

BOARD MINUTES  
BOARD MEETING  
ADMINISTRATION OFFICE  
March 8, 2021  
7:00 P.M.

Call to Order: Phil Foster, Brian Gott, Greg Hole, Dennis Reagan, Adam Shepherd, Melissa Smith and Shane Steimel  
Pledge of Allegiance  
Prayer

- **MINUTES**

- The Chair entertained a motion to approve the minutes of the February 8, 2021, School Board Meeting.

*Motion: Brian Gott, Second: Dennis Reagan, (Discussion), Vote: 7-0*

**ACTION ITEMS**

By individual motions, the Board approved/adopted the following items or action.

- **PERSONNEL** All employment recommendations are pending completed satisfactory criminal background history report.
- **Thorntown**
  - Gloria Arnold – Change in Position – Custodian at Granville Wells to Custodial Supervisor effective March 15, 2021
  - Mary Ann Lowery – Change in Retirement Date – Custodian effective April 17, 2021
- **Western Boone**
  - Danielle Suiters – Change in Position – Full-time to Part-time Custodian effective February 8, 2021
  - Ryne Clark – FMLA – Custodian – effective February 25, 2021, to April 20, 2021
  - Connie Bouse – Resignation – Custodial Supervisor – effective March 12, 2021
- **Western Boone Transportation**
  - Danny Elkins – Resignation – Bus Driver – effective March 19, 2021
- **Western Boone Athletics**
  - Ashley Sanders – Title Change – Varsity Assistant Track & Field (Distance) from Junior High Assistant Track & Field Coach
  - Keith Lively – Title Change – Varsity Volunteer Assistant Track & Field Coach (Distance) from Varsity Assistant Track & Field
  - Caitlin Smith – Junior High Assistant Track & Field Coach
  - Jonah Marsh – Junior High Assistant Track & Field Coach

*Motion: Melissa Smith, Second: Greg Hole, (Discussion), Vote: 7-0*

- **BUSINESS**

- **School Calendar**
  - Superintendent Ramey recommended the Board approve the following
    - Revised calendar for 2021-2022 school year and approve the 2022-2023 school year.

*Motion: Brian Gott, Second: Phil Foster, (Discussion), Vote: 7-0*

- **2021-2022 Pre-Kindergarten1 Tuition Rates**

- Superintendent Ramey recommended the Board establish the Pre-Kindergarten tuition at \$240.00 a month for the 2021-2022 school year.

*Motion: Dennis Reagan, Second: Adam Shepherd, (Discussion), Vote: 7-0*

- **Summer Marching Band Schedule**

- Superintendent Ramey recommended the Board approve the Summer Band Schedule for 2021.

*Motion: Melissa Smith, Second: Brian Gott, (Discussion), Vote: 7-0*

- **Out of State/ Overnight Field Trip**

- Superintendent Ramey recommended the Board approve the field trip request for the following:
  - World Travelers – Jennifer Brunty rescheduled due to COVID-19, June 20-27, 2022

*Motion: Adam Shepherd, Second: Phil Foster, (Discussion), Vote: 7-0*

- **Donations**

- Superintendent Ramey recommended the Board approve the following donations:
  - Western Boone received \$400.00 from Mitchell Excavating & Transport LLC to be used for Webo Hoops.
  - Western Boone Received \$400.00 from Jackson Investment Group (Jackson IG, LLC to be used for Webo Bowling Club.

*Motion: Greg Hole, Second: Adam Shepherd, (Discussion), Vote: 7-0*

- **CLAIMS**

- The Chair entertained a motion to approve the claims for the period of February 8, 2021, through March 8, 2021, as submitted.

*Motion: Adam Shepherd, Second: Brian Gott, (Discussion), Vote: 7-0*

- **MONTHLY FINANCIAL REPORTS**

- Kristen Dunn, Corporation Treasurer, provided an update on the financial reports of the school corporation.

- **OTHER**

- **PERSONAL**

- **Thorntown**

- Tia Wyatt – Change in Position – Full-time to Part-time Cafeteria effective March 5, 2021

- **BUSINESS**

- **Greater Jamestown Area Fund Board**

- Superintendent Ramey recommended the Board approve the reappointment of Rob Ramey for term starting on March 1, 2021 and ending on February 28, 2023. Western Boone County Community School Corporation is responsible for appointing one more position to the Greater Jamestown Area Fund Board. If anyone is interested, they should contact Superintendent Ramey.

- **Approval of Architect Contract**

- Superintendent Ramey recommended the Board approve Moake Park Group for the architectural services related to the renovation/addition project at Thorntown Elementary.

*Motion: Brian Gott, Second: Melissa Smith, (Discussion), Vote: 7-0*

- **BUSINESS**

- Kindergarten Roundup – March 11, 2021, 7:00 p.m.
- End of 3<sup>rd</sup> 9 weeks grading period – March 12, 2021
- Kindergarten Roundup – March 16, 2021, 9:00 a.m.
- Spring Break – March 29, 2021 to April 2, 2021

- **ADJOURNMENT**

*Motion: Dennis Reagan, Second: Adam Shepherd, (Discussion), Vote: 7-0*

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**WESTERN BOONE COMMUNITY SCHOOL CORPORATION**  
**2021-2022 School Calendar**

Adopted 02/10/2020  
 Revised 03/08/2021

Monday	Tuesday	Wednesday	Thursday	Friday	Explanatory Notes
<b>AUGUST 2021</b>					
9 - T	10 - S	11	12	13	T=Teacher 1st Day/Orientation
16	17	18	19	20	S= Student 1st Day
23	24	25	26	27	
30	31				
<b>SEPTEMBER 2021</b>					
		1	2	3 = MT	MT=Mid Term (19 days)
6 - LD	7	8	9	10	LD= Labor Day (NO SCHOOL)
13	14	15	16	17	EL = eLearning Day
20	21	22 - EL	23	24	
27	28	29	30		
<b>OCTOBER 2021</b>					
				1	E=End of 9 weeks (43 days)
4	5	6	7	8 - E	FB=Fall Break (NO SCHOOL)
11	12	13	14	15	
18 - FB	19 - FB	20 - FB	21 - FB	22 - FB	
25	26	27	28	29	
<b>NOVEMBER 2021</b>					
1	2	3	4	5	MT=Mid Term (20 days)
8	9	10	11	12 - MT	EL = eLearning Day
15	16	17	18	19	TB= Thanksgiving Break (NO SCHOOL)
22	23	24 - EL	25 - TB	26 - TB	
29	30				
<b>DECEMBER 2021</b>					
		1	2	3	E= End of 2nd 9 weeks (42 days)
6	7	8	9	10	SM= End of 1st Semester (85 days)
13	14	15	16 - E, SM	17 - T	T = Teachers Record Day
20 - CB	21 - CB	22 - CB	23 - CB	24 - CB	CB= Christmas Break (NO SCHOOL)
27 - CB	28 - CB	29 - CB	30 - CB	31 - CB	
<b>JANUARY 2022</b>					
3 - S, T	4	5	6	7	T = Teachers Return
10	11	12	13	14	S= Students Return
17 - MLK,SMD	18	19	20	21	MLK =Martin Luther King Day (No School)
24	25	26 - EL	27	28 - MT	SMD=Snow MakeUp Day - if 1 or more days missed
31					EL = eLearning Day, MT=Mid Term (19 days)
<b>FEBRUARY 2022</b>					
	1	2	3	4	WB=Winter Break (No School)
7	8	9	10	11	SMD=Snow MakeUp Day - if 1 or more days missed
14	15	16	17	18	
21 - WB, SMD	22 - WB, SMD	23	24	25	
28					
<b>MARCH 2022</b>					
	1	2	3	4	E= End of 3rd 9 weeks (47 days)
7	8	9	10	11 - E	SB=Spring Break (NO SCHOOL)
14	15	16	17	18	
21	22	23	24	25	
28 - SB	29 - SB	30 - SB	31 - SB		
<b>APRIL 2022</b>					
				1 - SB	MT=Mid Term (20 days)
4	5	6	7	8	
11	12	13	14	15 - MT	
18	19	20	21	22	
25	26	27	28	29	
<b>MAY 2022</b>					
2	3	4	5	6	MD= Memorial Day
9	10	11	12	13	E= End of 4th 9 weeks (48 days)
16	17	18	19	20	SM= End of 2nd Semester (95 days)
23	24	25 - E,SM	26 - T	27 - SMD	T=Teacher Record Day -1/2 day *move to end of SMD if needed
30 - MD	31 - SMD	1 - SMD	2 - SMD	3 - SMD	SMD=Snow Make Up Day if needed

\*EL=Upon IDOE approval, eLearning Days scheduled on the calendar will be used for staff professional development. Students will not physically attend school those days. WBCSC will also use eLearning Days in lieu of snow make up days for the 2021-2022 school year.  
 \*Consecutive eLearning days will be limited to three days.  
 The fourth consecutive missed day will require a snow make-up day.

