



402 LEE STREET
DECATUR, ALABAMA 35601
MARCH 6, 2023

Council Chambers	Regular City Council Meeting	6:00 PM
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I. CALL MEETING TO ORDER:

II. INVOCATION:

Pastor Eric Albright, Southside Baptist Church

III. PLEDGE OF ALLEGIANCE:

IV. ROLL CALL OF ELECTED OFFICIALS:

Council President Jacob Ladner, District 5
Council Pro-Tempore Carlton McMasters, District 3
Council Member Billy Jackson, District 1
Council Member Kyle Pike, District 2
Council Member Hunter Pepper, District 4

V. PROCLAMATION: *March 2023 - Colorectal Cancer Awareness Month*

VI. APPROVAL OF MINUTES:

- A. February 13, 2023 - 5:00 PM Council Work Session
[02.13.2023 WS.pdf](#)
- B. February 20, 2023 - 9:30 AM Council Work Session
[02.20.2023 WS.pdf](#)
- C. February 20, 2023 - 10:00 AM Council Meeting
[02.20.2023 CM.pdf](#)

VII. PUBLIC HEARINGS:

- A. Ordinance No. 23-4548: Approve Re-Zoning Request 1412-23 for property located at 4200 Central Avenue SW from an R5, Single-Family Patio Home to an R6, Single-Family Semi-Attached Residential District

Public Hearing was set February 6, 2023

[Ord No 23-4548 Rezoning Request 1412-23 Central Ave.pdf](#)

[Legal 1 - 1412-23 Rezoning Huntsville LTD - Central Avenue SW .doc](#)

[Legal 2 - 1412-23 Rezoning Huntsville LD - Central Avenue SW .doc](#)

[Planning Commission Agenda January 2023.pdf](#)

[ZONING DISTRICT COMPARISON R-5 to R-6.docx](#)

[Rezoning-Zoning-1412-23-Glenmont Acres.jpg.pdf](#)

[D-1-23.pdf](#)

- B. Ordinance No. 23-4549: Approve Re-zoning Request 1413-23 for a tract of land from M-1, Light Industry to B-5, Central Business District located at portions of 400 & 500 Bank Street

Public Hearing was set February 6, 2023

[Ord No 23-4549 Rezoning Request 1413-23 Bank Street.pdf](#)

[Legal 1 - 1413-23 Rezoning Bank Street .doc](#)

[Legal 2 - 1413-23 Rezoning Bank Street .doc](#)

[Planning Commission Agenda January 2023-2.pdf](#)

[ZONING DISTRICT COMPARISON M-1 to B-5.docx](#)

[Rezoning 1413-23-Zoning.pdf](#)

- C. Resolution No. 23-015: Approve abatement of unsafe conditions at 322 11th Ave. NW
Public Hearing was set February 6, 2023
[Res No 23-015 Abatement 322 11th Ave. NW DEMO.pdf](#)

VIII.RESOLUTIONS:

- A. Resolution No. 23-046: Assess cost of abatement of unsafe conditions at 406 5th Ave. NW
[Res No 23-046 Demo Lien 406 5th Ave NW.pdf](#)
- B. Resolution No. 23-047: Assess cost of abatement of unsafe conditions at 504 Finley Dr. NW
[Res No 23-047 Demo Lien 504 Finley Dr NW.pdf](#)
- C. Resolution No. 23-048: Assess cost of abatement of unsafe conditions at 507 13th Ave. NW
[Res No 23-048 Demo Lien 507 13th Ave NW.pdf](#)
- D. Resolution No. 23-049: Declare Items no longer needed by the City of Decatur Information Services Department as surplus and authorize disposal.
[Res No 23-049 IT Surplus Items.pdf](#)
[RID10.2022 \(2\).pdf](#)
- E. Resolution No. 23-050: Award Bid #23-010 to Champion Auto Sewer Bore to Armor's Utility Contractors
[Res No 23-050 Armor Utility Sewer Boar - Champion.pdf](#)
[Recommendation of Award 23-010.pdf](#)
- F. Resolution No. 23-051: Approve Pugh Wright Agreement for Poole Valley Road Realignment

[Res No 23-051 PW-Poole Valley Rd Realignment.pdf](#)
[PW-Poole Valley Rd Realignment Contract 60500.pdf](#)

- G. Resolution No. 23-052: Approve CDG Proposal for Outfall Reconnaissance and Mapping
For NPDES Phase II
[Res No 23-052 CDG Outfall Inspections.pdf](#)
[CDG Contract-Outfall Inspections .pdf](#)
- H. Resolution No. 23-053: Approve 1690 Beltline Rd SW Vacation Reapproval
[Res No 23-053 Vacation Reapproval - 1690 Beltline Rd SW.pdf](#)
- I. Resolution No. 23-054: Approve DDRA Johnston Alley Improvements Project Agreement
[Res No 23-054 DDRA Johnston Street Alley Project approval.pdf](#)
[DDRA alley agreement final.docx](#)
- J. Resolution No. 23-055: Authorize the Mayor to execute Goodwyn Mills Cawood, LLC Contract regarding proposed recreation center at Wilson Morgan
[Res No 23-055 GMC Architect Services.pdf](#)
[B101-2017 - decatur rec.pdf](#)
- K. Resolution No. 23-056: Authorize the Mayor to execute Frameworks Architecture agreement regarding professional services for proposed sports complex (near Austin High School)
[Res No 23-056 Frameworks Architect Services.pdf](#)
[Frameworks Contract-Sports Complex.pdf](#)
- L. Resolution No. 22-057: Authorize the Mayor to execute Pugh Wright McAnally Inc. design services agreement for sports complex (near Austin High School)
[Res No 23-057 Pugh Wright McAnally design services agreement.pdf](#)
[PWM Design Contract- Jack Allen Sports Complex.pdf](#)
- M. Resolution No. 23-058: Approve designation for Voting Delegate and Alternates for ALM Business Session
[Res No 23-058 ALM Voting Delegates.pdf](#)
[Voting_Delegate_Clerk_Letter_2023.pdf](#)
[Voting-Delegate-Auth-Form-2023 \(2\).pdf](#)
- N. Resolution No. 23-059: Authorize grant application for Historic Structures Report on the Old Bank
[Res No 23-059 CLG OSB Historic Structures.pdf](#)

IX. ORDINANCES:

- A. Ordinance No. 23-4550A: Change effective date of Section 14-103 and Section 104 amendment
[Ord No 23-4550A Amendment_to_Section_14-103_and_14-104_Ordinance_effective_date..pdf](#)

X. BOARDS AND COMMITTEES:

- A. Appoint Michelle Washington to the Historic Preservation Commission with term expiring March 19, 2025
- B. Appoint Trudy Grisham to the Historic Preservation Commission with term expiring March 19, 2025
- C. Appoint Caroline Duncan to the Historic Preservation Commission with term expiring March 19, 2024
- D. Appoint Angie Whittington to the Historic Preservation Commission with term expiring March 19, 2025
- E. Appoint Phil Wirey to the Historic Preservation Commission with term expiring March 19, 2026
- F. Appoint John Allison to the Historic Preservation Commission with term expiring March 19, 2026
- G. Appoint Ellis Chenault to the Architectural Review Committee with term expiring March 19, 2024
- H. Appoint Lynn Schuppert to the Architectural Review Committee with term expiring March 19, 2024
- I. Appoint Bill Stone to the Architectural Review Committee with term expiring March 19, 2026
- J. Appoint Jacob Woods to the Architectural Review Committee with term expiring March 19, 2026
- K. Appoint Bonnie Crow to the Architectural Review Committee with term expiring March 19, 2026

XI. ADJOURNMENT:

*THE NEXT COUNCIL WORK SESSION WILL BE HELD ON MARCH 13, 2023 AT 5:00PM
THE NEXT REGULAR COUNCIL MEETING WILL BE HELD ON MARCH 20, 2023 AT
10:00AM.*

*NOTE: CHANGES TO A CITY COUNCIL AGENDA MAY BE NECESSARY PRIOR TO THE
CITY COUNCIL MEETING. SUCH CHANGES MAY NOT BE INCLUDED ON THE CITY
COUNCIL AGENDA ON THE WEBSITE.*

PLEASE BE ADVISED: ANYONE PLANNING TO MAKE A PRESENTATION TO THE COUNCIL AT A WORK SESSION OR RELATED TO AN ITEM BEING ADDRESSED AT A COUNCIL MEETING THAT WILL REQUIRE AUDIO/VISUAL EQUIPMENT (I.E. POWERPOINT, SCREEN, PROJECTOR, ETC.) ARE REQUIRED TO NOTIFY THE

INFORMATION SYSTEMS DEPARTMENT **TWO BUSINESS DAYS** BEFORE THE
PRESENTATION AT 256-341-4700.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Minutes

AGENDA SECTION: APPROVAL OF MINUTES:

SUBJECT: February 13, 2023 - 5:00 PM Council Work Session

FINANCIAL IMPACT: NA

SUGGESTED ACTION:

ATTACHMENTS:
[02.13.2023 WS.pdf](#)

CITY HALL, DECATUR, ALABAMA, FEBRUARY 13, 2023 – 5:00 PM WORK SESSION

The members of the City Council of the City of Decatur, Alabama met on Monday, February 13, 2023 at 5:00 p.m. in the Council Chambers on the 1st floor of Decatur City Hall located at 402 Lee Street, Decatur, AL.

The following members were present: Ladner, McMasters, Jackson
and Pike
Absent: Pepper

Present at the work session were Mayor Bowling, City Attorney Herman Marks, Assistant City Attorney Ruth Priest, Assistant City Attorney Chip Alexander, CFO Kyle Demeester, Revenue Manager Lori Rossetti, Police Captain Silvestri, Fire Chief Thornton, City Engineer Carl Prewitt, Purchasing Agent Charles Booth, Community Development Manager Allen Stover, Director of Transportation Dewayne Hellums, Point Mallard Park Manager Stephanie McLain, Parks & Recreation Director Jason Lake, HR Director Richelle Sandlin, IT Director Brad Phillips, and City Clerk Stephanie Simon.

Council reviewed the February 20, 2023 agenda.

There being no further business the meeting adjourned at 5:21pm.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Minutes

AGENDA SECTION: APPROVAL OF MINUTES:

SUBJECT: February 20, 2023 - 9:30 AM Council Work Session

FINANCIAL IMPACT: NA

SUGGESTED ACTION:

ATTACHMENTS:
[02.20.2023 WS.pdf](#)

CITY HALL, DECATUR, ALABAMA, FEBRUARY 20, 2023 – 9:30 AM WORK SESSION

The members of the City Council of the City of Decatur, Alabama met on Monday, February 20, 2023 at 9:30 a.m. in the Council Chambers on the 1st floor of Decatur City Hall located at 402 Lee Street, Decatur, AL.

The following members were present: Ladner, McMasters, Jackson
Pike and Pepper

Present at the work session were Mayor Bowling, City Attorney Herman Marks, Assistant City Attorney Ruth Priest, Finance Manager Dawn Runager, Revenue Manager Lori Rossetti, Police Chief Pinion, City Engineer Carl Prewitt, Purchasing Agent Charles Booth, Director of Development Dane Shaw, Community Development Manager Allen Stover, Point Mallard Park Manager Stephanie McLain, Parks & Recreation Director Jason Lake, HR Director Richelle Sandlin, IT Director Brad Phillips, Landfill Director Wanda Tyler, Historic Preservation Specialist Caroline Swope, and City Clerk Stephanie Simon.

Council reviewed the February 20, 2023 agenda.

There being no further business the meeting adjourned at 9:42 am.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Minutes

AGENDA SECTION: APPROVAL OF MINUTES:

SUBJECT: February 20, 2023 - 10:00 AM Council Meeting

FINANCIAL IMPACT: NA

SUGGESTED ACTION:

ATTACHMENTS:
[02.20.2023 CM.pdf](#)



MINUTES
REGULAR CITY COUNCIL MEETING
FEBRUARY 20, 2023 – 10:00 AM

I. CALL MEETING TO ORDER:

Council President Jacob Ladner called the meeting to order at 10:00am.

II. INVOCATION:

Director of Development Dane Shaw provided the invocation.

III. PLEDGE OF ALLEGIANCE:

Director of Development Dane Shaw led the Pledge of Allegiance.

