM-1993  
Standard Form of Amendment for the Agreement Between Owner and Architect where the  
Architect Provides Construction Management Services as an Adviser to the Owner;**

**and**

**(A.3) AIA Document A201-2017  
General Conditions of the Contract for Construction**

# AIA<sup>®</sup> Document B101<sup>™</sup> – 2017

## **Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the 13 day of March in the year 2019  
(In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner:

City of Perris  
135 N. D Street  
Perris, CA 92570

and the Architect:

Blue Stone Management  
6033 West Century Blvd, Suite 1290  
Los Angeles, CA 90046  
310.410.9892

for the following Project:

Perris Downtown Skills Training and Job Placement Center  
City of Perris, CA

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

**TABLE OF ARTICLES**

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

**ARTICLE 1 INITIAL INFORMATION**

**§ 1.1** This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

**§ 1.1.1** The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Perris Downtown Skills Training and Job Placement Center

**§ 1.1.2** The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

Approximately 20,000sqft, two story Skills Training and Job Placement facility located on the corner of D Street and 1<sup>st</sup> Street in Down Town City of Perris

**§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:

Six Million One-Hundred Dollars (\$6,100,000)

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

Int.

The design phases are as follows (counting from date of contract execution):

Schematic Design (SD) – 1 month

Design Development (DD) – 1 month

Construction Development (CD) – 2 months

Permitting phase anticipated to start during Design Development (DD)

Bidding – 1 month

Award – ½ month

*(Paragraph deleted)*

Construction – 12 Months

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

Competitive Bid

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

*(List name, address, and other contact information.)*

N/A

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

*(List name, address, and other contact information.)*

Dr. Grace Williams, Director of Planning and Economic Development

§ 1.1.9 The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

TBD

.2 Civil Engineer:

TBD

.3 Other, if any:

*(List any other consultants and contractors retained by the Owner.)*

TBD

Int.

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

Jeremy Fletcher  
Design Director, AIA  
6033 West Century Blvd. Los Angeles, CA 90045  
310.410.9821

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

TBD

.2 Mechanical Engineer:

TBD

.3 Electrical Engineer:

TBD

§ 1.1.11.2 Consultants retained under Supplemental Services:

TBD

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

No Reimbursement for printing or domestic travel to project site

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals, including an Architect of Record, subject to the same terms of this agreement, under separate agreement with Blue Stone Management.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

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

§ 2.5.1 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.2 Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than \$1,000,000.00 per accident, combined single limit. Said policy shall include coverage for owned, non-owned, leased and hired cars.

§ 2.5.3 Refer to section 2.5.5.

§ 2.5.4 Workers' Compensation Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000.00 per accident for all covered losses.

§ 2.5.5 Commercial General Liability Insurance. A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000.00 per occurrence for all covered losses and no less than \$2,000,000.00 general aggregate.

§ 2.5.6 Professional Liability or Error and Omissions Insurance. A policy of insurance in an amount not less than \$1,000,000.00 per claim with respect to loss arising from the actions of Consultant performing professional services hereunder on behalf of the City.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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<b>Basic Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
Programming	Architect
Multiple preliminary designs	Architect
Measured drawings	Architect
Existing facilities surveys	Owner
Site evaluation and planning	Architect
Building Information Model management responsibilities	Architect
Development of Building Information Models for post construction use	Architect
Civil engineering	Architect
Landscape design	Architect
Architectural interior design	Owner
Value analysis	Architect
Detailed cost estimating beyond that required in Section 6.3	Architect
On-site project representation	Architect
Conformed documents for construction	Architect
As-designed record drawings	Architect
As-constructed record drawings	Architect
Post-occupancy evaluation	Architect
Facility support services	Owner
Tenant-related services	Owner
Architect's coordination of the Owner's consultants	Architect
Telecommunications/data design	Architect
Security evaluation and planning	Architect
Commissioning	Architect
Sustainable Project Services pursuant to Section 4.1.3	N/A
Fast-track design services	Architect
Multiple bid packages	Architect
Historic preservation	Owner
Other services provided by specialty Consultants	Owner
Construction Management	See B144-193)