**Western Boone County Community School Corporation  
2022-23 School Calendar**

Adopted 3/8/21

Monday	Tuesday	Wednesday	Thursday	Friday	Explanatory Notes
<b>AUGUST 2022</b>					
8 - T	9 - S	10	11	12	T = Teachers 1st Day
15	16	17	18	19	S = Students 1st Day
22	23	24	25	26	
29	30	31			
<b>SEPTEMBER 2022</b>					
			1	2 - MT	MT=Mid Term (19 days)
5 - LD	6	7	8	9	LD= Labor Day (NO SCHOOL)
12	13	14	15	16	EL = eLearning Day
19	20	21-EL	22	23	
26	27	28	29	30	
<b>OCTOBER 2022</b>					
3	4	5	6	7 - E	E=End of 9 weeks (43 days)
10	11	12	13	14	FB=Fall Break (NO SCHOOL)
17 - FB	18 - FB	19 - FB	20 - FB	21 - FB	
24	25	26	27	28	
31					
<b>NOVEMBER 2022</b>					
	1	2	3	4	MT=Mid Term (20 days)
7	8	9	10	11 - MT	EL = eLearning Day
14	15	16	17	18	TB= Thanksgiving Break (NO SCHOOL)
21	22	23- EL	24 - TB	25 - TB	
28	29	30			
<b>DECEMBER 2022</b>					
			1	2	E = End of 2nd 9 weeks (43 days)
5	6	7	8	9	SM = End of 1st Semester (86 days)
12	13	14	15	16 - E, SM	CB= Christmas Break (NO SCHOOL)
19 - CB	20 - CB	21 - CB	22 - CB	23 - CB	
26 - CB	27 - CB	28 - CB	29 - CB	30 - CB	
<b>JANUARY 2023</b>					
2-T	3-S	4	5	6	T = Teachers Return
9	10	11	12	13	S = Students Return
16- MLK, SMD	17	18	19	20	MLK = Martin Luther King Day (No School), Snow Make-up Day
23	24	25 - EL	26	27 - MT	MT=Mid Term (19 days)
30	31				EL = eLearning Day
<b>FEBRUARY 2023</b>					
		1	2	3	WB=Winter Break (No School), Snow Make-up Day
6	7	8	9	10	
13	14	15	16	17	
20 - WB, SMD	21 - WB, SMD	22	23	24	
27	28				
<b>MARCH 2023</b>					
		1	2	3	E= End of 3rd 9 weeks (46 days)
6	7	8	9	10 - E	SB=Spring Break (NO SCHOOL)
13	14	15	16	17	
20	21	22	23	24	
27 - SB	28 - SB	29 - SB	30 - SB	31 - SB	
<b>APRIL 2022</b>					
3	4	5	6	7	MT=Mid Term (20 days)
10	11	12	13	14 - MT	
17	18	19	20	21	
24	25	26	27	28	
<b>MAY 2023</b>					
1	2	3	4	5	MD= Memorial Day
8	9	10	11	12	E= End of 4th 9 weeks (48 days)
15	16	17	18	19	SM= End of 2nd Semester (94 days)
22	23	24 - E, SM	25 - T	26 - SMD	T=Teacher Record Day -1/2 day *move to end of SMD if needed
29 - MD	30 - SMD	31 - SMD			SMD=Snow Make-up Day if needed

\*EL=eLearning Days scheduled on the calendar will be used for staff professional development. Students will not physically attend school those days. WBCCSC will also use eLearning Days in lieu of snow make up days for the 2022-2023 school year. \*Consecutive eLearning days will be limited to three days. The fourth consecutive missed day will require a snow make-up day.



Western Boone County Community School Corporation  
1201 North State Road 75  
Thorntown, IN 46071  
765.482.6333 o.  
765.482.0890 f.  
[www.weboschools.org](http://www.weboschools.org)

To: WBOCCSC Board Members  
From: Rob Ramey, Superintendent *RWR*  
Re: 2021-2022 Pre-Kindergarten Tuition Rates

I recommend PK tuition increase to \$240.00 per month for the 2021-2022 school year. This is an increase of \$10.00 per month from the 2019-2020 school year. With the increase, administration is seeking to maintain the PK program as a self-supporting program. This is due to the fact that WBOCCSC does not receive state tuition support for PK.

Thank you for your consideration.



Western Boone Jr/Sr High School  
Leslie Baker, Director of Bands  
1205 N. St. Rd. 75  
Thorntown, IN 46071  
[leslie.baker@webo.k12.in.us](mailto:leslie.baker@webo.k12.in.us)

To Marching Band Students and Parents,

I am excited to announce that this year's marching show will be titled "Star Crossed." We've got great ideas for this show and are looking forward to making it happen! After our 18<sup>th</sup> place finish at the State Fair, I am so excited to raise the bar even higher for this year!

Please note that we will start rehearsing music and marching technique after school starting in April. I understand that students have other sports and activities that they are involved in. Students who were in the marching band last year know that it was extremely helpful for us to start getting our fundamentals learned early. Marching band members will be encouraged, though not obligated, to attend these spring rehearsals.

The expected dates for the 2021 marching band are listed below and will be sent to the school board for approval.

- July 12<sup>th</sup> through 16<sup>th</sup>**, Full Band 5:00-8:00 – This week will be nothing but setting drill in the evening.  
Drumline 1:00-4:00 - \*This is the same as last year. We added this and it worked out well!
- July 19<sup>th</sup> through 22<sup>nd</sup>**, 8:00-4:00 – Band camp- cleaning music and putting it with the drill
- Friday, July 23<sup>rd</sup>** – Competition Day (Location TBA)
- Saturday, July 24<sup>th</sup>** – Competition Day (Location TBA)
- July 26<sup>th</sup> through 29<sup>th</sup>**, 8:00-4:00 – More band camp
- Friday, July 30<sup>th</sup>** – Competition Day (Location TBA)
- Saturday, July 31<sup>st</sup>** - Competition Day (Location TBA)
- August 2<sup>nd</sup> through 5<sup>th</sup>** – 8:00-12:00 – drill/music cleaning (May cancel a day if we don't need it!)
- Friday, August 6<sup>th</sup>**- State Fair Band Day Competition!

Please note that all students who return the attached form will be enrolled in the applied music course for the 2021 summer school session. This means that there will be one arts credit earned for completing the summer. Please know also, that once you return this form, it is important for you to show up for all rehearsals and performances. I will be getting the drill written soon. Backing out after you have committed will result in holes in the drill, which will hurt our performance. I will be allowing participation in local fair activities and splitting the time with athletics; however, you will need to provide in writing what the scheduling conflicts are. Unexcused absences will lower your overall grade by one letter grade. FAILURE TO ATTEND will result in an F for the class. Please make certain you add all dates to your family calendar. By signing up for marching band, you will be expected to be present at the events listed above. ANY CHANGES TO THE SCHEDULE WILL BE ANNOUNCED ASAP!

## 2021 Western Boone Jr/Sr High Marching Band Registration Form

I have read the attached information about the Summer 2021 Marching Band Season. I understand that by returning this signed form, \_\_\_\_\_ (student's name) will be enrolled in the applied music summer class for 2021. I have read all dates and times mentioned above and he/she will be present.

Student's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Parent/Guardian Name (printed): \_\_\_\_\_ Relationship: \_\_\_\_\_

Parent/Guardian Signature: \_\_\_\_\_ Date: \_\_\_\_\_

If you foresee any scheduling conflicts due to summer sports or local fair events, please list them here:

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**Please have this form turned in by Friday, January 29<sup>th</sup>.**



## **EDUCATION & OPERATION FUND COMPARISON REPORT**

As of February 28, 2021, the Education Fund cash balance was \$3,558,818. The Education Fund expenditures for February 2021 were \$756,043. As of the end of February 2021, a total of 16% of the 2021 appropriation was expended.

As of February 28, 2021, the Operation Fund cash balance was \$931,508. The Operation Fund expenditures for February 2021 were \$370,936. As of the end of February 2021, a total of 14% of the 2021 appropriation was expended.

Western Boone County Community School Corporation has investments in the form of various interest-bearing accounts and deposits with financial institutions and has earned interest as follows:

<u>Financial Institution</u>	<u>2021 YTD Interest Earned</u>
Home National Bank	\$1,968.19

FYI: The February 2021 - Fund, Appropriation, and Revenue Reports are posted to the School Board Document Site

# AIA<sup>®</sup> Document B132™ – 2019

## **Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition**

**AGREEMENT** made as of the Eighth day of March in the year Two Thousand Twenty One  
(*In words, indicate day, month, and year.*)

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

Western Boone County Community School Corporation  
1201 N. State Road 75  
Thorntown, IN 46071-9229

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

The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

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

Additions & Renovations to the Existing Thorntown Elementary School  
200 W. Mill Street  
Thorntown, IN 46071

The Construction Manager (also referred to herein as the "C.M.):  
(*Name, legal status, address, and other information*)

Tecton Construction Management, Inc.  
102 North Third Street  
Suite 201  
Lafayette, IN 47901

The Owner and Architect agree as follows.

### **Project Description:**

The existing elementary school is approximately 68,000 gsf and most will receive varying amounts of renovation. The additions consist of approximately 20,000 gsf. See Exhibit "A" for concept diagrams of building and site development.

**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.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232™–2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

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- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
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- 7 COPYRIGHTS AND LICENSES
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- 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.)*

See Exhibit A.

§ 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.)*

The Architect and Owner with consultation from the Construction Manager shall collaboratively work together in order to mutually determine the appropriate physical characteristics for the Project.

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

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

Hard cost and C.M. fees estimated at \$14,062,500.00.