IV. ROLL CALL OF ELECTED OFFICIALS:

Present - Council President Jacob Ladner, District 5

Present - Council Pro-Tempore Carlton McMasters, District 3

Present - Council Member Billy Jackson, District 1

Present - Council Member Kyle Pike, District 2

Present - Council Member Hunter Pepper, District 4

V. APPROVAL OF MONTHLY BILLS:

A. Approve January 2023 Monthly Bills

Herbert Underwood, 16 Cherry St, spoke against Bill #233074 - Craft Training

Fund \$152,126

[**CHECKS WRITTEN IN JANUARY 2023 FOR COUNCIL APPROVAL.pdf**](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

VI. APPROVAL OF MINUTES:

A. January 30, 2023 - 4:30 PM Special Called Council Meeting

[01.30.2023 SCCM.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 4- 0

Voting For: Jacob Ladner, Carlton McMasters, Kyle Pike, Hunter Pepper

Voting Against: None Abstain: Billy Jackson

B. January 30, 2023 - 5:00 PM Council Work Session

[01.30.2023 WS.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

C. February 6, 2023 - 5:30 PM Council Work Session

[02.06.2023 WS.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

D. February 6, 2023 - 6:00 PM Council Meeting

[02.06.2023 CM.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

E. February 9, 2023 - 10:30 AM Special Called Council Meeting

[02.09.2023 SCCM.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 4- 0

Voting For: Jacob Ladner, Carlton McMasters, Kyle Pike, Hunter Pepper

Voting Against: None Abstain: Billy Jackson

VII. PUBLIC HEARINGS:

- A. Resolution No. 23-034: Approve request for Special Event Retail Liquor License for Witt LLC DBA JW Steakhouse located at 133 2nd Ave NE Decatur, AL 35601
This being the date, time and place set for the public hearing Council President Ladner opened the meeting for comment. There being none he closed the hearing and asked Council for a motion.

[Res No 23-034 Witt LLC Special Event 133 2nd Ave NE.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

VIII. RESOLUTIONS:

- A. Resolution No. 23-035: Authorize Application of Alabama Historic Commission Grant for Austinville Historic Survey
Herbert Underwood, 16 Cherry Street, stated grants should include Old Town

[Res No 23-035 Austinville Historic Survey.pdf](#)

Moved by Carlton McMasters; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- B. Resolution No. 23-036: Authorize Alabama Historic Commission Grant for Delano Historic Structures report

[Res No 23-036 Delano Structures.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- C. Resolution No. 23-037: Approve Funding for Recruitment Incentive Award Program

[Res No 23-037 Funding of Recruitment Incentive.pdf](#)

[Police Officer Recruitment.docx](#)

[Referral Incentive Program Procedure - Rev 12.14.22.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- D. Resolution No. 23-038: Approve budget amendment \$11,842.00 to repair Point Mallard Golf Course irrigation line

[Res No 23-038 Golf Course Irrigation Repairs.pdf](#)

[Southern Pump Proposal.pdf](#)

Moved by Carlton McMasters; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- E. Resolution No. 23-039: Approve agreement with Pugh Wright McAnally for Bunny Lane Road Improvements

[Res No 23-039 Bunny Lane Road Improvements.pdf](#)

[PWM Bunny Lane Improvements.pdf](#)

Moved by Carlton McMasters; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- F. Resolution No. 23-040: Award Bid #23-005 for Tree and Stump Removal to Asplundh

[Res No 23-040 Asplundh tree & stump removal.pdf](#)

[Bid Tab 23-005.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- G. Resolution No. 23-041: Award Bid #23-006 for Mosquito Sprayers to Adapco

[Res No 23-041 Mosquito Sprayers - Adapco.pdf](#)

[Bid Tab 23-006.pdf](#)

Moved by Carlton McMasters; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- H. Resolution No. 23-042: Award RFP 23-007 to Doing It With You Marketing for Social Media Services

Mayor Bowling recognized Charles Booth on his upcoming retirement.

[Res No 23-042 Social Media Services.pdf](#)

[Bid Tab 23-007.pdf](#)

Moved by Kyle Pike; seconded by Carlton McMasters to Approve .

Motion Passed: 3- 2

Voting For: Jacob Ladner, Carlton McMasters, Kyle Pike

Voting Against: Billy Jackson, Hunter Pepper

- I. Resolution No. 23-043: Authorize the Mayor to Execute the Purchase Agreement for Land for DYS Facility

Council Member Jackson stated he was for Youth Services having their own building but could not support the purchase of this property as there are other parcels in the area that could possibly be deeded to the city without cost.

[Res No 23-043 DYS Land Purchase.pdf](#)

[Purchase and Sale Agreement \(DHA-DHDC-COD\) v6.doc](#)

Moved by Hunter Pepper; seconded by Billy Jackson to Table .

Motion Failed: 2- 3

Voting For: Billy Jackson, Hunter Pepper

Voting Against: Jacob Ladner, Carlton McMasters, Kyle Pike

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 3- 2

Voting For: Jacob Ladner, Carlton McMasters, Kyle Pike

Voting Against: Billy Jackson, Hunter Pepper

- J. Resolution No. 23-044: Approve DDRA additional appropriation for Johnston Street Alley Improvement Project

City Engineer Carl Prewitt stated he had reviewed plans from the company which showed the alley staying the same grade for water runoff.

[Res No 23-044 DDRA Johnston Street Alley Project.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 4- 1

Voting For: Jacob Ladner, Carlton McMasters, Kyle Pike, Hunter Pepper

Voting Against: Billy Jackson

- K. Resolution No. 23-045: Approve Funding for locating Horton House in Decatur (CEOTA project)

The following spoke in favor of moving the Horton House:

Herbert Underwood, 16 Cherry St

Frances Tate, 506 Monroe Dr. NW

Gerald Ginwright, Birmingham, AL

[Res No 23-045 CEOTA Funding of Horton House moving.pdf](#)

Moved by Billy Jackson; seconded by Carlton McMasters to Approve .

Motion Passed: 4- 1

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike

Voting Against: Hunter Pepper

IX. ORDINANCES:

- A. Ordinance No. 23-4550: Amend Transient Occupancy Tax Ordinance

[Ord No 23-4550 Amend Transient Occupancy Tax Section 14-103 and 14-104.pdf](#)

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

X. BOARDS AND COMMITTEES:

- A. Reappoint Police Chief Todd Pinion to the Morgan County E-911 Board with term Expiring April 11, 2027

Moved by Hunter Pepper; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- B. Reappoint Dr. S. Kinney Copeland to the Health Care Authority Board with term expiring January 1, 2026.

Moved by Carlton McMasters; seconded by Kyle Pike to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

- C. Reappoint Melissa Craig to the Health Care Authority Board with term Expiring

December 31, 2028

Moved by Kyle Pike; seconded by Carlton McMasters to Approve .

Motion Passed: 5- 0

Voting For: Jacob Ladner, Carlton McMasters, Billy Jackson, Kyle Pike, Hunter Pepper

Voting Against: None

XI. ADJOURNMENT:

THE NEXT COUNCIL WORK SESSION WILL BE HELD ON FEBRUARY 27, 2023 AT 5:00PM.

THE NEXT REGULAR COUNCIL MEETING WILL BE HELD ON MARCH 6, 2023 AT 6:00PM.

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Mayor Bowling stated Hands Across Decatur had asked for help with grants and our Grants Administrator will help educate the non profit on grant writing.

He also acknowledged Kim Mitchell, Executive Director of the Carnegie, on the Mardi Gras Carnival and the amount of money they raised.

There being no further business the meeting adjourned at 10:54am.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Michelle Stinnett, Planning

ITEM TYPE: Ordinances

AGENDA SECTION: PUBLIC HEARINGS:

SUBJECT: Ordinance No. 23-4548: Approve Re-Zoning Request 1412-23 for property located at 4200 Central Avenue SW from an R5, Single-Family Patio Home to an R6, Single-Family Semi-Attached Residential District
Public Hearing was set February 6, 2023

FINANCIAL IMPACT: N/A

SUGGESTED ACTION: To approve re-zoning of 26.54 acres more or less from R-5, Single-Family Patio Home District to an R-6, Single-Family Semi-Attached Residential District, located at ~4200 Central Avenue SW.

ATTACHMENTS:

[Ord No 23-4548 Rezoning Request 1412-23 Central Ave.pdf](#)

[Legal 1 - 1412-23 Rezoning Huntsville LTD - Central Avenue SW .doc](#)

[Legal 2 - 1412-23 Rezoning Huntsville LD - Central Avenue SW .doc](#)

[Planning Commission Agenda January 2023.pdf](#)

[ZONING DISTRICT COMPARISON R-5 to R-6.docx](#)

[Rezoning-Zoning-1412-23-Glenmont Acres.jpg.pdf](#)

[D-1-23.pdf](#)

ORDINANCE NO. 23-4548

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ALABAMA

Section 1. That the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended, are further amended, changed and modified as follows:

Re-zoning Request No. 1412-23

The property being considered for re-zoning is a tract of land containing 26.54 acres more or less from an R-5, Single-Family Patio Home District to an R-6, Single-Family Semi-Attached Residential District, located at ~4200 Central Avenue SW.

A PORTION OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 4 WEST, DECATUR, MORGAN COUNTY, ALABAMA, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17. THENCE SOUTH 89 DEGREES 24 MINUTES 00 SECONDS EAST ALONG THE NORTH BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 17 A DISTANCE OF 1346.26 FEET TO A POINT. THENCE SOUTH 00 DEGREES 21 MINUTES 36 SECONDS WEST (PASSING A CAPPED IRON PIN AT 37.37 FEET) A TOTAL DISTANCE OF 2001.46 FEET TO A 5/8 INCH IRON PIN, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE FROM THE TRUE POINT OF BEGINNING NORTH 89 DEGREES 46 MINUTES 57 SECONDS WEST A DISTANCE OF 196.77 FEET TO A POINT; THENCE SOUTH 00 DEGREES 02 MINUTES 12 SECONDS EAST A DISTANCE OF 49.38 FEET TO A 1 INCH REBAR; THENCE NORTH 88 DEGREES 53 MINUTES 41 SECONDS WEST A DISTANCE OF 643.97 FEET TO A CAPPED IRON PIN; THENCE NORTH 89 DEGREES 35 MINUTES 37 SECONDS WEST A DISTANCE OF 311.61 FEET TO A 3/4 INCH REBAR; THENCE NORTH 00 DEGREES 53 MINUTES 44 SECONDS EAST A DISTANCE OF 31.00 FEET TO A POINT; THENCE NORTH 89 DEGREES 06 MINUTES 16 SECONDS WEST A DISTANCE OF 210.11 FEET TO A POINT ON THE WEST BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 17; THENCE NORTH 00 DEGREES 48 MINUTES 04 SECONDS EAST ALONG SAID WEST BOUNDARY A DISTANCE OF 680.89 FEET TO A POINT; THENCE SOUTH 89 DEGREES 11 MINUTES 56 SECONDS EAST A DISTANCE OF 350.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 48 MINUTES 04 SECONDS EAST A DISTANCE OF 190 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS EAST A DISTANCE OF 207.26 FEET TO A POINT; THENCE NORTH 03 DEGREES 13 MINUTES 39 SECONDS EAST A DISTANCE OF 59.26 FEET TO A POINT; THENCE NORTH 00 DEGREES 21 MINUTES 36 SECONDS EAST A DISTANCE OF 3.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS EAST A DISTANCE OF 647.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 21

MINUTES 36 SECONDS EAST A DISTANCE OF 38.00 FEET O A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS EAST A DISTANCE OF 148.00 FEET TO A POINT; THENCE SOUTH 00 DEGREES 19 MINUTES 51 SECONDS WEST A DISTANCE OF 957.09 FEET TO THE TRUE POINT OF BEGINNING AND CONTAINING 27.53 ACRES MORE OR LESS.

LESS AND EXCEPT PUBLIC RIGHT-OF-WAY FOR CENTRAL AVENUE ALONG THE WEST BOUNDARY THEREOF CONTAINING 0.99 ACRES MORE OR LESS LEAVING A REMAINDER OF 26.54 ACRES MORE OR LESS

And containing 26.54 acres more or less from an R-5, Single-Family Patio Home District to an R-6, Single-Family Semi-Attached Residential District, subject to all rules, regulations and requirements therefore set forth in Section 25-11, Code of Decatur Alabama, and other provisions applicable therefore.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its adoption and publication as required by law.

ADOPTED this the _____ day of _____, 20 ____.

Authenticated:

Stephanie Simon

APPROVED this the ____ day of _____, 20 ____.

Tab Bowling, Mayor

LEGAL NOTICE

Notice of a proposed amendment to the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended.

Pursuant to instructions given by the City Council of the City of Decatur, Alabama, notice is hereby given that the proposed amendment herein below set forth to the Code of Decatur, Alabama, will be considered by the City Council of the City of Decatur, Alabama, at a meeting of said City Council in the Council Chambers in the City Hall of Decatur, Alabama, at 402 Lee Street, N.E. at _____, on _____, 20____.

Section 1. That the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended, are further amended, changed and modified as follows:

Rezoning Request No. 1412-23

The property being considered for re-zoning is a tract of land containing 26.54 acres more or less from an R-5, Single-Family Patio Home District to an R-6, Single-Family Semi-Attached Residential District, located at ~4200 Central Avenue SW.