**§ 3.1.1** The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. Architect agrees to submit a report not less frequently than quarterly to the Owner covering the general progress of the job and describing any problems or factors contributing to delay.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall

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provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.4** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

**§ 3.1.5** The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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

### **§ 3.2 Schematic Design Phase Services**

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

**§ 3.2.2** The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

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

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

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

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

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

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

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

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

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

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

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

### § 3.5 Procurement Phase Services

#### § 3.5.1 General

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

#### § 3.5.2 Competitive Bidding

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

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;

- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 Negotiated Proposals

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

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

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

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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

#### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

#### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

**§ 3.6.6.3** When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.6.6.4** The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

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

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

N/A

*(Table deleted)*

##### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Paragraph deleted)*

Hereby incorporated by reference. B144- 1993 Standard Form of Amendment to the Agreement Between Owner and Architect where the Architect provides Construction Management Services as an adviser to the Owner.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Paragraph deleted)*

B144, Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides CONSTRUCTION MANAGEMENT Services as an Adviser to the Owner

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

##### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;

- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

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

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

- .1 Unlimited reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Unlimited visits to the site by the Architect during construction
- .3 Unlimited inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Unlimited inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within 19 months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.7 If the Owner identified a Sustainable Objective in Article I, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

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

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

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## ARTICLE 6 COST OF THE WORK

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

**§ 6.2** The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

**§ 6.3** In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

**§ 6.4** If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

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

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

Int.

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

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

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien

arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

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

*(Check the appropriate box.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

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

### **§ 8.3 Arbitration**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Init.

**§ 8.3.4 Consolidation or Joinder**

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

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

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

**§ 8.4** The provisions of this Article 8 shall survive the termination of this Agreement.

**ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

**§ 9.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

**§ 9.6** If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

**§ 9.7** In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

- .1 Termination Fee:  
\$0.00

Init.

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

\$0.00

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

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

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively

for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

**§ 10.9** The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

#### **ARTICLE 11 COMPENSATION**

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

Stipulated Sum

*(Paragraphs deleted)*

\$640,000.00 + \$150,000 for Construction Management (B144)

*(Paragraphs deleted)* TOTAL CONTRACT SUM = SEVEN HUNDRED AND NINETY THOUSAND DOLLARS AND ZERO CENTS

**§ 11.2** For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

Hourly

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

Hourly

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10%), or as follows:

*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

N/A

**§ 11.5** When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows: N/A. Compensation based on progress payments outlined in **Section 11.10.2 Progress Payments**.

*(Table deleted)*

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

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

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(Paragraph deleted)

Employee or Category	Rate (\$0.00)
Managing Director / Managing Partner	\$400
Senior Director / Director	\$300
Senior Associate/ Associate	\$215
Senior Project Manager	\$185
Senior Quantity Surveyor	\$185
Senior Construction Manager	\$165
Design Manager	\$155
Project Manager	\$155
Quantity Surveyor	\$155
Construction Manager	\$135
Tenant Coordinator	\$135
Quality Assurance Manager	\$135
Junior Project Manager	\$105
Junior Quantity Surveyor	\$105
Project Coordinator	\$ 95

**§ 11.8 Compensation for Reimbursable Expenses**

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

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

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10 %) of the expenses incurred.

**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

N/A

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

**§ 11.10.1.1** An initial payment of ONE HUNDRED FIFTY EIGHT THOUSAND DOLLARS AND ZERO CENTS (\$158,000) shall be made upon execution of this Agreement and is the minimum payment under this Agreement.

Should it be necessary, Architect's fee includes a set-aside in the amount of \$10,000 to cover incidental costs.

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

**§ 11.10.2 Progress Payments**

§ 11.10.2.1 Progress in relationship to construction schedule shall be evaluated at quarterly construction schedule progress review meetings between Owner, Architect/PM and Contractor. Payments for services shall be made in proportion to services performed as follows:

Programming/Schematic/Design plus 25% Quantity Surveying (QS)  
Design Development (DD) + 25% QS  
Construction Documents (CD) plus 25% QS

Project Management + 25% QS billed monthly

Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid SIXTY DAYS ( 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.