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

- .1 Design phase milestone dates:

Schematic Design Documents delivered to the Owner by no later than: May 15, 2021

Design Development Documents delivered to the Owner by no later than: August 1, 2021  
Construction Documents delivered to the Owner by no later than: November 1, 2021

**2 Construction commencement date:**

Estimated to be March of 2022.

**3 Substantial Completion date or dates:**

There will be multiple phases of construction and each phase will have an individual date for substantial completion and occupancy.

**4 Other milestone dates:**

It is estimated that all phases of construction will be completed by July 15, 2024.

**§ 1.1.5** The Owner intends the following procurement method for the Project:  
*(Identify method such as competitive bid or negotiated contract.)*

Construction Manager as adviser (CMA) approach with competitive bidding on multiple bid packages to be handled by Tecton Construction Management, Inc. as CMA with Architect's assistance.

**§ 1.1.6** The Owner's requirements for multiple bid packages, or phased construction are set forth below:  
*(Identify any requirements for fast-track scheduling or phased construction and, if applicable, list number and type of bid/procurement packages.)*

As generally described in Sections 1.1.4.3 and 1.1.5. For the avoidance of doubt, this Project does not involve accelerated or fast-track design and construction.

**§ 1.1.7** The Owner's anticipated Sustainable Objective for the Project:  
*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

N/A

**§ 1.1.7.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective. N/A

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 5.4:  
*(List name, address, and other contact information.)*

Mr. Rob Ramey, Superintendent  
Western Boone County Community School Corporation  
1201 N. State Road 75  
Thorntown, IN 46071-9229  
Telephone Number: 765.482.6333  
Rob.Ramey@webo.k12.in.us

**§ 1.1.9** 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.)*

To Be Determined

§ 1.1.10 The Owner shall retain the following consultants and Contractors:  
(List name, legal status, address, and other contact information.)

.1 Construction Manager:

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1.)

Tecton Construction Management, Inc.  
102 North Third Street, Suite 201  
Lafayette, IN 47901

.2 Land Surveyor:

To Be Determined

.3 Geotechnical Engineer:

To Be Determined

.4 Civil Engineer: By Architect

.5 Other consultants and Contractors:

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

Unknown at this time

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:  
(List name, address, and other contact information.)

Jeremy Ogle, Project Architect  
The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804  
Telephone No: 260.424.6516  
jogle@moakepark.com

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Structural Engineering Services, LLC

Init.

15610 Lima Road  
Huntertown, IN 46748  
Telephone Number: 260.637.7867

**.2 Mechanical Engineer:**

SCO Engineering, LLC  
6534 Constitution Drive  
Fort Wayne, IN 46804  
Telephone No.: 260.436.9213

**.3 Electrical Engineer:**

SCO Engineering, LLC  
6534 Constitution Drive  
Fort Wayne, IN 46804  
Telephone No.: 260.436.9213

**.4 Civil Engineer:**

Mark Reinhard  
Engineering Resources Inc.  
4175 New Vision Drive  
Fort Wayne, IN  
46825  
mark@eri.consulting

**§ 1.1.12.2 Consultants retained under Supplemental Services:**

To Be Determined if required.

**§ 1.1.12.3** The Consultants identified in Section 1.1.12.1 shall not be changed without the Owner's prior written consent, which consent shall not be unreasonably withheld.

**§ 1.1.13 Other Initial Information on which the Agreement is based:**

See Exhibit A

**§ 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, if and as appropriate, adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner may 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.

§ 1.4 The term "Contractors" refers to persons or entities who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager. The term "Contractors" is used to refer to such persons or entities, whether singular or plural. The term does not include the Owner's own forces, or Separate Contractors, which are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

## 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.

§ 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 provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Jeremy Ogle shall be the representative authorized for the Project.

§ 2.5 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.

§ 2.6 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.

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars and No Cents (\$ 1,000,000.00 ) for each occurrence and Three Million Dollars and No Cents (\$ 3,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and No Cents (\$ 1,000,000.00 ) per claim.

§ 2.6.3 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 2.6.1 and 2.6.2, 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.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars and No Cents (\$ 500,000.00 ) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars and No Cents (\$ 2,000,000.00 ) per claim and Two Million Dollars and No Cents (\$ 2,000,000.00 ) in the aggregate.

**§ 2.6.7 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 actual or alleged negligent acts or omissions of Architect, the Consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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.

**§ 2.6.8** The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6. The Owner shall be given thirty (30) days written notice prior to the cancellation, expiration, material modification or nonrenewal of the policy during the duration of the Project. The Architect shall ensure that all of the Consultants carry and maintain commercial general liability, umbrella, automobile, and workers' compensation insurance that adequately protects the Owner and that the Consultants maintain professional liability insurance of at least one million dollars in the aggregate and per claim.

**§ 2.7** The Architect shall be responsible for the quality, technical accuracy, timely completion, and coordination of all plans, studies, designs, reports, Construction Documents and other services furnished by the Architect under this Agreement. The Architect shall give prompt written notice to the Owner if the Architect discovers or becomes aware of a fault, defect, error, omission, or inconsistency related to the Project or in the Contract Documents. The Architect shall, without additional compensation, promptly correct or revise any errors, omissions, or other deficiencies in its plans, studies, designs, reports, Construction Documents and other services that are a result of the Architect's errors, omissions or negligent acts.

**§ 2.8** The Architect represents that it is licensed to practice architecture as required by law in the State of Indiana.

### **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, civil/site engineering services, and interior design services for all building finishes. Services not set forth in this Article 3 are Supplemental or Additional Services.

**§ 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.

**§ 3.1.2** The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's other 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, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency, in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall be consistent with Section 1.1.4 and include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. This schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager'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. The Architect shall promptly commence and expeditiously perform the services and shall perform the services in accordance with the schedule for the performance of the Architect's services, and such time limits identified in the schedule or this Agreement are of the essence of this Agreement. In the event the Architect's services are delayed due to causes beyond the Architect's control, the Architect shall be entitled to an equitable extension of time to the applicable time limits provided the Architect advises the Owner in writing of such delays and its resulting time impact within five business days of the occurrence of the cause of the delay.

**§ 3.1.4** The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take



other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

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

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, 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.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager 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 Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement 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 Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner and Construction Manager 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, to the Owner and Construction Manager, 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 Construction Manager's review and 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.

*(Paragraph Deleted)*

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager 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 the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate such revisions in the Design Development Phase.

**§ 3.2.8** In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

### **§ 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 Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and 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** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

**§ 3.3.3** Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

### **§ 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 Construction Manager's review and 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, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager 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 agreements between the Owner and Contractors; and (3) the Conditions of the Contracts for Construction (General, Supplementary and other Conditions); and (4) a project manual that includes the Conditions of the Contracts for Construction and Specifications, and may include bidding requirements and sample forms.

**§ 3.4.4** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

**§ 3.4.5** Upon receipt of the Construction Manager's information and an estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and

Construction Manager 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. The Owner shall require multiple bid packages to be issued and publicly bid in accordance with Ind. Code 36-1-12. The scope and number of the various bid packages shall be determined by Owner after consultation with the Architect and Construction Manager during the design phase.

### § 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 and Construction Manager in bidding the Project by assisting in the following:

- .1 assisting the Construction Manager with the distribution of Bidding Documents to prospective bidders;
- .2 assisting the Construction Manager with conducting a pre-bid conference for prospective bidders;
- .3 preparing responses in coordination with the Construction Manager to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda;
- .4 assisting the Construction Manager with conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the Owner; and
- .5 performing the Architect's Services in accordance with applicable public bidding laws and requirements.

§ 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.

§

3.5.2.4 The Architect shall not restrain or restrict bidding for this Project in violation of Ind. Code 24-1-2-3 (Restraint of bidding for letting contracts; offense).

### § 3.5.3 Intentionally Omitted.

*(Paragraphs Deleted)*

§ 3.5.4 Subject to the Architect's standard of care, the Construction Documents and other services provided by the Architect shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations.

### § 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 A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as amended by the Owner.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager 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 Contractors' 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 Construction Manager, or acts or omissions of the Contractors 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 initial 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 and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect shall not be a guarantor of the CM's work, nor any Contractor, or Sub-Contractor's performance.

**§ 3.6.2.2** The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, 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 Contractors, 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 the Construction Manager, Owner, or Contractors through the Construction Manager. 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 the Owner and Contractors, 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 Contractors designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A232-2019, the Architect, with the assistance of the Construction Manager, shall render initial decisions on Claims between the Owner and Contractors as provided in the Contract Documents.

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

**§ 3.6.3.1** Not more frequently than monthly, the Architect shall review and certify an application for payment. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there is more than one Contractor responsible for performing different portions of the Project, the Architect shall review the Project Application and Project Certificate for Payment, with the Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed, and certified. The Architect shall certify the total amount due all Contractors collectively and shall issue a Project Certificate for Payment in the total of such amounts.

**§ 3.6.3.2** The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's

Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, 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 Contractors are 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.