A PORTION OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 4 WEST, DECATUR, MORGAN COUNTY, ALABAMA, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 17. THENCE SOUTH 89 DEGREES 24 MINUTES 00 SECONDS EAST ALONG THE NORTH BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 17 A DISTANCE OF 1346.26 FEET TO A POINT. THENCE SOUTH 00 DEGREES 21 MINUTES 36 SECONDS WEST (PASSING A CAPPED IRON PIN AT 37.37 FEET) A TOTAL DISTANCE OF 2001.46 FEET TO A 5/8 INCH IRON PIN, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE FROM THE TRUE POINT OF BEGINNING NORTH 89 DEGREES 46 MINUTES 57 SECONDS WEST A DISTANCE OF 196.77 FEET TO A POINT; THENCE SOUTH 00 DEGREES 02 MINUTES 12 SECONDS EAST A DISTANCE OF 49.38 FEET TO A 1 INCH REBAR; THENCE NORTH 88 DEGREES 53 MINUTES 41 SECONDS WEST A DISTANCE OF 643.97 FEET TO A CAPPED IRON PIN; THENCE NORTH 89 DEGREES 35 MINUTES 37 SECONDS WEST A DISTANCE OF 311.61 FEET TO A 3/4 INCH REBAR; THENCE NORTH 00 DEGREES 53 MINUTES 44 SECONDS EAST A DISTANCE OF 31.00 FEET TO A POINT; THENCE NORTH 89 DEGREES 06 MINUTES 16 SECONDS WEST A DISTANCE OF 210.11 FEET TO A POINT ON THE WEST BOUNDARY OF THE NORTHWEST QUARTER OF SAID SECTION 17; THENCE NORTH 00 DEGREES 48 MINUTES 04 SECONDS EAST ALONG SAID WEST BOUNDARY A DISTANCE OF 680.89 FEET TO A POINT; THENCE SOUTH 89 DEGREES 11 MINUTES 56 SECONDS EAST A DISTANCE OF 350.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 48 MINUTES 04 SECONDS EAST A DISTANCE OF 190 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS EAST A DISTANCE OF 207.26 FEET TO A POINT; THENCE NORTH 03 DEGREES 13 MINUTES 39 SECONDS EAST A DISTANCE OF 59.26 FEET TO A POINT; THENCE NORTH 00 DEGREES 21 MINUTES 36 SECONDS EAST A DISTANCE OF 3.00 FEET TO A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS EAST A

DISTANCE OF 647.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 21 MINUTES 36 SECONDS EAST A DISTANCE OF 38.00 FEET O A POINT; THENCE SOUTH 89 DEGREES 38 MINUTES 24 SECONDS EAST A DISTANCE OF 148.00 FEET TO A POINT; THENCE SOUTH 00 DEGREES 19 MINUTES 51 SECONDS WEST A DISTANCE OF 957.09 FEET TO THE TRUE POINT OF BEGINNING AND CONTAINING 27.53 ACRES MORE OR LESS.

LESS AND EXCEPT PUBLIC RIGHT-OF-WAY FOR CENTRAL AVENUE ALONG THE WEST BOUNDARY THEREOF CONTAINING 0.99 ACRES MORE OR LESS LEAVING A REMAINDER OF 26.54 ACRES MORE OR LESS

And containing 26.54 acres more or less from an R-5, Single-Family Patio Home District to an R-6, Single-Family Semi-Attached Residential District, subject to all rules, regulations and requirements therefore set forth in Section 25-11, Code of Decatur Alabama, and other provisions applicable therefore.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its adoption and publication as required by law.

ADOPTED this the _____ day of _____, 20 ____.

Authenticated:

Stephanie Simon

APPROVED this the _____ day of _____, 20 ____.

Tab Bowling, Mayor

At the said time and place, all persons will have the right and are invited to be present and to be heard either for or against the adoption of said amendment.

An ordinance containing the proposed zoning ordinance changes may be reviewed in the office of the Planning Department.

This is the _____ day of _____, 20 ____.

Stephanie Simon
CITY CLERK

LEGAL NOTICE

The City Council of the City of Decatur, Alabama, will consider at their regular meeting of _____, at _____ in the Council Chambers of the City Hall at 402 Lee Street, N.E., the proposed amendment to the Zoning Ordinance of the City of Decatur set forth in Ordinance No. _____, as published in The Decatur Daily on _____.

Section 1. That the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended, are further amended, changed and modified as follows:

Re-zoning Request No. 1412-23

The property being considered for re-zoning is a tract of land containing 26.54 acres more or less from an R-5, Single-Family Patio Home District to an R-6, Single-Family Semi-Attached Residential District, located at ~4200 Central Avenue SW.

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And containing 26.54 acres more or less from an R-5, Single-Family Patio Home District to an R-6, Single-Family Semi-Attached Residential District, subject to all rules, regulations and requirements therefore set forth in Section 25-11, Code of Decatur Alabama, and other provisions applicable therefore.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its adoption and publication as required by law.

ADOPTED this the _____ day of _____, 20 ____.

Authenticated:

Stephanie Simon

APPROVED this the ____ day of _____, 20 ____.

Tab Bowling, Mayor

At said hearing all persons will have the right and are invited to be present and to be heard either for or against the adoption of said amendment.

Stephanie Simon
City Clerk

PUBLIC HEARING**ZONING**

FILE NAME OR NUMBER: Rezoning 1412-23

ACRES: 26.54

CURRENT ZONE: R-5 (Single-family Patio Home District)

APPLICANT: Pugh Wright McAnally for Huntsville LD, LLC

LOCATION AND OR PROPERTY ADDRESS: App 4100 Central Ave SW

REQUEST: Rezone 26.54 acres from R-5 to R-6

NEW ZONE: R-6 (Single-family Semi-attached Townhome District)

PROPOSED LAND USE: Residential

ONE DECATUR FUTURE LAND USE: Mixed Neighborhood

ONE DECATUR STREET TYPOLOGY: Central Ave SW is a Minor Arterial

COMMENTS AND RECOMMENDATIONS FROM ZONING COMMITTEE:**Comments from Zoning Committee:**

The committee was in favor of this rezoning.

Conditions to be Met:

1. None

Pt. of Info:

1. Any relocation of utilities will be at the owner's expense

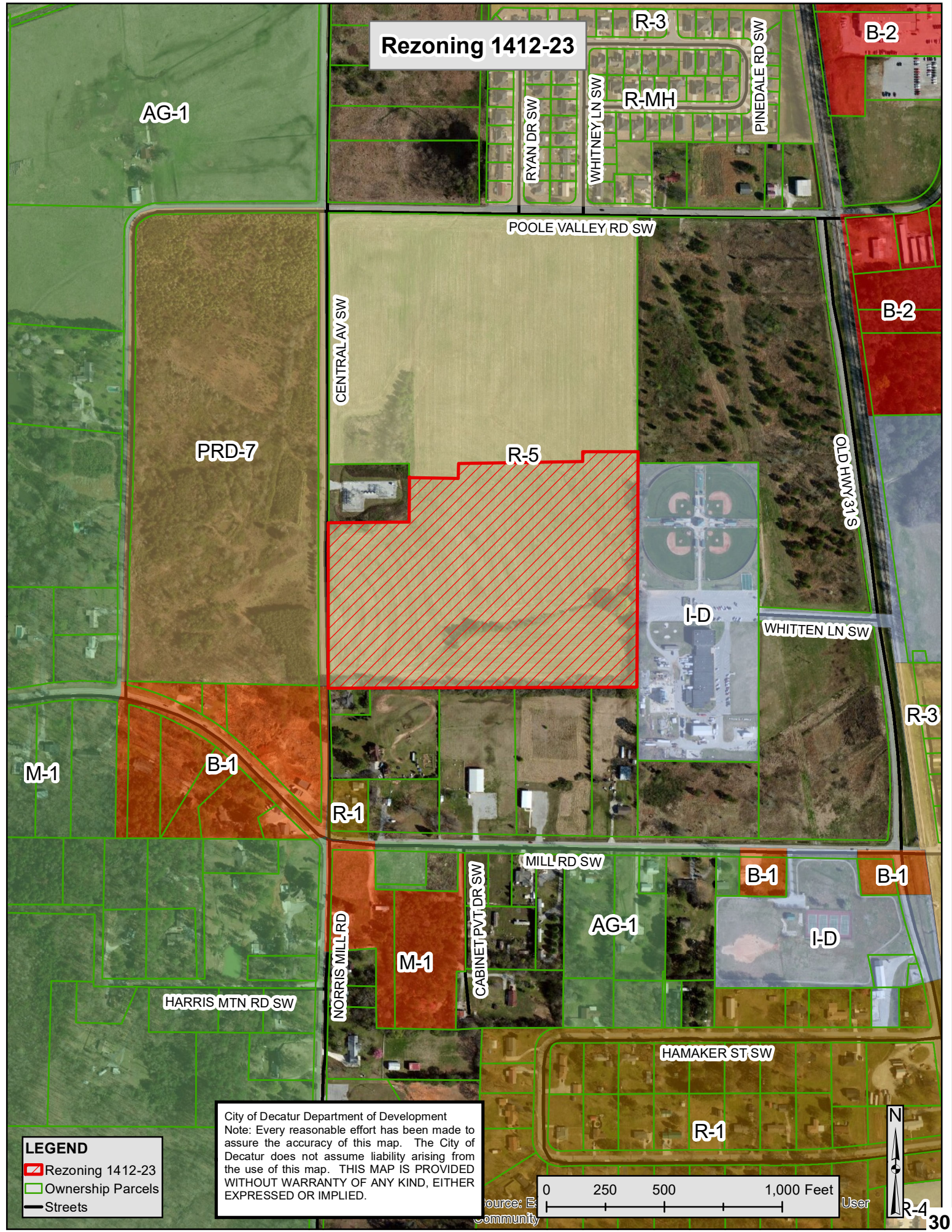
COMMENTS AND RECOMMENDATIONS FROM PLANNING COMMISSION:

Planning Commission voted unanimously in favor of recommending approval of re-zoning 1412-23 to the City Council.

ZONING DISTRICT COMPARISON R-5 TO R-6		January 17th, 2023
SECTION	R-5	R-6
USES PERMITTED	<p>There is hereby created an R-5 Residential District (single-family patio home) for those areas so designated by this chapter and the zoning map of the City of Decatur, Alabama, which R-5 Districts shall allow single-family patio home residences subject to use regulations common to all "R" Districts as set forth in section 25-10 hereof, and further subject to the following requirements and conditions:</p> <p>(1) General requirements:</p> <ol style="list-style-type: none"> Each dwelling unit shall be constructed on its own lot. No dwelling or lot within a R-5 District shall have vehicle access to an existing major thoroughfare (e.g., "collector street" or higher classified street) as defined by the zoning ordinance or comprehensive plan, or a major thoroughfare as defined by future plans adopted by the planning commission of the city. There shall be a minimum separation of thirteen (13) feet between structures on separate lots. All building setback lines shall be indicated on the preliminary and final plats. Perimeter setbacks: 1. Reserved. 2. Where R-5 lots adjoin (in any manner or configuration) a major thoroughfare (e.g. collector street or higher classification), then an additional twenty-foot setback shall be added to those 	<p>There is hereby created an R-6 Residential District (single-family semi-attached) for those areas so designated by this chapter and the zoning map of the City of Decatur, Alabama, which R-6 Districts shall allow single-family semi-attached residences, subject to use regulations common to all "R" Districts as set forth in section 25-10 hereof, except that accessory structure side yard setback requirements shall be the same as required in section 25-10.2(2)(D) for the main structure, and the rear yard setbacks would remain at the minimum of five (5) feet for accessory structures, and further subject to the following requirements and conditions:</p> <p>(1) General requirements:</p> <ol style="list-style-type: none"> Single-family semi-attached dwellings shall not form long, unbroken lines of row housing. No more than eight (8) contiguous units shall be allowed. Each single-family semi-attached dwelling unit shall be constructed on its own lot. No unit located in an R-6 District shall be located closer than twenty (20) feet to a dedicated exterior street or exterior lot line on the perimeter of one district. Maximum density (exclusive of public ROW) shall not exceed twelve (12) dwelling units per acre per development. No unit within an R-6 District shall have direct access to an existing major thoroughfare as defined by the zoning ordinance or comprehensive plan; or a major thoroughfare as shall be defined by future plans adopted by the planning commission of the City of Decatur.