10 % TEN

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

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

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

N/A

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document B144™-1993, Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides CONSTRUCTION MANAGEMENT Services as an Adviser to the Owner
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 Exhibits:  
*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

[ A ] U.S. Department of Commerce Economic Development Administration, Standard Terms and Conditions for Construction Projects dated Feb 12, 2016.

Init.




- [ B ] U.S. Department of Commerce Economic Development Administration, EDA Contracting Provisions for Construction Projects.
- [ C ] Appendix II to CFR 200 - Contract Provisions for Non-Federal Entity Contracts under Federal Awards.
- [ D ] Milestone Schedule


*(Paragraph deleted)*

.5 Other documents:

*(List other documents, if any, forming part of the Agreement.)*

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

  
 OWNER (Signature)  
 Richard Beland  
 (Printed name and title)  
 City Manager

  
 ARCHITECT (Signature)  
 KURT BENDER  
 (Printed name, title, and license number, if required)  
 MANAGING DIRECTOR

## **Additions and Deletions Report for AIA® Document B101™ – 2017**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 18:14:33 ET on 07/10/2019.

### **PAGE 1**

**AGREEMENT** made as of the 13 day of March in the year 2019

...

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

City of Perris  
135 N. D Street  
Perris, CA 92570

...

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

Blue Stone Management  
6033 West Century Blvd, Suite 1290  
Los Angeles, CA 90046  
310.410.9892

...

~~(Name, location and detailed description)~~

Perris Downtown Skills Training and Job Placement Center  
City of Perris, CA

### **PAGE 2**

Perris Downtown Skills Training and Job Placement Center

...

Approximately 20,000sft, two story Skills Training and Job Placement facility located on the corner of D Street and I<sup>st</sup> Street in Down Town City of Perris

...

~~(Provide total and, if known, a line item breakdown.)~~

Six Million One-Hundred Dollars (\$6,100,000)

...

1 — ~~Design phase milestone dates, if any:~~

The design phases are as follows (counting from date of contract execution):

Schematic Design (SD) – 1 month

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User Notes:

(1799895403)

Design Development (DD) – 1 month

~~2~~ ~~Construction commencement date:~~ Construction Development (CD) – 2 months

**PAGE 3**

Permitting phase anticipated to start during Design Development (DD)

...

~~3~~ ~~Substantial Completion date or dates:~~ Bidding – 1 month

...

Award – ½ month

...

~~4~~ ~~Other milestone dates:~~

Construction – 12 Months

...

~~(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)~~

Competitive Bid

...

~~(Identify and describe the Owner's Sustainable Objective for the Project, if any.)~~

N/A

...

N/A

...

Dr. Grace Williams, Director of Planning and Economic Development

...

TBD

...

TBD

...

TBD

**PAGE 4**

Jeremy Fletcher

Design Director, AIA

6033 West Century Blvd. Los Angeles, CA 90045

310.410.9821

...

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User Notes:

(1799895403)

TBD

...

TBD

...

TBD

...

TBD

...

No Reimbursement for printing or domestic travel to project site

...

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design ~~professionals.~~  
professionals, including an Architect of Record, subject to the same terms of this agreement, under separate agreement with Blue Stone Management.

PAGE 5

~~§ 2.5.1 Commercial General Liability with policy limits of not less than (\$ ) for each occurrence and (\$ ) in the aggregate for bodily injury and property damage. The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$ ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than \$1,000,000.00 per accident, combined single limit. Said policy shall include coverage for owned, non-owned, leased and hired cars.~~

~~§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Refer to section 2.5.5.~~

~~§ 2.5.4 Workers' Compensation at statutory limits. Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000.00 per accident for all covered losses.~~

~~§ 2.5.5 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit. Commercial General Liability Insurance. A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004.~~

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or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000.00 per occurrence for all covered losses and no less than \$2,000,000.00 general aggregate.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate or Error and Omissions Insurance. A policy of insurance in an amount not less than \$1,000,000.00 per claim with respect to loss arising from the actions of Consultant performing professional services hereunder on behalf of the City.