**§ 3.6.3.3** The issuance of a Certificate for Payment or a Project 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 each Contractor's right to payment, or (4) ascertained how or for what purpose that Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.4** 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 Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals transmitted by the Construction Manager 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 Contractors' submittals such as Shop Drawings, Product Data and Samples, that the Construction Manager has reviewed, recommended for approval, and transmitted to the Architect. The Architect's review of the submittals shall only be 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 Contractors' responsibilities. 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 Contractors 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 Contractors' design professionals, provided the submittals bear such professionals' 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** After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, 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 so as not to delay the critical path of the construction of the Project. 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 transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner’s approval and execution in accordance with the Contract Documents.

**§ 3.6.5.2** 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. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

**§ 3.6.5.3** The Architect and Construction Manager shall maintain records relative to changes in the Work.

**§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect, assisted by the Construction Manager, shall:

- .1 conduct inspections to determine the date of Substantial Completion and the date of final completion;
- .2 issue a Certificate of Substantial Completion prepared by the Construction Manager;
- .3 review written warranties and related documents required by the Contract Documents and received from the Contractors, through the Construction Manager; and
- .4 after receipt of a final Contractor’s Application and Certificate for Payment or a final Project Application and Project Certificate for Payment from the Construction Manager, 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 and Construction Manager to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the lists submitted by the Construction Manager and Contractors 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 each of the Contractors, 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 Contractors, through the Construction Manager: (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 Contractors under the Contract Documents.

**§ 3.6.6.5** 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 and Construction Manager 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.

*(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.)*

Supplemental Services	Responsibility <i>(Architect, Owner or Not Provided)</i>
<b>§ 4.1.1.1</b> Assistance with selection of Construction Manager	N/A
<b>§ 4.1.1.2</b> Programming	Not Provided

§ 4.1.1.3	Multiple preliminary designs	Architect (Completed in Facility Master Plan)
§ 4.1.1.4	Measured drawings	Not Provided
§ 4.1.1.5	Existing facilities surveys	Architect (Completed in Facility Master Plan)
§ 4.1.1.6	Site evaluation and planning	Architect (Included)
§ 4.1.1.7	Building Information Model management responsibilities	Not Provided
§ 4.1.1.8	Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9	Civil engineering	Architect (Included)
§ 4.1.1.10	Landscape design	Architect (Included)
§ 4.1.1.11	Architectural interior design	Architect (Included Building finishes Only)
§ 4.1.1.12	Value analysis	Not Provided (By C.M. to furnish)
§ 4.1.1.13	Cost estimating	Not Provided (By C.M. to furnish)
§ 4.1.1.14	On-site project representation (full-time)	Not Provided
§ 4.1.1.15	Conformed documents for construction	Not Provided
§ 4.1.1.16	As-designed record drawings	Architect (Included)
§ 4.1.1.17	As-constructed record drawings	Not Provided (By C.M. to furnish)
§ 4.1.1.18	Post-occupancy evaluation	Not Provided
§ 4.1.1.19	Facility support services	Not Provided
§ 4.1.1.20	Tenant-related services	Not Provided
§ 4.1.1.21	Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22	Telecommunications/data design	Not Provided
§ 4.1.1.23	Security evaluation and planning	Not Included
§ 4.1.1.24	Commissioning	Not Included
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26	Historic preservation	Not Provided
§ 4.1.1.27	Furniture, furnishings, and equipment design	Not Provided (By Owner)
§ 4.1.1.28	Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29	Other Supplemental Services	Not Provided

**§ 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.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 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.)*

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

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

N/A

**§ 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 E235™-2019, Sustainable Projects Exhibit,

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Construction Manager as Adviser Edition, 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. Any Additional Services shall only be provided and be reimbursable by the Owner if authorized in writing by Owner, prior to commencement of such services.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing 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 material change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to the Architect including but not limited to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service, where such enactment or revision occurred after the preparation of the Design Development Documents by the Architect;
- .4 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;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors and provided the Architect has informed the Owner and Construction Manager in writing of such reasonable time requirements;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto or where the dispute relates to in whole or in part to the Architect's negligence, errors or omissions;
- .10 Intentionally omitted;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 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 in writing 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

*(Paragraphs Deleted)*



- Evaluating an extensive number of Claims as the Initial Decision Maker; or
- 2 Evaluating more than three (3) substitutions proposed by the Owner, Construction Manager or Contractors 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 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors
- 2 One per week visits to the site by the Architect during construction
- 3 One ( 1 ) 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 One ( 1 ) inspections for any portion of the Work to determine final completion
- 5 **If additional reviews or site visits are required because Contractor(s) has not progressed its work and fails to notify Architect that it is not ready for scheduled visits, Owner shall pay Architect for such additional visits to the extent Owner recovers such costs from the responsible Contractor(s), and Owner agrees to use good faith efforts to recover such costs from the**

**Contractor(s).**

**§ 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 anticipated date of Substantial Completion identified in the Initial Information, 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 thirty-two ( 32 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

**§ 4.2.6** Owner, without nullifying this Agreement, may direct Architect in writing to make changes including additions and deletions of the Architect's Basic Services. Adjustment, if any, in the compensation or schedule resulting from such changes shall be set forth in a written document, to be signed by Owner and Architect. Notwithstanding anything herein to the contrary, in no event shall the Architect be reimbursed for claimed Additional Services or Supplemental Services to the extent such Additional Services or Supplemental Services were caused by an error or omission of the Architect or its consultants nor where the Architect performs Additional Services or Supplemental Services without the prior express written authorization of the Owner.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall upon request 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 retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser, as modified by Owner and Construction Manager. The Owner shall upon request provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

**§ 5.3** 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 the Owner determines is 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 and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 5.3.1 Intentionally Omitted.**

**§ 5.4** 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. Notwithstanding anything to the contrary, any approvals given by the Owner or its representative shall not relieve the Architect of any of its obligations under this Agreement.

**§ 5.5** 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.

**§ 5.6** 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.

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

**§ 5.8** If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E235™-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, attached to this Agreement.

**§ 5.9** The Owner shall with the Architect's assistance 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.

**§ 5.10** 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.

**§ 5.11** 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.

**§ 5.12** The Owner shall provide prompt written notice to the Architect and Construction Manager 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 but the Owner's failure to do so shall not relieve the Architect of its obligations under this Agreement, and the Owner shall have no duty of observation, inspection or investigation.

**§ 5.13** The Owner shall endeavor to communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall endeavor to include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

**§ 5.14** Before executing the Contracts for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contracts for Construction with the Architect's services set forth in this Agreement.

The Owner shall provide the Architect a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

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

*(Paragraph Deleted)*

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of the 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 also includes the Construction Management fees. 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 Architect's consultants; the costs of the land, right-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. The Cost of the Work does not include any soft costs.

§ 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 C.M..

§ 6.3 In preparing estimates of the Cost of Work, the C.M. 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 C.M.'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 C.M. shall provide such as estimate.

§ 6.4 If, through no fault of the C.M., 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 may be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the C.M.'s estimate of the Cost of the Work exceeds the Owner's budget for the Cost of Work, the C.M. shall make appropriate recommendations to the Owner and Architect to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the C.M. and 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 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 of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect and Construction Manager, 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, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.8 After incorporation of modifications under Section 6.7, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is caused by the Architect including but not limited due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## 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.

§ 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 perpetual, irrevocable, royalty-free and 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 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 Contractors, Construction Manager, 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 applicable law.

§ 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 A232-2019, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 Except to the extent covered by any applicable insurance policies, including but not limited to the Architect's professional liability insurance policy, 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.

§ 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 in accordance with the Indiana Rules of Alternative Dispute Resolution. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and the parties shall promptly confer and agree on a mediator. 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 with venue for any proceeding at law or in equity related to or arising out of this Agreement being in a court of competent jurisdiction in Boone County, Indiana, and the parties hereby waive any right to object to this exclusive venue. Each party further consents to the personal jurisdiction by said courts over it and hereby expressly waives, in the case of any such action, any defenses thereto based on jurisdictions, venue, or forum non conveniens
- 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.

*(Paragraphs Deleted)*

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make undisputed payments to the Architect in accordance with this Agreement and the Owner fails to remedy its failure to make payment of undisputed amounts within seven (7) days after receipt of written notice from the Architect advising of such non-payment, 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 and provided the Owner failed to pay undisputed amounts owing to the Architect during this seven (7) day period, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a proper 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 undisputed 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 in the event of a proper suspension.

**§ 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 materially 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 if 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:

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

.1 Termination Fee:

Zero Dollars (\$0).

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

Zero Dollars (\$0).

**§ 9.8** Intentionally Omitted.

§ 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 A232-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Architect and Construction Manager.

§ 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, and 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. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of the Architect's services, the Architect may at its option upon written notice to the Owner suspend performance of those services that are to be performed in the affected area of the Project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials. The Architect shall be obligated to promptly report in writing any such discovery to the Owner.

§ 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 Intentionally Omitted.

§ 10.8.1

§ 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.

§ 10.10 The acceptance or approval by the Owner of any designs, Construction Documents, or other services by the Architect shall not in any way relieve the Architect of responsibility for the technical accuracy of its services or its obligations under this Agreement.

**ARTICLE 11 COMPENSATION**

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

- .1 Stipulated Sum  
(Insert amount)

Fee is based on the basis of releasing a complete set of drawings for the entire scope of the project and does not include early release of or fast-tracking bid packages.

Eight hundred sixty two thousand five hundred dollars and no cents (\$862,500.00)\*  
\*Includes \$19,200.00 previously paid.