ZONING DISTRICT COMPARISON R-5 TO R-6		January 17 th , 2023
SECTION	R-5	R-6
	setback requirements set forth hereinbelow in subsections (2)(d) through (2)(f), of this section and shall be measured from the lot line.	
USES PERMITTED ON APPEAL	<p>There is hereby created an "R" Residential District (Residential) for those areas so designated by this chapter and the zoning map of the city, which "R" Districts shall allow: Accessory structures; gardens; playgrounds; parks; public buildings; including public schools and libraries. These uses shall also be permitted on appeal: Customary home occupations; public utilities, general hospitals for humans, except primary for mental cases; semi-public buildings; golf courses; municipal, county, state or federal use; clubs located on and embracing within its sole possessory right, one (1) tract or parcel of land not less than twenty (20) acres in size; and on premises and off premises sale of alcoholic beverage by clubs meeting the acreage requirements above when duly licensed as a class I or class II club by the city and the state alcoholic beverage control board under and pursuant to the Alcoholic Beverage Licensing Code.</p>	<p>There is hereby created an "R" Residential District (Residential) for those areas so designated by this chapter and the zoning map of the city, which "R" Districts shall allow: Accessory structures; gardens; playgrounds; parks; public buildings; including public schools and libraries. These uses shall also be permitted on appeal: Customary home occupations; public utilities, general hospitals for humans, except primary for mental cases; semi-public buildings; golf courses; municipal, county, state or federal use; clubs located on and embracing within its sole possessory right, one (1) tract or parcel of land not less than twenty (20) acres in size; and on premises and off premises sale of alcoholic beverage by clubs meeting the acreage requirements above when duly licensed as a class I or class II club by the city and the state alcoholic beverage control board under and pursuant to the Alcoholic Beverage Licensing Code. Beverage Licensing Code.</p>
USES PROHIBITED	<p>Except as expressly permitted, or permitted on appeal, the following uses are prohibited in all residential districts, including without limitation planned residential development districts, specialty and restricted residential districts: ("R" Districts): All buildings, structures and units constructed off-site (except for modular homes as in section 25-2) without regard to whether or not such building, structures or units are designed and built in compliance with state or federal standards, including without limitation, mobile homes,</p>	<p>Except as expressly permitted, or permitted on appeal, the following uses are prohibited in all residential districts, including without limitation planned residential development districts, specialty and restricted residential districts: ("R" Districts): All buildings, structures and units constructed off-site (except for modular homes as in section 25-2) without regard to whether or not such building, structures or units are designed and built in compliance with state or federal limitation, mobile homes, manufactured homes, house</p>

ZONING DISTRICT COMPARISON R-5 TO R-6		January 17 th , 2023
SECTION	R-5	R-6
	manufactured homes, house trailers, and trailer coaches; trailer or manufactured home parks, courts or camps, and commercial and industrial uses, including parking lots and parking areas in connection with any of these uses, not specifically permitted.	trailers, and trailer coaches; trailer or manufactured home parks, courts or camps, and commercial and industrial uses, including parking lots and parking areas in connection with any of these uses, not specifically permitted.
MINIMUM LOT AREA	Minimum lot area: Five thousand (5,000) square feet.	Minimum lot size: 2,000 square feet.
MAXIMUM BUILDING AREA	Maximum building area: None specified.	Maximum building area: None specified.
MINIMUM FRONT YARD	Minimum front yard setback (also see perimeter setbacks) (1) e: Twenty (20) feet.	Minimum front yard setback: 25 feet.
MINIMUM REAR YARD SETBACK	Minimum rear yard setback (also see perimeter setbacks) (1)e: Twenty (20) feet.	Minimum rear yard setback: 20 feet.
MINIMUM SIDE YARD SETBACK	Minimum side yard setbacks (also see perimeter setbacks) (1)e: Five (5) feet one side, eight (8) feet the other.	Minimum side yard setbacks applicable only at unattached ends and to exterior lots of a development: 10 feet (one-story); 12 feet (two-story).
MINIMUM LOT WIDTH	Minimum lot width at building line: Forty (40) feet.	Minimum lot size at building line: 20 feet.
MAXIMUM BUILDING HEIGHT	Maximum building height: 35 feet.	Maximum building height: Thirty-five (35) feet.
MAXIMUM HEIGHT IN STORIES	None specified.	Maximum height in stories: Two and one-half (2½)..
OFF STREET PARKING	Off-street parking: Two (2) spaces per dwelling unit	(1) Residential. In all cases of new structures, provision for the Off-street parking and vehicle access shall be provided as set forth in section 25-16 hereof. Parking of two (2) vehicles shall be provided for the use of the occupants of each dwelling unit.



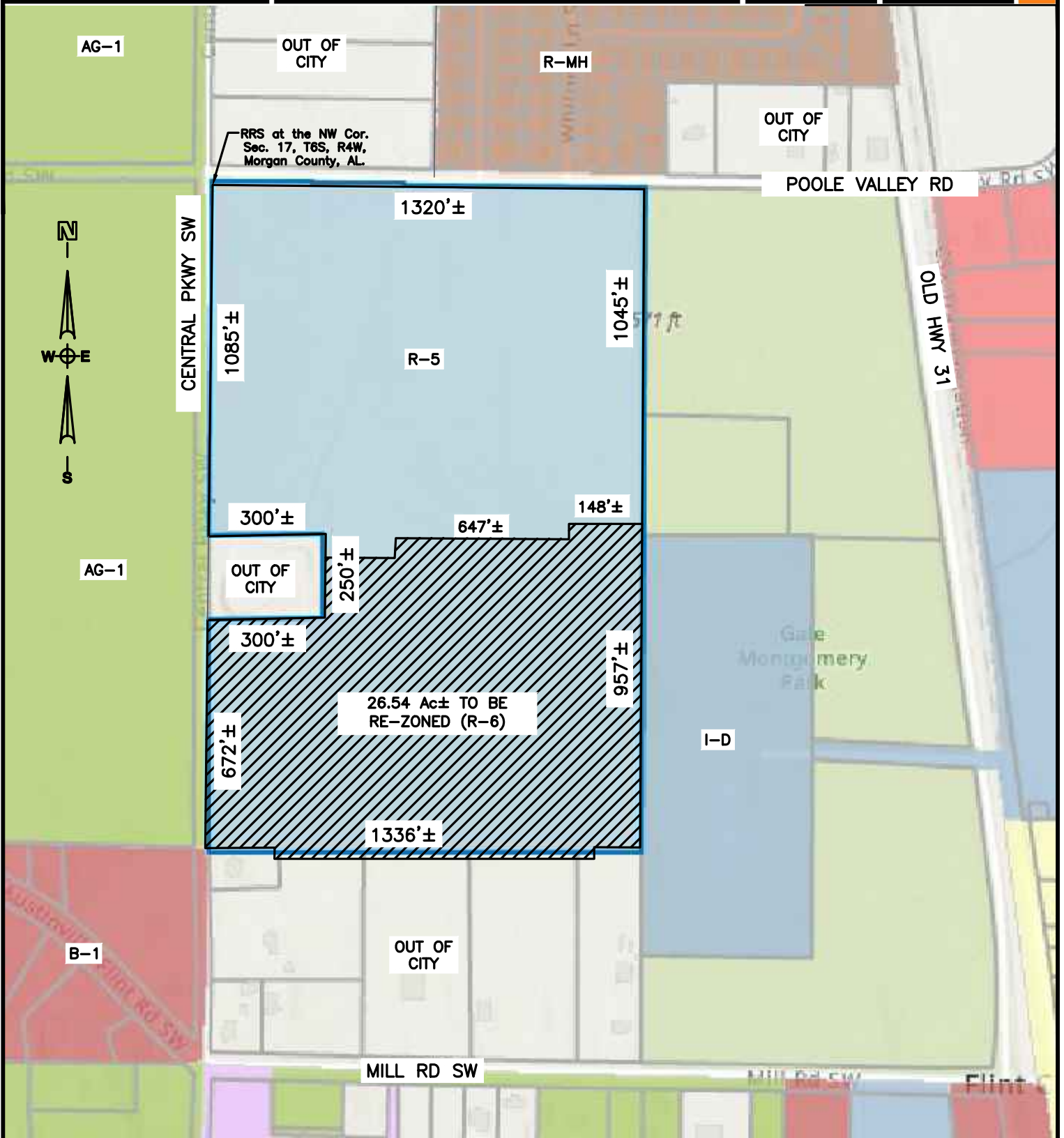
Rezoning 1412-23

LEGEND

- Rezoning 1412-23
- Ownership Parcels
- Streets

City of Decatur Department of Development
Note: Every reasonable effort has been made to assure the accuracy of this map. The City of Decatur does not assume liability arising from the use of this map. THIS MAP IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED.





RE-ZONE TO R-6 (SINGLE-FAMILY ATTACHED)

Scale 1" = 400'

REZONING APPLICATION - HUNTSVILLE LD, LLC - CENTRAL AVE SW, DECATUR, AL

DRAWING DATE: JAN 2023

DRAWN BY: GAF

APPROVED BY: HBM

JOB No. D-1-23

SCALE: 1"=400'

PAGE 1 OF 1

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Michelle Stinnett, Planning

ITEM TYPE: Ordinances

AGENDA SECTION: PUBLIC HEARINGS:

SUBJECT: Ordinance No. 23-4549: Approve Re-zoning Request 1413-23 for a tract of land from M-1, Light Industry to B-5, Central Business District located at portions of 400 & 500 Bank Street
Public Hearing was set February 6, 2023

FINANCIAL IMPACT: N/A

SUGGESTED ACTION: Approve re-zoning of a tract of land containing 1.54 acres more or less from a M-1, Light Industry District to a B-5, Central Business District, located at portions of ~400 Bank Street and ~500 Bank Street.

ATTACHMENTS:

[Ord No 23-4549 Rezoning Request 1413-23 Bank Street.pdf](#)
[Legal 1 - 1413-23 Rezoning Bank Street .doc](#)
[Legal 2 - 1413-23 Rezoning Bank Street .doc](#)
[Planning Commission Agenda January 2023-2.pdf](#)
[ZONING DISTRICT COMPARISON M-1 to B-5.docx](#)
[Rezoning 1413-23-Zoning.pdf](#)

ORDINANCE NO. 23-4549

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ALABAMA

Section 1. That the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended, are further amended, changed and modified as follows:

Re-zoning Request No. 1413-23

The property being considered for re-zoning is a tract of land containing 1.54 acres more or less from a M-1, Light Industry District to a B-5, Central Business District, located at portions of ~400 Bank Street and ~500 Bank Street.

PROPERTY NORTH OF CHERRY STREET

Lots "F" and "G" of Block 301 Decatur, Alabama, as shown by The Plan of the Lands of the Decatur Mineral and Land Company of record in the office of the Judge of Probate of Morgan County, Alabama, in Map Book 1, at Page 7, along with a portion of an alley on the easterly boundary, and right-of-way for Cherry Street along the southerly boundary; and further described as follows: Begin at the intersection of the westerly right-of-way margin of Bank Street and the northerly right-of-way margin of Cherry Street; thence in a westerly direction along the northerly right-of-way margin of Cherry Street a distance of 107.5 feet to a point; thence in a southerly direction parallel to Bank Street right-of-way a distance of 20 feet to the centerline of the Cherry Street right-of-way and the true point of beginning of the tract herein described; thence from the true point of beginning in a westerly direction along the centerline of the Cherry Street right-of-way a distance of 57.5 feet to a point on the westerly boundary of Lot G, Block 301, if extended; thence northerly along the westerly boundary of Lot G, Block 301, if extended, a distance of 152 feet to the northwestern most corner of said Lot 301; thence in an easterly direction parallel to Cherry Street along the northerly boundary of said Block 301 a distance of 57.5 feet to a point; thence in a southerly direction parallel to Bank Street a distance of 152 feet to the true point of beginning, and containing 0.20 acres, more or less.

PROPERTY NORTH OF CAIN STREET

Lots "F" and "G" of Block 290, Lots "F", "G", "A", "C" and "E" of Block 299, Decatur, Alabama, as shown by The Plan of the Lands of the Decatur Mineral and Land Company of record in the office of the Judge of Probate of Morgan County, Alabama, in Map Book 1, at Page 7, along with a portion of an alley, and right-of-way for Cain Street along the southerly boundary and Bank Street along the easterly boundary; and further

described as follows: Begin at the northwestern most corner of said Lot 299, and the true point of beginning of the tract herein described; thence from the true point of beginning in an easterly direction along the northerly boundary of said Lot 299, if extended, a distance of 214.5 feet to a point on the centerline of Bank Street; thence in a southerly direction along the centerline of Bank Street a distance of 75 feet to a point; thence in a westerly direction parallel to Cain Street a distance of 164.5 feet to a point on the easterly boundary of Lot "F" or said Block 299; thence in a southerly direction along the easterly boundary of Lot "F" or said Block 299 a distance of 25 feet to a point; thence in an easterly direction parallel to Cain Street a distance of 164.5 feet to a point on the centerline of Bank Street; thence in a southerly direction along the centerline of Bank Street a distance of 52 feet to a point on the centerline of Cain Street, if extended; thence in a westerly direction along the centerline of Cain Street a distance of 429 feet to a point 49.5 feet westerly of the easterly right-of-way margin of Railroad Street; thence in a northerly direction along a line that is 49.5 feet west of and parallel to the easterly right-of-way margin of Railroad Street a distance of 140 feet to a point; thence in an easterly direction parallel to Cain Street a distance of 214.5 feet to a point on the westerly boundary of said Block 299; thence in a northerly direction along the westerly boundary of said Block 299 a distance of 12.5 feet to the true point of beginning, and containing **1.34 acres**, more or less.