PAGE 6

<u>Basic Services</u>	<u>Responsibility</u> <i>(Architect, Owner, or not provided)</i>
Programming	Architect
Multiple preliminary designs	Architect
Measured drawings	Architect
Existing facilities surveys	Owner
Site evaluation and planning	Architect
Building Information Model management responsibilities	Architect
Development of Building Information Models for post construction use	Architect
Civil engineering	Architect
Landscape design	Architect
Architectural interior design	Owner
Value analysis	Architect
Detailed cost estimating beyond that required in Section 6.3	Architect
On-site project representation	Architect
Conformed documents for construction	Architect
As-designed record drawings	Architect
As-constructed record drawings	Architect
Post-occupancy evaluation	Architect
Facility support services	Owner
Tenant-related services	Owner
Architect's coordination of the Owner's consultants	Architect
Telecommunications/data design	Architect
Security evaluation and planning	Architect
Commissioning	Architect
Sustainable Project Services pursuant to Section 4.1.3	N/A
Fast-track design services	Architect
Multiple bid packages	Architect
Historic preservation	Owner
Other services provided by specialty Consultants	Owner
Construction Management	See B144-193)

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. Architect agrees to submit a report not less frequently than quarterly to the Owner covering the general progress of the job and describing any problems or factors contributing to delay.

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(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

N/A

Supplemental Services	Responsibility (Architect, Owner, or not provided)
<del>§ 4.1.1.1 Programming</del>	
<del>§ 4.1.1.2 Multiple preliminary designs</del>	
<del>§ 4.1.1.3 Measured drawings</del>	
<del>§ 4.1.1.4 Existing facilities surveys</del>	
<del>§ 4.1.1.5 Site evaluation and planning</del>	
<del>§ 4.1.1.6 Building Information Model management responsibilities</del>	
<del>§ 4.1.1.7 Development of Building Information Models for post-construction use</del>	
<del>§ 4.1.1.8 Civil engineering</del>	
<del>§ 4.1.1.9 Landscape design</del>	
<del>§ 4.1.1.10 Architectural interior design</del>	
<del>§ 4.1.1.11 Value analysis</del>	
<del>§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3</del>	
<del>§ 4.1.1.13 On-site project representation</del>	
<del>§ 4.1.1.14 Conformed documents for construction</del>	
<del>§ 4.1.1.15 As-designed record drawings</del>	
<del>§ 4.1.1.16 As-constructed record drawings</del>	
<del>§ 4.1.1.17 Post-occupancy evaluation</del>	
<del>§ 4.1.1.18 Facility support services</del>	
<del>§ 4.1.1.19 Tenant related services</del>	
<del>§ 4.1.1.20 Architect's coordination of the Owner's consultants</del>	
<del>§ 4.1.1.21 Telecommunications/data design</del>	
<del>§ 4.1.1.22 Security evaluation and planning</del>	
<del>§ 4.1.1.23 Commissioning</del>	
<del>§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3</del>	
<del>§ 4.1.1.25 Fast-track design services</del>	
<del>§ 4.1.1.26 Multiple bid packages</del>	
<del>§ 4.1.1.27 Historic preservation</del>	
<del>§ 4.1.1.28 Furniture, furnishings, and equipment design</del>	
<del>§ 4.1.1.29 Other services provided by specialty Consultants</del>	
<del>§ 4.1.1.30 Other Supplemental Services</del>	

...

*(Describe in detail the Architect's Supplemental Services identified in Section 1.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

Hereby incorporated by reference, B144- 1993 Standard Form of Amendment to the Agreement Between Owner and Architect where the Architect provides Construction Management Services as an adviser to the Owner.

...

*(Describe in detail the Owner's Supplemental Services identified in Section 1.1.1 or, if set forth in an exhibit, identify the exhibit.)*

B144, Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides CONSTRUCTION MANAGEMENT Services as an Adviser to the Owner

PAGE 13

- .1 ~~( )~~ Unlimited reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ~~( )~~ Unlimited visits to the site by the Architect during construction
- .3 ~~( )~~ Unlimited inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 ~~( )~~ Unlimited inspections for any portion of the Work to determine final completion.

...

**§ 4.2.5** If the services covered by this Agreement have not been completed within ~~( )~~ 19 months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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Arbitration pursuant to Section 8.3 of this Agreement

PAGE 18

~~(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)~~

...