- .2 Percentage Basis N/A  
(Insert percentage value)

( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

- .3 Other N/A  
(Describe the method of compensation)

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

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

Included in the Stipulated Sum identified in Section 11.1.1.

§ 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:

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

To Be Determined at the time Owner requests such services and such compensation shall be a mutually agreeable fixed amount or hourly at the rates identified in Exhibit B with or without a not to exceed amount.

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

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

§ 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:

Schematic Design Phase	\$129,375.00	15	%)
Design Development Phase	\$172,500.00	20	%)



Construction Documents Phase	\$327,750.00	38	%)
Procurement Phase	17,250.00	2	%)
Construction Phase	215,625.00	25	%)
Total Basic Compensation	<u>\$862,500.00</u>	100	%)
	Includes \$19,200.00 previously paid. (Applied to Schematic Design Phase)		

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

See Exhibit "B"

Employee or Category	Rate (\$0.00)
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§ 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 mileage and subsistence; mileage expense is \$.055 per mile.
- .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, reproductions, for final bid documents, if required;
- .5 Postage, handling, and delivery;

(Paragraph Deleted)

- 6 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- 7 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;
- 8 All taxes levied on professional services and on reimbursable expenses;

(Paragraph Deleted)

- 9 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and

*(Paragraph Deleted)*

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus five percent ( 5 %) of the expenses incurred.

#### § 11.9 Architect's Insurance

If the types and limits of coverage required in Section 2.6 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:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)*

Zero Dollars (\$0).

#### § 11.10 Payments to the Architect

##### § 11.10.1 Initial Payments

§ 11.10.1.1 No initial payments are due under this Agreement.

##### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within thirty (30) days of Owner's receipt of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after the Owner's receipt of the invoice 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.)*

Prime Rate as published by The Wall Street Journal plus 1%

§ 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 is responsible for the amounts.

§ 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.)*

§ 12.1 The architectural services to be provided pursuant to this Agreement are being performed solely for the benefit of the Owner, and no such benefit is meant to be conferred upon person or entity not party to this Agreement, and no such persons or entity should rely upon this Architect's performance of those services to the Owner; and no claim against the Architect shall accrue to: any contractor, subcontractor, consultant, engineer, supplier, fabricator, manufacturer, tenant, surety, or any third party as result of the Agreement of the performance or non-performance of architectural services on this project. The Architect may at the time of the preparation of the bidding documents including the AIA A232 general conditions request that the provisions of this Paragraph appear in the General Conditions of the contract documents of construction.

§ 12.2 To the extent that any incorporated document contradicts the provision of this Agreement, this Agreement shall be deemed to control.

§ 12.3 To the extent any of the Basic Services or Additional Services have been provided before the execution of this Agreement, the Owner and Architect nevertheless agree that this Agreement shall control the rights and responsibilities of the parties hereto including as to those Basic Services and Additional Services previously performed. For the avoidance of doubt, payments made to the Architect prior to the execution of this Agreement by the Owner related to this Project shall be credited as payments towards the compensation owed to the Architect under this Agreement.

§ 12.4 The Architect is an independent contractor and in providing its services under this Agreement shall not represent to any third party that its authority is greater than that granted to it under this Agreement.

§ 12.5 This Agreement may be executed in separate counterparts and delivered by facsimile or electronic scanned format, with the parties hereby acknowledging that each separately executed counterpart will be afforded the same force and effect as a duly signed original document, even if an executed counterpart is delivered only via facsimile copy or electronic scanned copy, and all fax, .pdf and electronic signatures shall be acceptable and binding on the parties.

#### 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 B132™-2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition

*(Paragraph Deleted)*

*(Paragraph Deleted)*

- .3 Exhibits:

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

*(Paragraph Deleted)*

- Other Exhibits incorporated into this Agreement:

*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

Exhibit "A" – Concept Diagrams for Building and Site  
Exhibit "B" – Hourly Rates for Design Team

- .4 Other documents:

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

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

Western Boone County Community School Corporation

The Moake Park Group, Inc.

OWNER (Signature)

ARCHITECT (Signature)

(Printed name and title)

Jeff E. Schroeder, President

(Printed name, title, and license number, if applicable)

# **Additions and Deletions Report for AIA® Document B132™ – 2019**

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 16:09:39 ET on 03/05/2021.

**PAGE 1**

**AGREEMENT** made as of the Eighth day of March in the year Two Thousand Twenty One

...

Western Boone County Community School Corporation  
1201 N. State Road 75  
Thorntown, IN 46071-9229

...

The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

...

Additions & Renovations to the Existing Thorntown Elementary School  
200 W. Mill Street  
Thorntown, IN 46071

...

The Construction Manager: Manager (also referred to herein as the "C.M."):

...

Tecton Construction Management, Inc.  
102 North Third Street  
Suite 201  
Lafayette, IN 47901

...

Project Description:

...

The existing elementary school is approximately 68,000 gsf and most will receive varying amounts of renovation. The additions consist of approximately 20,000 gsf. See Exhibit "A" for concept diagrams of building and site development.

PAGE 2

TABLE OF ARTICLES

...

See Exhibit A.

...

The Architect and Owner with consultation from the Construction Manager shall collaboratively work together in order to mutually determine the appropriate physical characteristics for the Project.

...

Hard cost and C.M. fees estimated at \$14,062,500.00.

...

.1 Design phase milestone dates, if any: dates:

...

Schematic Design Documents delivered to the Owner by no later than: May 15, 2021

PAGE 3

Design Development Documents delivered to the Owner by no later than: August 1, 2021

...

Construction Documents delivered to the Owner by no later than: November 1, 2021

...

Estimated to be March of 2022.

...

There will be multiple phases of construction and each phase will have an individual date for substantial completion and occupancy.

...

It is estimated that all phases of construction will be completed by July 15, 2024.

...

Construction Manager as adviser (CMa) approach with competitive bidding on multiple bid packages to be handled by Tecton Construction Management, Inc. as CMa with Architect's assistance.

...

§ 1.1.6 The Owner's requirements for ~~accelerated or fast-track design and construction~~, multiple bid packages, or phased construction are set forth below:

...

As generally described in Sections 1.1.4.3 and 1.1.5. For the avoidance of doubt, this Project does not involve accelerated or fast-track design and construction.

...

N/A

...

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E235-2019, Sustainable Projects Exhibit, Construction Manager as Adviser Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E235-2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E235-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective. N/A

...

Mr. Rob Ramey, Superintendent  
Western Boone County Community School Corporation  
1201 N. State Road 75  
Thorntown, IN 46071-9229  
Telephone Number: 765.482.6333  
Rob.Ramey@webo.k12.in.us

...

To Be Determined

**PAGE 4**

Tecton Construction Management, Inc.

...

102 North Third Street, Suite 201

...

Lafayette, IN 47901

...

To Be Determined

...

To Be Determined

...

.4 Civil Engineer: By Architect

...

Unknown at this time

...

Jeremy Ogle, Project Architect  
The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804  
Telephone No: 260.424.6516  
jogle@moakepark.com

...

Structural Engineering Services, LLC

PAGE 5

15610 Lima Road

...

Huntertown, IN 46748

...

Telephone Number: 260.637.7867

...

SCO Engineering, LLC

...

6534 Constitution Drive

...

Fort Wayne, IN 46804

...

Telephone No.: 260.436.9213

...

SCO Engineering, LLC

...

6534 Constitution Drive



...

Fort Wayne, IN 46804

...

Telephone No.: 260.436.9213

...

.4 Civil Engineer:

...

Mark Reinhard

...

Engineering Resources Inc.

...

4175 New Vision Drive

...

Fort Wayne, IN

...

§ 46825

...

mark@eri.consulting

...

§ 1.1.12.2 Consultants retained under Supplemental Services:

...

To Be Determined if required.

...

§ 1.1.12.3 The Consultants identified in Section 1.1.12.1 shall not be changed without the Owner's prior written consent, which consent shall not be unreasonably withheld.

...

See Exhibit A

...

§ 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 shall, if and as appropriate, adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall may 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.

#### PAGE 6

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Jeremy Ogle shall be the representative authorized for the Project.

...

§ 2.6.1 Commercial General Liability with policy limits of not less than One Million Dollars and No Cents (\$ 1,000,000.00 ) for each occurrence and Three Million Dollars and No Cents (\$ 3,000,000.00 ) in the aggregate for bodily injury and property damage.

...

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and No Cents (\$ ) ~~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.~~ 1,000,000.00 ) per claim.

...

§ 2.6.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars and No Cents (\$ 500,000.00 ) each accident, ~~(\$ )~~ each employee, and ~~(\$ )~~ policy limit.

...

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars and No Cents (\$ 2,000,000.00 ) per claim and Two Million Dollars and No Cents (\$ 2,000,000.00 ) in the aggregate.

#### PAGE 7

§ 2.6.7 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, actual or alleged negligent acts or omissions of Architect, the Consultants, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.~~ 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.

...

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6. The Owner shall be given thirty (30) days written notice prior to the cancellation, expiration, material modification or nonrenewal of the policy during the duration of the Project. The Architect shall ensure that all of the Consultants carry and maintain commercial general liability, umbrella, automobile, and workers' compensation insurance that adequately protects the Owner and that the Consultants maintain professional liability insurance of at least one million dollars in the aggregate and per claim.