And containing 1.54 acres more or less from a M-1, Light Industry District to a B-5, Central Business District, subject to all rules, regulations and requirements therefore set forth in Section 25-11, Code of Decatur Alabama, and other provisions applicable therefore.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its adoption and publication as required by law.

ADOPTED this the _____ day of _____, 20 ____.

Authenticated:

Stephanie Simon

APPROVED this the ____ day of _____, 20 ____.

Tab Bowling, Mayor

LEGAL NOTICE

Notice of a proposed amendment to the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended.

Pursuant to instructions given by the City Council of the City of Decatur, Alabama, notice is hereby given that the proposed amendment herein below set forth to the Code of Decatur, Alabama, will be considered by the City Council of the City of Decatur, Alabama, at a meeting of said City Council in the Council Chambers in the City Hall of Decatur, Alabama, at 402 Lee Street, N.E. at _____, on _____, 20____.

Section 1. That the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended, are further amended, changed and modified as follows:

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ADOPTED this the _____ day of _____, 20 ____.

Authenticated:

Stephanie Simon

APPROVED this the _____ day of _____, 20 ____.

Tab Bowling, Mayor

At the said time and place, all persons will have the right and are invited to be present and to be heard either for or against the adoption of said amendment.

An ordinance containing the proposed zoning ordinance changes may be reviewed in the office of the Planning Department.

This is the _____ day of _____, 20 ____.

Stephanie Simon
CITY CLERK

LEGAL NOTICE

The City Council of the City of Decatur, Alabama, will consider at their regular meeting of _____, at _____ in the Council Chambers of the City Hall at 402 Lee Street, N.E., the proposed amendment to the Zoning Ordinance of the City of Decatur set forth in Ordinance No. _____, as published in The Decatur Daily on _____.

Section 1. That the district boundaries of the City of Decatur Official Zoning Map, heretofore adopted by Section 27-1, Code of Decatur, Alabama, 1956, now Section 25-1, Code of Decatur, Alabama, as thereafter amended, are further amended, changed and modified as follows:

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The property being considered for re-zoning is a tract of land containing 1.54 acres more or less from a M-1, Light Industry District to a B-5, Central Business District, located at portions of ~400 Bank Street and ~500 Bank Street.

PROPERTY NORTH OF CHERRY STREET

Lots "F" and "G" of Block 301 Decatur, Alabama, as shown by The Plan of the Lands of the Decatur Mineral and Land Company of record in the office of the Judge of Probate of Morgan County, Alabama, in Map Book 1, at Page 7, along with a portion of an alley on the easterly boundary, and right-of-way for Cherry Street along the southerly boundary; and further described as follows: Begin at the intersection of the westerly right-of-way margin of Bank Street and the northerly right-of-way margin of Cherry Street; thence in a westerly direction along the northerly right-of-way margin of Cherry Street a distance of 107.5 feet to a point; thence in a southerly direction parallel to Bank Street right-of-way a distance of 20 feet to the centerline of the Cherry Street right-of-way and the true point of beginning of the tract herein described; thence from the true point of beginning in a westerly direction along the centerline of the Cherry Street right-of-way a distance of 57.5 feet to a point on the westerly boundary of Lot G, Block 301, if extended; thence northerly along the westerly boundary of Lot G, Block 301, if extended, a distance of 152 feet to the northwesternmost corner of said Lot 301; thence in an easterly direction parallel to Cherry Street along the northerly boundary of said Block 301 a distance of 57.5 feet to a point; thence in

a southerly direction parallel to Bank Street a distance of 152 feet to the true point of beginning, and containing 0.20 acres, more or less.

PROPERTY NORTH OF CAIN STREET

Lots "F" and "G" of Block 290, Lots "F", "G", "A", "C" and "E" of Block 299, Decatur, Alabama, as shown by The Plan of the Lands of the Decatur Mineral and Land Company of record in the office of the Judge of Probate of Morgan County, Alabama, in Map Book 1, at Page 7, along with a portion of an alley, and right-of-way for Cain Street along the southerly boundary and Bank Street along the easterly boundary; and further described as follows: Begin at the northwesternmost corner of said Lot 299, and the true point of beginning of the tract herein described; thence from the true point of beginning in an easterly direction along the northerly boundary of said Lot 299, if extended, a distance of 214.5 feet to a point on the centerline of Bank Street; thence in a southerly direction along the centerline of Bank Street a distance of 75 feet to a point; thence in a westerly direction parallel to Cain Street a distance of 164.5 feet to a point on the easterly boundary of Lot "F" or said Block 299; thence in a southerly direction along the easterly boundary of Lot "F" or said Block 299 a distance of 25 feet to a point; thence in an easterly direction parallel to Cain Street a distance of 164.5 feet to a point on the centerline of Bank Street; thence in a southerly direction along the centerline of Bank Street a distance of 52 feet to a point on the centerline of Cain Street, if extended; thence in a westerly direction along the centerline of Cain Street a distance of 429 feet to a point 49.5 feet westerly of the easterly right-of-way margin of Railroad Street; thence in a northerly direction along a line that is 49.5 feet west of and parallel to the easterly right-of-way margin of Railroad Street a distance of 140 feet to a point; thence in an easterly direction parallel to Cain Street a distance of 214.5 feet to a point on the westerly boundary of said Block 299; thence in a northerly direction along the westerly boundary of said Block 299 a distance of 12.5 feet to the true point of beginning, and containing **1.34 acres**, more or less.

And containing 1.54 acres more or less from a M-1, Light Industry District to a B-5, Central Business District, subject to all rules, regulations and requirements therefore set forth in Section 25-11, Code of Decatur Alabama, and other provisions applicable therefore.

SECTION 2. This ordinance shall take effect and be in force from and after the date of its adoption and publication as required by law.

ADOPTED this the _____ day of _____, 20 _____.

Authenticated:

Stephanie Simon

APPROVED this the ____ day of _____, 20 ____.

Tab Bowling, Mayor

At said hearing all persons will have the right and are invited to be present and to be heard either for or against the adoption of said amendment.

Stephanie Simon
City Clerk

FILE NAME OR NUMBER: Rezoning 1413-23

ACRES: 1.54

CURRENT ZONE: M-1 (Light Industry District)

APPLICANT: Pugh Wright McAnally for Decatur Urban Ventures, LLC

LOCATION AND OR PROPERTY ADDRESS: App 400 & 500 Block of Bank St NE

REQUEST: Rezone 1.54 acres from M-1 to B-5

NEW ZONE: B-5 (Central Business District)

PROPOSED LAND USE: Mixed Use

ONE DECATUR FUTURE LAND USE: Urban Core Downtown

ONE DECATUR STREET TYPOLOGY: Bank St NE is a Minor Arterial

COMMENTS AND RECOMMENDATIONS FROM ZONING COMMITTEE:
--

Comments from Zoning Committee

The committee was in favor of this rezoning.

Conditions to be met:

1. All conditions have been met

Pt. of Info:

1. Any relocation of utilities will be at the owner's expense

COMMENTS AND RECOMMENDATIONS FROM PLANNING COMMISSION:

Planning Commission voted unanimously in favor or recommending approval of re-zoning 1413-23 to the City Council.

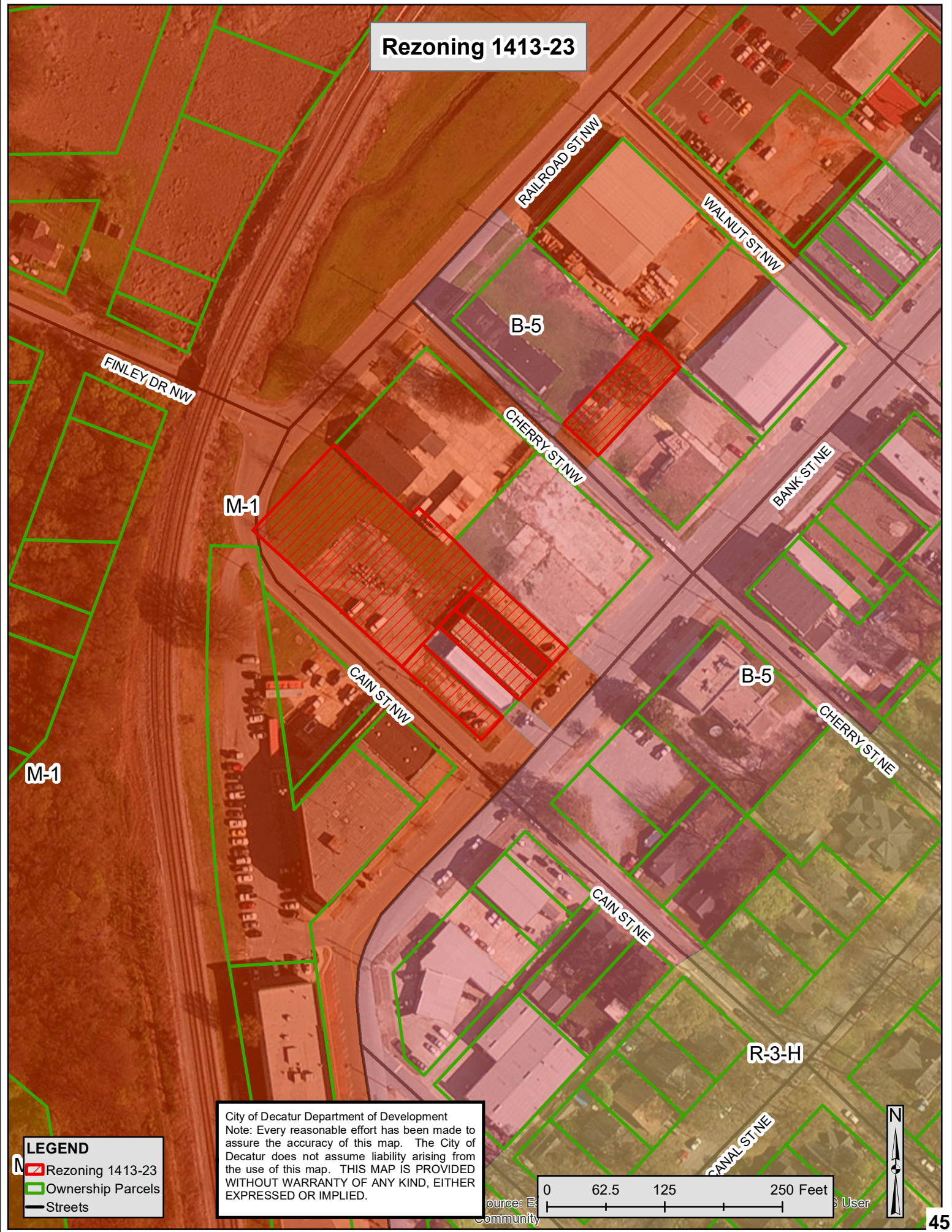
ZONING DISTRICT COMPARISON M-1 to B-5		January 17, 2023
SECTION	M-1	B-5
USES PERMITTED	Off premises sale of alcoholic beverages; clubs; and on premises and off premises sale of alcoholic beverages by clubs when duly licensed as a class I club by the City of Decatur and the Alabama Alcoholic Beverage Control Board under and pursuant to the Alcoholic Beverage Licensing Code, light industrial operations, not obnoxious, offensive, or detrimental to neighborhood property by reason of dust, smoke, vibration, noise, odor, effluence, or appearance (i.e. ice cream plants and creameries; cold storage plants; ice plants; bottling and central distribution plants; warehouses; dry cleaners and laundries). Any retail or wholesale business or service not specifically restricted or prohibited.	Off premises sale of alcoholic beverages; On premises sale of table wine; On premises sale of alcoholic beverages by the Princess Theatre Center for the Performing Arts and any other valid responsible organization of good reputation, if duly licensed as a special retail licensee; on premises sale of alcoholic beverages by duly licensed restaurants; and on premises sale of alcoholic beverages by lounges located in and constituting an integral part of a restaurant licensed by the Alabama Alcoholic Beverage Control Board to sell alcoholic beverages as a restaurant; and on premises sale by a lounge located in, and constituting an integral part of a hotel or motel having fifty (50) or more rooms for rent to the public; residential dwellings (multiple family or single family); provided that such dwellings conform to all requirements set forth in the residential zoning requirements (section 25-10) other than the maximum height provision, setback requirements, lot size, and parking set forth therein, which shall not be applicable. Retail stores and markets, including the following types: food, general merchandise; apparel; furniture; household and hardware; radio and T.V.; drugs and sundries; jewelry and gifts; florists; sporting goods; and similar types. Services including the following types: dry cleaning and laundry pickup stations; event venues, filling stations, provided however that gasoline storage above ground is prohibited; barber shops and beauty shops; shoe repair; offices; hotels; motels; post offices; banks; theaters and similar services. Public buildings, including public schools and libraries; public utilities; semi-public buildings; municipal, county, state and federal