\$0.00

PAGE 19

\$0.00

PAGE 20

~~1~~ Stipulated Sum  
*(insert amount)*

~~2~~ Percentage Basis  
*(insert percentage value)*

~~( )~~ % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6, \$640,000.00 + \$150,000 for Construction Management (B1-4)

~~3~~ Other

~~(Describe the method of compensation)~~

TOTAL CONTRACT SUM = SEVEN HUNDRED AND NINETY THOUSAND DOLLARS AND ZERO CENTS

...

~~(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)~~

Hourly

...

~~(Insert amount of, or basis for, compensation.)~~

Hourly

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( %), 10%, or as follows:

...

N/A

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows: N/A. Compensation based on progress payments outlined in Section 11.10.2 Progress Payments.

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Procurement Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

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~~(If applicable, attach an exhibit of hourly billing rates or insert them below.)~~

...

<u>Managing Director / Managing Partner</u>	<u>\$400</u>
<u>Senior Director / Director</u>	<u>\$300</u>
<u>Senior Associate/ Associate</u>	<u>\$215</u>
<u>Senior Project Manager</u>	<u>\$185</u>
<u>Senior Quantity Surveyor</u>	<u>\$185</u>
<u>Senior Construction Manager</u>	<u>\$165</u>
<u>Design Manager</u>	<u>\$155</u>
<u>Project Manager</u>	<u>\$155</u>
<u>Quantity Surveyor</u>	<u>\$155</u>
<u>Construction Manager</u>	<u>\$135</u>

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<u>Tenant Coordinator</u>	<u>\$135</u>
<u>Quality Assurance Manager</u>	<u>\$135</u>
<u>Junior Project Manager</u>	<u>\$105</u>
<u>Junior Quantity Surveyor</u>	<u>\$105</u>
<u>Project Coordinator</u>	<u>\$ 95</u>

...

.4 Printing, reproductions, plots, and standard form documents; Printing beyond standard:

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (~~—Ten percent (10 %)~~) of the expenses incurred.

...

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

N/A

...

§ 11.10.1.1 An initial payment of (~~\$—~~) ONE HUNDRED FIFTY EIGHT THOUSAND DOLLARS AND ZERO CENTS (\$158,000) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. ~~It shall be credited to the Owner's account in the final invoice.~~

Should it be necessary, Architect's fee includes a set-a-side in the amount of \$10,000 to cover incidental costs.

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

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§ 11.10.2.1 ~~Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Progress in relationship to construction schedule shall be evaluated at quarterly construction schedule progress review meetings between Owner, Architect/PM and Contractor. Payments for services shall be made in proportion to services performed as follows:~~

Programming/Schematic/Design plus 25% Quantity Surveying (QS)  
Design Development (DD) + 25% QS  
Construction Documents (CD) plus 25% QS

Project Management + 25% QS billed monthly

Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid SIXTY DAYS ( 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.

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

~~—%—~~ 10 % TEN

...

N/A

~~.2~~ AIA Document ~~E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~ B144™-1993, Standard Form of Amendment for the Agreement Between Owner and Architect where the Architect Provides CONSTRUCTION MANAGEMENT Services as an Adviser to the Owner  
~~(Insert the date of the E203-2013 incorporated into this agreement.)~~ .3 AIA Document A201™-2017, General Conditions of the Contract for Construction

~~.3~~ .4 Exhibits:

~~[ ]~~ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below: [ A ] U.S. Department of Commerce Economic Development Administration, Standard Terms and Conditions for Construction Projects dated Feb 12, 2016,

~~(Insert the date of the E204-2017 incorporated into this agreement.)~~ [ B ] U.S. Department of Commerce Economic Development Administration, EDA Contracting Provisions for Construction Projects,

[ C ] Appendix II to CFR 200 – Contract Provisions for Non-Federal Entity Contracts under Federal Awards.

~~[ ]~~ Other Exhibits incorporated into this Agreement: [ D ] Milestone Schedule  
~~(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)~~

~~.4~~ .5 Other documents:

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 18:14:33 ET on 07/10/2019 under Order No. 5875655087 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

**MANAGING DIRECTOR**  
\_\_\_\_\_  
(Title)

**JULY 10TH 2019**  
\_\_\_\_\_  
(Dated)