...

§ 2.7 The Architect shall be responsible for the quality, technical accuracy, timely completion, and coordination of all plans, studies, designs, reports, Construction Documents and other services furnished by the Architect under this Agreement. The Architect shall give prompt written notice to the Owner if the Architect discovers or becomes aware of a fault, defect, error, omission, or inconsistency related to the Project or in the Contract Documents. The Architect shall, without additional compensation, promptly correct or revise any errors, omissions, or other deficiencies in its plans, studies, designs, reports, Construction Documents and other services that are a result of the Architect's errors, omissions or negligent acts.

...

§ 2.8 The Architect represents that it is licensed to practice architecture as required by law in the State of Indiana.

...

§ 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, civil/site engineering services, and interior design services for all building finishes. Services not set forth in this Article 3 are Supplemental or Additional Services.

...

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall be consistent with Section 1.1.4 and include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. This schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager'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. The Architect shall promptly commence and expeditiously perform the services and shall perform the services in accordance with the schedule for the performance of the Architect's services, and such time limits identified in the schedule or this Agreement are of the essence of this Agreement. In the event the Architect's services are delayed due to causes beyond the Architect's control, the Architect shall be entitled to an equitable extension of time to the applicable time limits provided the Architect advises the Owner in writing of such delays and its resulting time impact within five business days of the occurrence of the cause of the delay.

PAGE 8

~~§ 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.~~

PAGE 10

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager 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. The Owner shall require multiple bid packages to be issued and publicly bid

in accordance with Ind. Code 36-1-12. The scope and number of the various bid packages shall be determined by Owner after consultation with the Architect and Construction Manager during the design phase.

...

**§ 3.5.2.2** The Architect shall assist the Owner and Construction Manager in bidding the Project by assisting in the following:

...

**.1** ~~facilitating assisting the Construction Manager with~~ the distribution of Bidding Documents to prospective bidders;

...

**.2** ~~organizing and assisting the Construction Manager with~~ conducting a pre-bid conference for prospective bidders;

...

**.3** preparing responses in coordination with the Construction Manager 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 assisting the Construction Manager with~~ conducting the opening of bids, and subsequently documenting and distributing the bidding results, as directed by the ~~Owner~~ Owner; ~~and~~

...

**.5** performing the Architect's Services in accordance with applicable public bidding laws and requirements.

...

### **§ 3.5.3** Negotiated Proposals

...

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.~~ **3.5.2.4** The Architect shall not restrain or restrict bidding for this Project in violation of Ind. Code 24-1-2-3 (Restraint of bidding for letting contracts; offense).

...

~~§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by:~~ **3.5.3** Intentionally Omitted.

...

~~.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; § 3.5.4 Subject to the Architect's standard of care, the Construction Documents and~~

...  
~~4 participating in negotiations with prospective Contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner, other services provided by~~

...  
~~§ 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, consult with the Construction Manager, and prepare and distribute addenda identifying approved substitutions to all prospective contractors. the Architect shall comply with all applicable federal, state and local laws, codes, ordinances, rules and regulations.~~

...  
~~§ 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 A232™-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2019, these modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. Edition, as amended by the Owner.~~

#### PAGE 11

~~§ 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 and the Construction Manager (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect shall not be a guarantor of the CM's work, nor any Contractor, or Sub-Contractor's performance.~~

#### PAGE 12

~~§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, 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. promptness so as not to delay the critical path of the construction of the Project. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

PAGE 13

§ 3.6.5.3 The Architect and Construction Manager shall maintain records relative to changes in the Work.

...

§ 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 and Construction Manager to review the facility operations and performance.

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§ 4.1.1.1 Assistance with selection of Construction Manager	<u>N/A</u>
§ 4.1.1.2 Programming	<u>Not Provided</u>
§ 4.1.1.3 Multiple preliminary designs	<u>Architect (Completed in Facility Master Plan)</u>
§ 4.1.1.4 Measured drawings	<u>Not Provided</u>
§ 4.1.1.5 Existing facilities surveys	<u>Architect (Completed in Facility Master Plan)</u>
§ 4.1.1.6 Site evaluation and planning	<u>Architect (Included)</u>
§ 4.1.1.7 Building Information Model management responsibilities	<u>Not Provided</u>
§ 4.1.1.8 Development of Building Information Models for post construction use	<u>Not Provided</u>
§ 4.1.1.9 Civil engineering	<u>Architect (Included)</u>
§ 4.1.1.10 Landscape design	<u>Architect (Included)</u>
§ 4.1.1.11 Architectural interior design	<u>Architect (Included Building finishes Only)</u>
§ 4.1.1.12 Value analysis	<u>Not Provided (By C.M. to furnish)</u>
§ 4.1.1.13 Cost estimating	<u>Not Provided (By C.M. to furnish)</u>
§ 4.1.1.14 On-site project representation (full-time)	<u>Not Provided</u>
§ 4.1.1.15 Conformed documents for construction	<u>Not Provided</u>
§ 4.1.1.16 As-designed record drawings	<u>Architect (Included)</u>
§ 4.1.1.17 As-constructed record drawings	<u>Not Provided (By C.M. to furnish)</u>
§ 4.1.1.18 Post-occupancy evaluation	<u>Not Provided</u>
§ 4.1.1.19 Facility support services	<u>Not Provided</u>
§ 4.1.1.20 Tenant-related services	<u>Not Provided</u>
§ 4.1.1.21 Architect's coordination of the Owner's consultants	<u>Not Provided</u>
§ 4.1.1.22 Telecommunications/data design	<u>Not Provided</u>
§ 4.1.1.23 Security evaluation and planning	<u>Not Included</u>
§ 4.1.1.24 Commissioning	<u>Not Included</u>
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	<u>Not Provided</u>
§ 4.1.1.26 Historic preservation	<u>Not Provided</u>
§ 4.1.1.27 Furniture, furnishings, and equipment design	<u>Not Provided (By Owner)</u>
§ 4.1.1.28 Other services provided by specialty Consultants	<u>Not Provided</u>
§ 4.1.1.29 Other Supplemental Services	<u>Not Provided</u>

...

N/A

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. Any Additional Services shall only be provided and be reimbursable by the Owner if authorized in writing by Owner, prior to commencement of such services.

...

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner in writing 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 material change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;

...

- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to the Architect including but not limited to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;

...

- .3 Services necessitated by enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service; Service, where such enactment or revision occurred after the preparation of the Design Development Documents by the Architect;

...

- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or ~~contractors~~; contractors and provided the Architect has informed the Owner and Construction Manager in writing of such reasonable time requirements;

...

- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party ~~thereto~~; thereto or where the dispute relates to in whole or in part to the Architect's negligence, errors or omissions;

...

- .10 ~~Evaluation of the qualifications of entities providing bids or proposals;~~ Intentionally omitted;

...

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner in writing 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 Project submittal schedule approved by the Architect;~~

...

~~.2 Responding to the Contractors' requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractors 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 Contractors' proposals and supporting data, or the preparation or revision of Instruments of Service;~~

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~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or~~

...

~~.5 Evaluating~~ .2 Evaluating more than three (3) substitutions proposed by the Owner, Construction Manager or Contractors and making subsequent revisions to Instruments of Service resulting therefrom.

...

.1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractors

...

.2 One per week ( - ) visits to the site by the Architect during construction

...

.3 One ( 1 ) 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 One ( 1 ) inspections for any portion of the Work to determine final completion

...

.5 If additional reviews or site visits are required because Contractor(s) has not progressed its work and fails to notify Architect that it is not ready for scheduled visits, Owner shall pay Architect for such additional visits to the extent Owner recovers such costs from the



responsible Contractor(s), and Owner agrees to use good faith efforts to recover such costs from the responsible

...

Contractor(s).

...

§ 4.2.5 If the services covered by this Agreement have not been completed within thirty-two ( 32 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

§ 4.2.6 Owner, without nullifying this Agreement, may direct Architect in writing to make changes including additions and deletions of the Architect's Basic Services. Adjustment, if any, in the compensation or schedule resulting from such changes shall be set forth in a written document, to be signed by Owner and Architect. Notwithstanding anything herein to the contrary, in no event shall the Architect be reimbursed for claimed Additional Services or Supplemental Services to the extent such Additional Services or Supplemental Services were caused by an error or omission of the Architect or its consultants nor where the Architect performs Additional Services or Supplemental Services without the prior express written authorization of the Owner.

...

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall upon request 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 retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. The Owner shall Adviser, as modified by Owner and Construction Manager. The Owner shall upon request provide the Architect with a copy of the scope of services in the agreement executed between the Owner and the Construction Manager, and any subsequent modifications to the Construction Manager's scope of services in the agreement.

...

§ 5.3 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 the Owner determines is 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 and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

PAGE 17

~~§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractors to remove and replace previously installed Work. If~~

~~the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs. Intentionally Omitted.~~

...

§ 5.4 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. Notwithstanding anything to the contrary, any approvals given by the Owner or its representative shall not relieve the Architect of any of its obligations under this Agreement.

...

§ 5.9 The Owner shall ~~with the Architect's assistance~~ 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.

...

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager 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. Service but the Owner's failure to do so shall not relieve the Architect of its obligations under this Agreement, and the Owner shall have no duty of observation, inspection or investigation.