ZONING DISTRICT COMPARISON M-1 to B-5		January 17, 2023
SECTION	M-1	B-5
		buildings; gardens; playgrounds and parks.
USES PERMITTED ON APPEAL	Mobile home parks; brewpubs as defined by Chapter 4A of Title 28 the Code of Alabama (Alabama Brewpub Act) and subject to all requirements of that Chapter, as last amended; sale of alcoholic beverages by a manufacturers licensee when duly licensed by the City of Decatur and the Alabama Alcoholic Control Board under and pursuant to the Alcoholic Beverage Licensing Code, as last amended. Any uses permitted or permitted on appeal in an R-4, Residential District and subject to all district requirements of said district as specified in section 25-10, hereof, other than the maximum height provision set forth therein which shall not be applicable.	Restaurants; class 1 restaurants with the intent that possible impacts on nearby citizens who live or have businesses should be addressed during the board of zoning adjustment hearing process; clubs; on premises and off premises sale of alcoholic beverages by clubs when duly licensed as a class I club by the City of Decatur and the Alabama Alcoholic Beverage Control Board under and pursuant to the Alcoholic Beverage Licensing Code; and on premises and off premises sale of beer and table wine by food establishments other than any classification of restaurant which have monthly gross receipts from the serving of meals and food that constitute at least sixty (60) percent of the monthly gross receipts of the business; architecturally compatible accessory structures may be permitted as a use permitted on appeal for a residential use; brewpubs as defined by Chapter 4A of Title 28 the Code of Alabama (Alabama Brewpub Act) and subject to all requirements of that chapter, as last amended; dry cleaners and laundries; manufacturing incidental to a retail business where articles are sold at retail on the premises, for only those uses specifically permitted. .
USES PROHIBITED	Slaughterhouse; stockyard; bag cleaning; boiler and tank works; central mixing plant for cement, mortar, plaster and painting materials; curing, tanning or storage of hides; distillation of bones, coal, tar, or wood; fat rendering; forage plants; gasoline storage above ground in excess of five hundred (500) gallons; manufacture of acetylene, acid, alcohol for non-consumption, ammonia, bleaching powder, brick,	Major auto repair, except as may be a part of a new car sales, and Businesses licensed under the Deferred Presentment Services Act and/or, Pawnshop Act and/or, Dealers in Gold or Precious Items Act. Any use not permitted or permitted on appeal.

ZONING DISTRICT COMPARISON M-1 to B-5		January 17, 2023
SECTION	M-1	B-5
	pottery, terra cotta or tile, cement blocks, candles, disinfectants, dye-stuffs, fertilizers, illuminating or heating gas, including storage of same, paint, turpentine, varnish, soap, and tar products; wool pulling or scouring; junk yards; cotton waste reclaiming; and similar types of plants or operations; Businesses licensed under the Deferred Presentment Services Act and/or, Pawnshop Act and/or, Dealers in Gold or Precious Items Act.	
MINIMUM LOT AREA	It is the intent of the section that lots of sufficient size be used for any industrial, service or business use for any industrial, service or business use space in addition to the space required for the other normal operation of the enterprise	It is the intent of this section that lots of sufficient size be used for any business or service use to provide adequate parking and loading space in addition to the space required for the other normal operations of the business or service.
MAXIMUM BUILDING AREA	None specified	None specified.
MINIMUM FRONT YARD	None specified, except where existing establishments (other than residential) are set back, any new structures shall be set back not less than the average of the setbacks of the existing establishments within one hundred (100) feet each side thereof.	None specified.
MINIMUM REAR YARD SETBACK	None specified.	None specified.
MINIMUM SIDE YARD SETBACK	None specified, excepting a lot, adjoining its side lot line another lot which is in a residential district, there shall be a side yard not less than eight (8) feet wide	None specified.
MINIMUM FEET AT BUILDING LINE	None specified	None specified.
MAXIMUM BUILDING HEIGHT	None specified	None specified.
MAXIMUM HEIGHT IN STORIES	None specified	None specified.
OFF STREET PARKING	Off-street parking: See § 25-16.	None specified.

ZONING DISTRICT COMPARISON M-1 to B-5		January 17, 2023
SECTION	M-1	B-5
OFF-STREET UNLOADING	Shall provide adequate space for loading or unloading all vehicles or trucks incidental to the operation of the industry or use.	Shall provide space for loading and unloading for structures hereafter erected or altered when same is not on lot adjoining a public or private alley.

Rezoning 1413-23



CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Olivia Williams,Community Development

ITEM TYPE: Public Hearing

AGENDA SECTION: PUBLIC HEARINGS:

SUBJECT: Resolution No. 23-015: Approve abatement of unsafe conditions at
322 11th Ave. NW
Public Hearing was set February 6, 2023

FINANCIAL IMPACT: 001-018-15-000-55210

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-015 Abatement 322 11th Ave. NW DEMO.pdf](#)

RESOLUTION NO. 23-015

WHEREAS, the City Council, of the City of Decatur Alabama, finds and determines after a public hearing that the structure(s) on the below described lot(s) is in violation of the International Property Maintenance Code, as adopted by the City of Decatur; and

WHEREAS, said violations constitute a public nuisance; and

WHEREAS, said structure(s) is unsafe and said unsafe conditions should be removed to protect the public health and welfare of the citizens of Decatur; and

WHEREAS, the owner(s) of record has been notified of said unsafe conditions in accordance with the International Property Maintenance Code, as adopted and amended by the City of Decatur; and

WHEREAS, the owner(s) of record has been given the opportunity to abate said unsafe conditions and eliminate this public nuisance, yet has failed to do so;

THEREFORE, BE IT RESOLVED by the City Council of the City of Decatur, in the State of Alabama, that the Mayor, Tab Bowling, is hereby authorized to abate said code violation(s) on the below described lot at City expense and the costs of such abatement shall constitute a lien on the property and shall be collected in a manner provided by law, and the Mayor is hereby authorized and directed to award any contract required for such abatement.

Said lot is described as follows:

Legal Description: DLI&F Addition #1 Lot 1 and 23 Block 26

More commonly known as: **322 11th Ave. NW, Decatur Alabama**

Adopted this _____ day of _____ 2023

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Olivia Williams, Community Development

ITEM TYPE: Demolition Assessment

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-046: Assess cost of abatement of unsafe conditions at 406 5th Ave. NW

FINANCIAL IMPACT: 001-018-15-000-55210

SUGGESTED ACTION:

ATTACHMENTS:
[Res No 23-046 Demo Lien 406 5th Ave NW.pdf](#)

RESOLUTION NO. 23-046

WHEREAS, the City of Decatur, Community Development Department has given notice to Alfonso Robinson as the person or persons last assessed for ad valorem taxes for the property described as: Decatur Mineral and Land Company, Lot 3 and Part of Lot 4, Block 7, more commonly known as **406 5th Ave. NW, Decatur, Alabama**, of the property being in violation of the Code of Alabama 1975 11-40-33 by reason of being unsafe; and

WHEREAS, the Community Development Department was unable to cause the owner of said property to abate the violation; and

WHEREAS, the Community Development Department did, after soliciting bids, cause the structure to be demolished by contract; and

WHEREAS, the costs for the demolition are as follows:

Contractor Cost	\$12,000.00
Administrative fee	300.00
Utility Retirement Fee	30.00
Total Cost	<u>\$ 12,330.00</u>

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Decatur, Alabama, as follows:

Section 1. The above referenced property shall be assessed, for the above stated demolition costs and the amount shall constitute a special assessment against the land and lien against the property.

Section 2. The City Clerk shall cause a certified copy of this resolution to be recorded in the Office of the Probate Judge of Morgan County, and shall forward a copy to the Morgan County Revenue Commissioner so that the amount of the lien shall be added to the ad valorem tax bill for the property.

Adopted this the 6th day of March, 2023.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Olivia Williams,Community Development

ITEM TYPE: Demolition Assessment

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-047: Assess cost of abatement of unsafe conditions at 504 Finley Dr. NW

FINANCIAL IMPACT: 001-018-15-000-55210

SUGGESTED ACTION:

ATTACHMENTS:
[Res No 23-047 Demo Lien 504 Finley Dr NW.pdf](#)

RESOLUTION NO. 23-047

WHEREAS, the City of Decatur, Community Development Department has given notice to Ivan Fletcher as the person or persons last assessed for ad valorem taxes for the property described as: Begin 1250'S W and 150'S SO from NE corner SW1/4, E 72', SO 463' to NW ROW of Finley Dr., SW'ly 100', N 496' to the POB, more commonly known as **504 Finley Dr. NW, Decatur, Alabama**, of the property being in violation of the Code of Alabama 1975 11-40-33 by reason of being unsafe; and

WHEREAS, the Community Development Department was unable to cause the owner of said property to abate the violation; and

WHEREAS, the Community Development Department did, after soliciting bids, cause the structure to be demolished by contract; and

WHEREAS, the costs for the demolition are as follows:

Contractor Cost	\$ 8,000.00
Administrative fee	300.00
Utility Retirement Fee	30.00
Total Cost	<u>\$ 8,330.00</u>

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Decatur, Alabama, as follows:

Section 1. The above referenced property shall be assessed, for the above stated demolition costs, and the amount shall constitute a special assessment against the land and lien against the property.

Section 2. The City Clerk shall cause a certified copy of this resolution to be recorded in the Office of the Probate Judge of Morgan County, and shall forward a copy to the Morgan County Revenue Commissioner so that the amount of the lien shall be added to the ad valorem tax bill for the property.

Adopted this the 6th day of March, 2023.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Olivia Williams,Community Development

ITEM TYPE: Demolition Assessment

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-048: Assess cost of abatement of unsafe conditions at 507 13th Ave. NW

FINANCIAL IMPACT: 001-018-15-000-55210

SUGGESTED ACTION:

ATTACHMENTS:
[Res No 23-048 Demo Lien 507 13th Ave NW.pdf](#)

RESOLUTION NO. 23-048

WHEREAS, the City of Decatur, Community Development Department has given notice to The Heirs of George S. Allen as the person or persons last assessed for ad valorem taxes for the property described as: Decatur Land Improvement and Furnace Company Subdivision Addition #1, Lot 18, Block 54, more commonly known as **507 13th Ave. NW, Decatur, Alabama**, of the property being in violation of the Code of Alabama 1975 11-40-33 by reason of being unsafe; and

WHEREAS, the Community Development Department was unable to cause the owner of said property to abate the violation; and

WHEREAS, the Community Development Department did, after soliciting bids, cause the structure to be demolished by contract; and

WHEREAS, the costs for the demolition are as follows:

Contractor Cost	\$ 6,000.00
Administrative fee	300.00
Utility Retirement Fee	30.00
Total Cost	<u>\$ 6,330.00</u>

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Decatur, Alabama, as follows:

Section 1. The above referenced property shall be assessed, for the above stated demolition costs, and the amount shall constitute a special assessment against the land and lien against the property.

Section 2. The City Clerk shall cause a certified copy of this resolution to be recorded in the Office of the Probate Judge of Morgan County, and shall forward a copy to the Morgan County Revenue Commissioner so that the amount of the lien shall be added to the ad valorem tax bill for the property.

Adopted this the 6th day of March, 2023.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Jessica Terry, Information Systems

ITEM TYPE: Resolutions

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-049: Declare Items no longer needed by the City of Decatur Information Services Department as surplus and authorize disposal.

FINANCIAL IMPACT: NONE

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-049 IT Surplus Items.pdf](#)

[RID10.2022 \(2\).pdf](#)

RESOLUTION NO. 23-049

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ALABAMA that the attached list of items are no longer needed for use by the City of Decatur Information Systems Department and are hereby declared surplus. This is in accordance with 11-43-56 Code of Alabama.

Approved this 6th day of March, 2023.