...

§ 5.13 The Owner shall endeavor to communicate with the Contractors and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall endeavor to include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

PAGE 18

~~§ 5.16 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.~~

...

§ 6.1 For purposes of ~~this the~~ 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 ~~the Contractors' contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any, also includes the Construction Management fees.~~ 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; Architect, the Architect's consultants;~~ the costs of the land, ~~rights-of-way, right-of-way,~~ financing, or contingencies for changes in the Work; or other costs that are the responsibility of the ~~Owner. Owner,~~ The Cost of the Work does not include any soft costs.

...

§ 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 5.3 and 6.4, 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the C.M..

...

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates. In preparing estimates of the Cost of Work, the C.M. 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 C.M.'s estimate of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review, 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 C.M. shall provide such as estimate.

...

#### § 6.3.1 If 6.4

...

the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates. If, through no fault of the C.M., 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 may be adjusted to reflect changes in the general level of prices in the applicable construction market.

...

#### § 6.4 If, prior to 6.5

...

the conclusion of the Design Development Phase, the Construction Manager's If at any time the C.M.'s estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, Work, the C.M. shall make appropriate recommendations to the Owner and Architect to adjust the Project's size, quality-quality, or budget for the Cost of the Work, and the Owner shall cooperate with the C.M. and Architect in making such adjustments.

...

§ 6.5 If the Construction Manager's estimate of 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, Construction Documents Phase Services is exceeded by the lowest bona fide 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 of the Project within a reasonable time;

...

.3 terminate in accordance with Section 9.5;

...

~~.3~~ .4 in consultation with the Architect and Construction Manager, revise the Project program, scope, or

...

quality as required to reduce the Cost of the Work; ~~or,~~

...

~~.4~~ .5 implement any other mutually acceptable alternative.

...

~~§ 6.6-6.7~~ If the Owner chooses to proceed under Section ~~6.5.3, 6.6.4,~~ the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

PAGE 19

~~§ 6.7-6.8~~ After incorporation of modifications under Section ~~6.6, 6.7,~~ the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is caused by the Architect including but not limited due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

...

~~§ 7.3~~ The Architect grants to the Owner a perpetual, irrevocable, royalty-free and 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 Contractors, Construction Manager, 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.

...

~~§ 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 applicable law.~~

PAGE 20

~~§ 8.1.4 Except to the extent covered by any applicable insurance policies, including but not limited to the Architect's professional liability insurance policy, 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.~~

...

~~§ 8.2.1 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. 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. in accordance with the Indiana Rules of Alternative Dispute Resolution. 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 parties shall promptly confer and agree on a mediator. 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.~~

...

Litigation with venue for any proceeding at law or in equity related to or arising out of this Agreement being in a court of competent jurisdiction in Boone County, Indiana, and the parties hereby waive any right to object to this exclusive venue. Each party further consents to the personal jurisdiction by said courts over it and hereby expressly waives, in the case of any such action, any defenses thereto based on jurisdictions, venue, or forum non conveniens

PAGE 21

### § 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.~~

...

#### ~~§ 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 issues 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.~~

...

~~§ 9.1 If the Owner fails to make undisputed payments to the Architect in accordance with this Agreement, Agreement and the Owner fails to remedy its failure to make payment of undisputed amounts within seven (7) days after receipt of written notice from the Architect advising of such non-payment, 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, services and provided the Owner failed to pay undisputed amounts owing to the Architect during this seven (7) day period, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a proper 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 undisputed 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~~ adjusted in the event of a proper suspension.

...

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

...

Zero Dollars (\$0).

...

Zero Dollars (\$0).

...

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

PAGE 22

**§ 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. In the event the Architect or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of the Architect's services, the Architect may at its option upon written notice to the Owner suspend performance of those services that are to be performed in the affected area of the Project until the Owner retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials. The Architect shall be obligated to promptly report in writing any such discovery to the Owner.

...

**§ 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.~~ Intentionally Omitted.

...

**§ 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.~~

PAGE 23

§ 10.10 The acceptance or approval by the Owner of any designs, Construction Documents, or other services by the Architect shall not in any way relieve the Architect of responsibility for the technical accuracy of its services or its obligations under this

...

ARTICLE Agreement.

...

ARTICLE 11 COMPENSATION

...

Fee is based on the basis of releasing a complete set of drawings for the entire scope of the project and does not include early release of or fast-tracking bid packages.

...

Eight hundred sixty two thousand five hundred dollars and no cents (\$862,500.00)\*

...

\*Includes \$19,200.00 previously paid.

...

.2 Percentage Basis N/A

...

.3 Other N/A

...

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

...

Included in the Stipulated Sum identified in Section 11.1.1.

...

To Be Determined at the time Owner requests such services and such compensation shall be a mutually agreeable fixed amount or hourly at the rates identified in Exhibit B with or without a not to exceed amount.

**PAGE 24**

Schematic Design Phase	<u>\$129,375.00</u>	<del>percent</del>	<u>15</u>	<del>%</del>
Design Development Phase	<u>\$172,500.00</u>	<del>percent</del>	<u>20</u>	<del>%</del>
Construction Documents Phase	<u>\$327,750.00</u>	<del>percent</del>	<u>38</u>	<del>%</del>



Procurement Phase	<u>17,250.00</u>	percent (	<u>2</u>	%)
Construction Phase	<u>215,625.00</u>	percent (	<u>25</u>	%)

...

Total Basic Compensation	<u>one</u>	percent (	100	%)
	<u>hundred \$862,500.00</u>			
	<u>Includes \$19,200.00</u>			
	<u>previously paid.</u>			
	<u>(Applied to</u>			
	<u>Schematic Design</u>			
	<u>Phase)</u>			

...

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

...

~~§ 11.6.1 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.~~

...

See Exhibit "B"

...

~~.1 Transportation and authorized out-of-town travel and subsistence; mileage and subsistence; mileage expense is \$.055 per mile.~~

...

~~.4 Printing, reproductions, plots, and standard form documents; for final bid documents, if required;~~

...

~~.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—8~~ All taxes levied on professional services and on reimbursable expenses;

...

~~.10—~~ Site office expenses;

PAGE 25

~~.11—9~~ 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 five percent ( 5 %) of the expenses incurred.

...

If the types and limits of coverage required in Section 2.6 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~~:below:

...

Zero Dollars (\$0).

...

~~§ 11.10.1.1~~ An initial payment of ( \$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice. No initial payments are due under this Agreement.

...

~~§ 11.10.1.2~~ If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ( \$ ) 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.

...

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable ~~upon presentation within thirty (30) days of Owner's receipt of the Architect's invoice.~~ Amounts unpaid thirty ( 30 ) days after the Owner's receipt of 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.

...

% Prime Rate as published by The Wall Street Journal plus 1%

...

§ 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 is responsible for the amounts.

...

§ 12.1 The architectural services to be provided pursuant to this Agreement are being performed solely for the benefit of the Owner, and no such benefit is meant to be conferred upon person or entity not party to this Agreement, and no such persons or entity should rely upon this Architect's performance of those services to the Owner; and no claim against the Architect shall accrue to: any contractor, subcontractor, consultant, engineer, supplier, fabricator, manufacturer, tenant, surety, or any third party as result of the Agreement of the performance or non-performance of architectural services on this project. The Architect may at the time of the preparation of the bidding documents including the AIA A232 general conditions request that the provisions of this Paragraph appear in the General Conditions of the contract documents of construction.

§ 12.2 To the extent that any incorporated document contradicts the provision of this Agreement, this Agreement shall be deemed to control.

§ 12.3 To the extent any of the Basic Services or Additional Services have been provided before the execution of this Agreement, the Owner and Architect nevertheless agree that this Agreement shall control the rights and responsibilities of the parties hereto including as to those Basic Services and Additional Services previously performed. For the avoidance of doubt, payments made to the Architect prior to the execution of this Agreement by the Owner related to this Project shall be credited as payments towards the compensation owed to the Architect under this Agreement.

§ 12.4 The Architect is an independent contractor and in providing its services under this Agreement shall not represent to any third party that its authority is greater than that granted to it under this Agreement.

§ 12.5 This Agreement may be executed in separate counterparts and delivered by facsimile or electronic scanned format, with the parties hereby acknowledging that each separately executed counterpart will be afforded the same force and effect as a duly signed original document, even if an executed counterpart is delivered only via facsimile copy or electronic scanned copy, and all fax, .pdf and electronic signatures shall be acceptable and binding on the parties.

PAGE 26

.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:

...

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

...

[ ] — AIA Document E235™ 2019, Sustainable Projects Exhibit, Construction Manager as

...

~~Adviser Edition, dated as indicated below:~~

...

*(Insert the date of the E235 2019 incorporated into this Agreement.)*

...

Exhibit "A" – Concept Diagrams for Building and Site

...

Exhibit "B" – Hourly Rates for Design Team

PAGE 27

Western Boone County Community School Corporation      The Moake Park Group, Inc.

...

Jeff E. Schroeder, President

## **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 16:09:39 ET on 03/05/2021 under Order No. 2858973061 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B132™ - 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

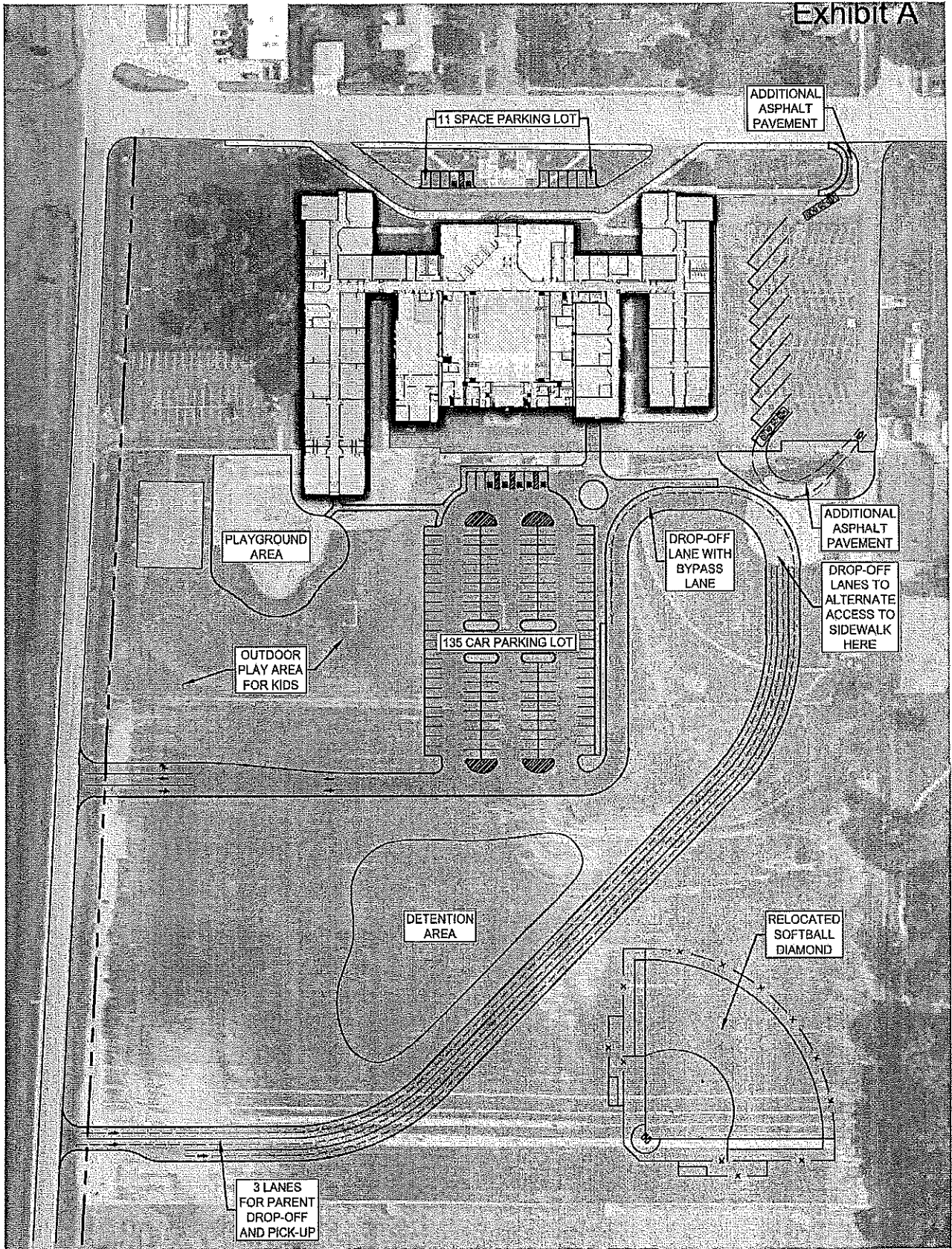
(  
\_\_\_\_\_  
(Signed)

Jeff E. Schroeder, RA President and Architect of Record

(Title)

March 5, 2021

(Dated)



# Thorntown Elementary Preliminary Site Concept

March 8, 2021



**The Moake Park Group, Inc.  
2021 Standard Hourly Billing Rates  
January 1, 2021**

Principals I.....	\$ 220.00 per hour
Principals II.....	\$ 160.00 per hour
Project Manager.....	\$ 150.00 per hour
Project Architect.....	\$ 130.00 per hour
Graduate Architect 1 .....	\$ 115.00 per hour
Graduate Architect 2 .....	\$ 85.00 per hour
Construction Administrator.....	\$ 130.00 per hour
Senior Technical Coordinator I .....	\$ 130.00 per hour
Technical Coordinator II.....	\$ 100.00 per hour
Senior Interior Designer I .....	\$ 90.00 per hour
Interior Designer II.....	\$ 75.00 per hour
Design Visualization & Graphics.....	\$ 150.00 per hour
Senior Clerical I.....	\$ 85.00 per hour
Clerical II .....	\$ 70.00 per hour
Clerical III .....	\$ 50.00 per hour





# EXHIBIT B

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6534 Constitution Drive  
Fort Wayne, IN 46804  
(260) 436-9213  
fax (260) 432-5481

## ENGINEERING HOURLY RATES (2021)

Principal	\$175.00/hr
Project Engineer	\$140.00/hr
Sr. Designer	\$120.00/hr
Designer	\$ 90.00/hr
Drawing/CAD Technician	\$ 75.00/hr
Secretary & Support	\$ 50.00/hr





### 1. STANDARD BILLING RATES

Compensation to be made on a time basis shall be according to the number of hours expended on a project times the appropriate billing rate shown below. Descriptions for the billing categories listed below can be provided upon request:

- a. Senior Engineering / Project Management Services .....\$145/hr.
- b. Project Engineering / Management Services.....\$120/hr.
- c. Design Engineering Services .....\$105/hr.
- d. Design / Document Preparation Services .....\$90/hr.
- e. Standard AutoCAD Drafting Services .....\$70/hr.
- f. Senior Construction Inspection .....\$85/hr.
- g. Construction Inspection/ Field Data Collection Services .....\$75/hr.
- h. Intern AutoCAD Drafting/ Construction Inspection .....\$60/hr.
- i. Clerical /Administration Services .....\$65/hr.
- j. Forensic Engineering.....\$200/hr.
- k. Expert Witness .....\$350/hr.

### 2. REIMBURSABLE EXPENSES

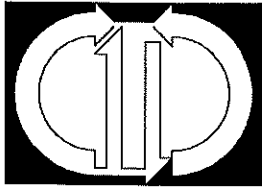
- a. Automobile Transportation..... Allowable IRS Rate/Mile
- b. Subconsultant Services.....cost + 10%
- c. Other Reimbursable Expenses .....cost + 10%



3. BILLING CATEGORY DESCRIPTIONS:

- a. **Senior Engineering / Project Management Services:** These services are provided by a senior member of the staff for: specialized design requirements, project reviews, coordination and administration. Depending on the degree of advanced engineering knowledge required for a project, the items described in the Project Engineering/Management Services shown below may be completed under this service item.
- b. **Project Engineering / Management Services:** These services are provided by the project manager or project engineer. Project tasks completed under this service item would include: site visits, project research, design calculations, plan development, coordination, project reviews, attending meetings and construction administration.
- c. **Design Engineering Services:** These services include: routine design calculations, document reviews and other standard tasks that are completed by a member of the staff other than the Project Engineer/Manager.
- d. **Design / Document Preparation Services:** These services include: Permit preparation and production of project documents and AutoCAD/Revit design and plan development beyond standard drafting procedures.
- e. **Standard AutoCAD Drafting Services:** These services include: basic AutoCAD drafting tasks necessary to develop plans and other required documents.
- f. **Senior Construction Inspection:** These services are provided by a senior member of the staff for project oversight during construction to review, approve, observe, or document the actual construction for a project.
- g. **Construction Inspection / Field Data Collection Services:** These services are the basic tasks during construction to review, approve, observe, or document the actual construction for a project. Services also includes any field data time that is completed within the design or construction timeline.
- h. **Intern Construction Inspection / AutoCAD Drafting:** These services are provided by entry level staff that work under the direct supervision of the Construction Inspector and assist them with the basic tasks during construction to review, approve, observe, or document the actual construction for a project. Services also includes any AutoCAD drafting time that is completed within the design or construction timeline.
- i. **Clerical /Administration Services:** These services are the basic tasks necessary to accomplish any project or other required documents that are completed by a member of the clerical staff. This includes word documentation, permits/form preparation, filing/submittal of documents, and other office duties.
- j. **Forensic Engineering:** Provided by a highly qualified senior member of the staff for specialized services. Involves the investigation of failures in facilities and infrastructure to interpret and determine the cause of the damage or failure that may lead to legal activity.
- k. **Expert Witness:** These services are provided by a highly qualified senior member of the staff for specialized services, including the preparation of testimony and participation at trial regarding issues that require specialized expertise.

# EXHIBIT B



**STRUCTURAL  
ENGINEERING  
SERVICES, LLC.**

15610 Lima Road  
Huntertown, IN 46748  
Phone: 260-637-7867  
[www.structuralengr.com](http://www.structuralengr.com)

## 2021 Standard Hourly Rates

Ethan P. Hess, P.E., Project Engineer	\$100.00
Johnathon D. Short, P.E., Head Project Engineer	\$100.00/\$125.00
Kenneth E. Hess, P.E., Owner	\$150.00