<u>SERIAL #</u>	<u>MODEL</u>	<u>TYPE</u>
1C8YVL1	LATITUDE E6500	LAPTOP COMPUTER
2R1W0M1	LATITUDE E6500	LAPTOP COMPUTER
3RQ9W32	LATITUDE 3450	LAPTOP COMPUTER
4B4NYB2	OPTIPLEX 3040	DESKTOP COMPUTER
4WJ7KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WK6KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WK7KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WL1KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WM3KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WM4KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WN4KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WP1KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
5HZPPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J0PPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J0QPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J1NPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J3QPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J3SPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J6MPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J6PPD2	OPTIPLEX 5040	DESKTOP COMPUTER
5J6QPD2	OPTIPLEX 5040	DESKTOP COMPUTER
6Y8BVY1	LATITUDE 6430	LAPTOP COMPUTER
78C0SD2	OPTIPLEX 3020	DESKTOP COMPUTER
866SBT1	LATITUDE E6500	LAPTOP COMPUTER
9BHGCL2	OPTIPLEX 3050	DESKTOP COMPUTER
BKW6W52	PRECISION T1700	DESKTOP COMPUTER
BYGDCH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
C2LQYF2	LATITUDE E7470	LAPTOP COMPUTER
CBX8JL2	OPTIPLEX 3050 MICRO	DESKTOP COMPUTER
CF9DYF2	LATITUDE E7470	LAPTOP COMPUTER
D9HGCL2	OPTIPLEX 3050	DESKTOP COMPUTER
HMRKXG2	OPTIPLEX 7040	DESKTOP COMPUTER
HMRMXG2	OPTIPLEX 7040	DESKTOP COMPUTER
HMRQXG2	OPTIPLEX 7040	DESKTOP COMPUTER
HMRRXG2	OPTIPLEX 5040	DESKTOP COMPUTER
HMRVBH2	OPTIPLEX 7040	DESKTOP COMPUTER
J9338W1	LATITUDE 6430	LAPTOP COMPUTER
JBW4JK2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
4WM5KH2	OPTIPLEX 3050 SFF	DESKTOP COMPUTER
2S8CYF2	LATITUDE E7470	LAPTOP COMPUTER
HMRCYF2	LATITUDE E7470	LAPTOP COMPUTER
85000337	Sharp ARM-257	COPIER

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Charles Booth,Purchasing

ITEM TYPE: Bid

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-050: Award Bid #23-010 to Champion Auto
Sewer Bore to Armor's Utility Contractors

FINANCIAL IMPACT: n/a

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-050 Armor Utility Sewer Boar - Champion.pdf](#)
[Recommendation of Award 23-010.pdf](#)

RESOLUTION NO. 23-050

BE IT RESOLVED BY THE CITY COUNCIL OF DECATUR, MORGAN COUNTY, IN THE STATE OF ALABAMA, that bid #23-010 for Champion Auto Sewer Bore is hereby awarded to Armor's Utility Contractors being the sole respondent in the amount of \$203,635.00 and the Purchasing Agent is authorized to approve purchase orders according to terms and conditions of the bid with funding from General Fund unassigned fund balance.

Approved this 6th day of March, 2023.

February 17, 2023

**Honorable Tab Bowling
City of Decatur
402 Lee Street NE
Decatur, AL 35601**

RE: Recommendation of Award for Champion Auto Sewer Bore. Bid No. 233-010

Mayor,

Enclosed herewith is the certified bid tabulation of the above referenced project. Upon investigation of the bids by Pugh Wright McAnally, Inc. (PWM), we are recommending Armor's Utility Contractors of Decatur, AL be awarded the contract. The award will include all of the unit prices shown of the Base Bid. Should you have any questions please do not hesitate to contact me.

Sincerely,



Nathan Tomberlin P.E.
Vice President
PWM

**CERTIFIED BID TAB FOR
CHAMPION AUTO SEWER BORE
BID NO. 23-010
CITY HALL, 3rd FLOOR
CITY OF DECATUR, ALABAMA**

BID DATE: FEBRUARY 14, 2023, AT 2:00 P.M. CENTRAL TIME


ABBREVIATIONS

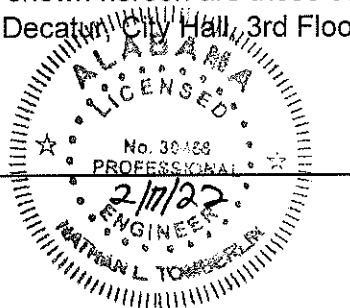
LS-LUMP SUM	AC-ACRE
EA-EACH	LF-LINEAR FOOT
SY-SQUARE YARD	CY-CUBIC YARD

				Armor's Utility Contractors	
BASE BID					
ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
1	1	LS	MOBILIZATION / DEMOBILIZATION	\$7,500.00	\$7,500.00
2	145	LF	8" PVC SEWER GRAVITY MAIN	\$105.00	\$15,225.00
3	140	LF	AUGER BORE WITH 16" STEEL CASING (0.250")	\$775.00	\$108,500.00
4	2	EA	PRECAST CONCRETE SANITARY MANHOLE (0' TO 6')	\$14,750.00	\$29,500.00
5	1	EA	ADD FOR SANITARY MANHOLE HEIGHT UNITS OF 2'	\$3,200.00	\$3,200.00
6	1	EA	ADD FOR DOGHOUSE MANHOLE	\$3,600.00	\$3,600.00
7	2	EA	ADD FOR WATER TIGHT MANHOLE LID	\$2,250.00	\$4,500.00
8	2	EA	ADD FOR CONCRETE DOME	\$4,200.00	\$8,400.00
9	70	SY	DEMO AND SAWCUT EXISTING ASPHALT	\$21.00	\$1,470.00

CERTIFIED BID TAB FOR CHAMPION AUTO SEWER BORE BID NO. 23-010 CITY HALL, 3rd FLOOR CITY OF DECATUR, ALABAMA BID DATE: FEBRUARY 14, 2023, AT 2:00 P.M. CENTRAL TIME				
ABBREVIATIONS LS-LUMP SUM AC-ACRE EA-EACH LF-LINEAR FOOT SY-SQUARE YARD CY-CUBIC YARD				
			Armor's Utility Contractors	
BASE BID ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE AMOUNT
10	70	SY	REBUILD 1" WEARING SURFACE, 2' UPPER BINDER COURSE, AND 8" DENSE GRADED BASE	\$225.00 \$15,750.00
11	34	SY	ZOYSIA SOD REPLACEMENT	\$35.00 \$1,190.00
12	1	LS	EROSION CONTROL	\$1,200.00 \$1,200.00
13	1	LS	INCIDENTALS	\$3,600.00 \$3,600.00
			BASE BID TOTAL	\$203,635.00

I hereby certify that the totals shown hereon are those submitted by Bidders at 2:00 P.M. CDT, February 14, 2023, at City of Decatur, City Hall, 3rd Floor, 402 Lee Street NE, Decatur, AL 35601


 Nathan Tomberlin, PE
 Ala. Reg. No. 30456



CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Gloria Robertson, Engineering Department

ITEM TYPE: Agreements

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-051: Approve Pugh Wright Agreement for Poole Valley Road Realignment

FINANCIAL IMPACT: Funding Source: General Fund Unassigned Balance

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-051 PW-Poole Valley Rd Realignment.pdf](#)
[PW-Poole Valley Rd Realignment Contract 60500.pdf](#)

RESOLUTION NO. 23-051

Pugh Wright Agreement – Poole Valley Road Realignment

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ALABAMA, With the recommendation from Dane Shaw, Director, Economic and Community Development, that it hereby approves the expenditure and authorizes the Mayor to enter in to the attached agreement with Pugh Wright McAnally Civil Engineers, to provide surveying and civil engineering services for Poole Valley Road Realignment Design.

The quote for the project is \$60,500, based on an assumed project construction budget of \$1.1M, with a design fee of 5.5% of construction cost.

Budget amendment is requested in the amount of \$60,500.00. Funding shall be made from the General Fund Unassigned Balance.

Approved this 6th day of March, 2023.

SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as February 6th, 2023 ("Effective Date") between

City of Decatur ("Owner")

and

Pugh Wright McAnally, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Surveying and Civil Engineering Services for Poole Valley Road Realignment Design ("Project").

Engineer's Services under this Agreement are generally identified as follows:

Poole Valley Road Realignment

[See Exhibit A]

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 15 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 15 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for

services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.

b. By Engineer:

1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with

laws and regulations applicable to such contractor's furnishing and performing of its work.

- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and

consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

1. *[See Exhibit A]*

- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Exhibit B.

Attachments:

Exhibit A – Scope and Proposal

Exhibit B - Engineer's Standard Hourly Rates

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: _____

Title: _____

Date Signed: _____

Address for giving notices:

ENGINEER:

By: Nathan Tomberlin /Nathan Tomberlin

Title: Vice President

Date Signed: January 18, 2023

Engineer License or Firm's
Certificate Number: C-94-E

State of: Alabama

Address for giving notices:

P.O. Box 2419
Decatur, AL 35602

Exhibit A

February 6, 2023

Mr. Dane Shaw
Director of Development
City of Decatur
402 Lee Street NE
Decatur, AL 35601
Phone: (256) 341-4505

RE: Civil Design Services for Poole Valley Road Realignment

Dear Dane,

We at Pugh Wright McAnally (PWM) appreciate the opportunity to make a response to your request for Engineering Services for the above referenced project. Thank you for meeting with us to discuss the area for this proposed design.

Scope of Work:

Civil Engineering and Surveying (PWM)

- Complete a Right-of-way and Topographic Survey of the Corridor and area of improvements.
- Provide Schematic Layout of proposed improvements for City review and approval
- Provide information to City of Subsurface Exploration (Subsurface Exploration is excluded from this proposal)
- Complete Preliminary Engineering documents based on comments provided on Schematic Layout
- Provide Construction Documents to include Construction Drawings, Utility Relocation Drawings, Engineer's Estimated Quantities, Bid Documents, Contract Documents
- Provide services during Bidding to include Pre-Bid Conference and addressing Requests For Information

This proposal excludes Construction Engineering and Inspection (CE&I)

Civil Engineering and Surveying Fee

**(Based on design of 2-Lane ditch
street section) and ROW improvements:**

\$60,500.00

This fee is based on an assumed project construction budget of \$1.1M with a design fee of 5.5% of construction cost.

We appreciate your consideration for our services and look forward to working with you and the City to accomplish this project. Should you have any questions, please do not hesitate to contact us.

Respectfully,



Nathan Tomberlin P.E., Vice President
Pugh Wright McAnally, Inc.

Exhibit B

2023 HOURLY RATE SCHEDULE

Valid 1 January through 31 December 2023

PROJECT MANAGER.....	\$170.00 per hour
PRINCIPAL ENGINEER.....	\$150.00 per hour
LICENSED PROFESSIONAL ENGINEER.....	\$135.00 per hour
PROJECT ENGINEER.....	\$115.00 per hour
SENIOR PARTY CHIEF (Licensed Professional Surveyor).....	\$ 97.00 per hour
CIVIL DESIGNER II.....	\$100.00 per hour
CIVIL DESIGNER I.....	\$ 89.00 per hour
CIVIL TECHNICIAN.....	\$ 60.00 per hour
PARTY CHIEF.....	\$ 80.00 per hour
INSPECTOR.....	\$ 82.00 per hour
CLERICAL.....	\$ 47.00 per hour

SURVEY CREWS: (Includes electronic Total Station and Data Collector)

2-man.....	\$135.00 per hour
3-man.....	\$170.00 per hour

EQUIPMENT CHARGES:

GPS (SMARTROVER STATIONS).....	\$ 57.00 per hour
LEICA MS 50 SCANNER.....	\$175.00 per hour
VELODYNE SCANNER/M-600 UAS.....	\$420.00 per hour

REIMBURSABLES 4% of above Hourly Totals (Includes prints, copies, telephone, fax, postage, stakes, hubs, iron pins, flagging.)

OTHER COSTS (Sub-Contracts, Over-night shipping, Permits and Fees, Travel): As Required by Client shall be invoiced at Cost + 10%

The hourly rates are portal-to-portal from our office at 310 8th Avenue, N.E., Decatur, Alabama, and include all payroll taxes, fringe benefits, overhead, and profit. The rates are for nine hours daily, Monday through Friday. Saturday work or daily work required in excess of nine hours shall be 1.3 times the foregoing rate schedule. Sunday or holiday work shall be 1.5 times the foregoing rate schedule.

Pugh Wright McAnally, Inc. will keep accurate records of the number of hours charged for each employee assigned to the work and such records will be available for inspection by your authorized representative. Terms of payment will be net monthly. Balances in excess of 30 days may be subject to a finance charge.

Pugh Wright McAnally, Inc. maintains in full force and effect the following minimum insurance coverage's:

- Insurance to protect against claims under any applicable Workmen's Compensation Law, State or Federal. Employer's Liability insurance with limits of \$500,000 per accident.
- Public Liability insurance with limits of \$1,000,000 combined single limit for property damage and bodily injury.
- Automobile Liability insurance with limits of \$1,000,000 combined single limit for bodily injury and death and/or property damage.
- In addition to the above coverage, we also carry an excess umbrella policy of \$2,000,000.
- Professional Liability insurance with limits of \$2,000,000 each claim, \$2,000,000 aggregate.

Certificates evidencing said insurance and containing a ten-day notice of cancellation clause shall be furnished upon request.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Gloria Robertson, Engineering Department

ITEM TYPE: Agreements

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-052: Approve CDG Proposal for Outfall
Reconnaissance and Mapping
For NPDES Phase II

FINANCIAL IMPACT: Funding Source: Engineering General Account; Expense: 001-
033-31-000-52036

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-052 CDG Outfall Inspections.pdf](#)
[CDG Contract-Outfall Inspections .pdf](#)

RESOLUTION NO. 23-052

CDG Proposal – Outfall Reconnaissance and Mapping
For NPDES Phase II

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DECATUR, ALABAMA,
It is the recommendation of the City Engineer, Carl Prewitt, that we allow him to sign the attached contract with CDG to do our stormwater outfall inspections and mapping for NPDES Phase II General Permit #ALR040006.

The quote for the project is \$9,400.00. Funding is available in the Engineering General Fund under expense account 001-033-31-000-52036.

Approved this 6th day of March, 2023



6767 Old Madison Pike
Suite 240
Huntsville, AL 35806
Tel (256) 539-7470
Fax (256) 539-7473

cdge.com

February 15, 2023

City of Decatur
1802 Central Parkway, SW
Decatur, Alabama 35601

Attention: Mr. Carl Prewitt, PE, City Engineer

Reference: **Proposal to Provide Outfall Reconnaissance and Mapping
For NPDES Phase II General Permit #ALR040006
Decatur, Morgan County, Alabama**

Dear Mr. Prewitt:

CDG, Inc. (CDG) is pleased to submit this proposal to provide outfall reconnaissance and digitization services in association with the City of Decatur's MS4 NPDES General Permit #ALR040006.

Proposed Scope of Services

Our services will be performed in general accordance with subsection 3.4 – *Stormwater Outfall Inspections* of the City's *Stormwater Management Program Plan* (revised March 2022). The noted subsection indicates that 20% of outfalls shall be checked within each calendar year. Specifically, we propose the following:

A representative of CDG will perform dry weather inspections at a minimum of eighty (80) and maximum of one-hundred (100) outfall locations during February/March 2023. Inspections will include the following.


- A review of precipitation events occurring within 48-hours prior to the inspection.
- A simplified *Dry Weather Screening Checklist* will be completed for each inspected outfall location.
- Visual identification of the outfall type, including photographs.
- Outfalls will be inspected for structural damage, staining, vegetation, and stagnation.
- When not already catalogued in the City's GIS system, a handheld GPS unit will be utilized to establish the latitude and longitude of the outfall location to a horizontal accuracy of 30 feet or less.
- The outfall location inventory will be digitized using the City's ArcGIS web portal.
- Inspected outfalls will be assigned to an appropriate watershed / sub-watershed (if not already completed).



Based on the noted scope of services, the lump sum cost for inspection services is **\$9,400.00**.
Supplementary services may be provided as requested by the client.

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. Please call if you have any questions.

Sincerely,
CDG, Inc.


Allen J. Yates, PE
Senior Engineer

Attachments: Proposal Acceptance Sheet
Terms and Conditions



CORPORATE OFFICE
PO BOX 278
ANDALUSIA, AL 36420
(334) 222-9431

HUNTVILLE OFFICE
6767 OLD MADISON PIKE, SUITE 240
HUNTSVILLE, ALABAMA 35806
(256) 539-7470

PROPOSAL ACCEPTANCE SHEET

Project Name: Decatur Outfall Recon and Mapping (Q1-2023)
Project Location: Decatur, AL
CDG Reference Number: R856217028

CLIENT

Corporate Name: City of Decatur
Street Address or PO Box: 1802 Central Parkway, SW
City / State / Zip: Decatur, AL 35601
Phone Number: (256) 341-4875
Email Address: clprewitt@decatur-al.gov
Attention: Carl Prewitt, City Engineer

BILLING INFORMATION (if different than client)

Name: _____
Address: _____
Phone Number: _____

REPORT DISTRIBUTION:

Company: _____	Company: _____	Company: _____
Contact: _____	Contact: _____	Contact: _____
Email: _____	Email: _____	Email: _____

PROPOSAL ACCEPTANCE

The Terms and Conditions of this Proposal, including the terms on this page and the attached are

Accepted this ____ day of _____, 2023.

Print or type individual, firm or corporate body name

Signature of authorized representative

Print or type name of authorized representative and title

CDG, INC.

Print or type individual, firm or corporate body name

Signature of authorized representative

Print or type name of authorized representative and title

TERMS AND CONDITIONS

SERVICES TO BE PROVIDED AND PROPOSAL DURATION. CDG, Inc. (hereinafter CDG) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in our proposal. The stated fee or unit-rate compensation is valid for 60 days from the date of the proposal.

PAYMENT TERMS. Client agrees to pay our invoice upon receipt. If payment is not received within 10 days from the invoice date, Client agrees to pay a service charge on the past due amount at a rate of 1.5% per month, and CDG reserves the right to suspend all work until payment is received. No deduction shall be made from our invoice due to liquidated damages, retainage or other sums withheld from payments to contractors or others.

TERMINATION. Either party may terminate this Agreement without cause upon 20 days advance notice in writing. In the event Client requests termination prior to completion of the proposed services, Client agrees to pay CDG for all costs incurred plus reasonable charges associated with termination of the work.

PROFESSIONAL LIABILITY. Notwithstanding any other provision of this Agreement, the Engineer's total liability to the Client for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the Engineer's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the Engineer's total fees associated with this Agreement or the proceeds paid under Engineer's liability insurance in effect at the time such claims are made. The Client hereby releases the Engineer from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.

SITE OPERATIONS. Client will arrange for right-of-entry to all applicable properties for the purpose of performing studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

OWNERSHIP AND USE OF PROJECT DOCUMENTS. All documents are instruments of service in respect to the Services, and Engineer shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the Engineer) whether or not the Services are completed. Copies of documents that may be relied on by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by the Engineer. Files in electronic media format of text, data, graphics, or of other types that are furnished by Engineer to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. Client may make and retain copies of documents for information and reference in connection with the services by Client. Such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants. Client shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom. In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern. Any verification or adaptation of the documents for extensions of the services or for any other services will entitle Engineer to further compensation at rates to be agreed upon by Client and Engineer.

ADDITIONAL SERVICES OF CONSULTANT. If authorized in writing by the Client, CDG shall furnish additional services that are not considered as an integral part of the Scope of Services outlined in the Proposal Acceptance Sheet. Under this Agreement, all costs for additional services will be negotiated as to activities and compensation. In addition, it is possible that unforeseen conditions may be encountered that could substantially alter the original scope of services. If this occurs, CDG will promptly notify and consult with Client and any additional services will be negotiated.

ASSIGNABILITY. CDG shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Client; provided, however, that claims for money by the Client from CDG under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be promptly furnished to the Client.

SERVICES TO BE CONFIDENTIAL. All services, including opinions, designs, drawings, plans, specifications, reports and other services and information, to be furnished by CDG under this Agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the client, without prior written approval of the Client, except by testimony under oath in a judicial proceeding or as otherwise required by law. CDG shall take all necessary steps to ensure that no member of its organization divulges any such information except as may be required by law.

CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation. However, in the event a claim is made that results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in defending the claim, including reasonable attorney's fees. The claim will be considered proven if the judgment obtained and retained through any applicable appeal is at least ten percent greater than the sum offered to resolve the matter prior to the commencement of trial.

SEVERABILITY. It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

SURVIVAL. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and CDG shall survive the completion of the services and the termination of this Agreement.

INTEGRATION. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of Alabama.

Client representative agreeing to above terms

CDG representative agreeing to above terms

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Herman Marks, Legal

ITEM TYPE: Vacation of Easement/Right-of-Way

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-053: Approve 1690 Beltline Rd SW Vacation Reapproval

FINANCIAL IMPACT: None

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-053 Vacation Reapproval - 1690 Beltline Rd SW.pdf](#)

Resolution of the City Council of the City of Decatur

Be it Resolved by the City Council of the City of Decatur that in accordance with Article 3 of Chapter 2 of Title 35 of the Code of Alabama, 1975, determination has been made upon presentation of material facts submitted by the owner of certain real property to wit KTY LLC, that the portion of the ***drainage utilities and telecommunications and/or right-of-way*** contained within the boundaries of the hereinafter described property, to wit:

The southerly eight (8.00') feet of a twenty-five (25.00') foot drainage and utilities easement which is evenly off the northerly boundary of Parcel No. 1 of Beltline Plaza LTD., a Certificate to Subdivide, as recorded by map or plat in the Office of Judge of Probate for Morgan County, Alabama, on the 6th day of May, 1982, in plat book 6, at page 109, leaving the northerly seventeen (17') feet of said easement intact.

is determined to be void of public benefit and superfluous to any interest the City of Decatur, a municipal corporation of the State of Alabama, may have in the reasonable facilitation of traffic flow, utility installations, or any other municipal interests.

BE IT FURTHER RESOLVED that the assent of the City Council of the City of Decatur, Alabama, being the governing body of the municipality in which the above described portion of the ***drainage utilities and telecommunications and/or right-of-way*** is located, be and the same is given to the vacation by KTY LLC, the owner of all land abutting thereon, of said ***drainage utilities and telecommunications and/or right-of-way***.

BE IT FURTHER RESOLVED that this request was previously approved by the City Council of the City of Decatur at the May 11, 1992 Council meeting, but not subsequently recorded.

BE IT FURTHER RESOLVED that the City Clerk of the City of Decatur, Morgan County, Alabama, be and she is hereby, authorized and empowered to attach a certified copy of this resolution to the declaration of vacation.

Adopted this _____ day of _____, 20____.

STATE OF ALABAMA

COUNTY OF MORGAN

I, _____, City Clerk of the City of Decatur, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Decatur, Alabama, on the _____ day of _____, 20_____.

Witness my hand and seal of the office this the _____ day of _____, 20_____.

City Clerk of the City of Decatur, Alabama

Tammy Manley Yarborough, Member and Registered Agent for KTY, LLC
275 Lakewood DR East
Muscle Shoals, Alabama 35661

Stephanie Simon
City Clerk
City of Decatur, AL
PO Box 488
Decatur, AL 35601

Dear Stephanie Simon :

I purchased the property at 1690 Beltline RD SW in 2017 in the name of KTY, LLC. It has come to our attention that there was a vacation done in 1992 for a portion of an easement. The vacation document was not completed. There are certified council minutes showing that it was unanimously approved at the meeting council meeting held May 11, 1992. The minutes of that meeting were approved May 18, 1992. I would like the vacation process of a portion of the easement as approved to be completed as soon as possible. I have provided a Resolution to complete the vacation so that we can get it approved and the vacation recorded by the current City.

<i>Tammy Manley Yarborough</i>	dotloop verified 02/08/23 12:39 PM CST INHP-40IT-V6DX-7GLX
--------------------------------	--

Tammy Manley Yarborough, Member and Registered Agent for KTY, LLC

Enclosure

[illegible]

CEDAR STREET SW

FRONTAGE ROAD

BELTLINE ROAD SW

FRONTAGE ROAD

262.12

40 PARKING SPACES

NATURAL GAS EASEMENT

SETBACK

150.00*

EXISTING ACCESS ROAD

171.01' TO REMAIN

50

100.

**PROPOSED
SINGLE-STORY
FREESTANDING STORE**

二

100.

1

15' IN REAR SETBACK

10

10

160.00'

25. DRAINAGE AND UTILITIES EASEMENT

**EXISTING
WALMART
PARKING LOT**

SCALE: 1"=40'

DATE: APR., 1992	D-77-92
------------------	---------

PAGE 6 OF 8

DECLARATION OF VACATION

STATE OF ALABAMA)
)
COUNTY OF MORGAN)

KNOW ALL MEN BY THESE PRESENTS, THAT:

LEISURE ENTERTAINMENT, INC., owners of all of the property adjacent to that certain drainage and utilities easement hereinafter described, and desiring to vacate the same, do hereby declare that a portion of the drainage and utilities easement heretofore granted to the City of Decatur, Alabama by subdivision plat of BELTLINE PLAZA, LTD., of record in the Office of the Judge of Probate of Morgan County, Alabama in Plat Book 6, at Page 109, situated in the City of Decatur, Morgan County, Alabama and particularly described as follows, to-wit:

The southerly eight (8.00') feet of a twenty-five (25.00') foot drainage and utilities easement which is evenly off the northerly boundary of Parcel No. 1 of Beltline Plaza Ltd., a Certificate to Subdivide, as recorded by map or plat in the Office of the Judge of Probate for Morgan County, Alabama, on the 6th day of May, 1982, in Plat Book 6, at Page 109, leaving the northerly seventeen (17.00') feet of said easement intact.

be and the same is hereby vacated and all public rights therein are hereby divested.

It is hereby declared that the said vacation does not interrupt public utilities or required storm drainage access to any areas served by the City of Decatur and that the easement covering the above described property is excessive to the need of the City of Decatur in and about the maintenance and provision of public utilities or storm drainage.

It is further declared that the assent to the foregoing vacation be procured from the City Council of the City of Decatur, the governing body of the municipality in which said easement was located, and shall be assented to by a resolution adopted by said City Council, a copy of which, certified by the Clerk of the City of Decatur, Alabama shall be attached to, and filed and recorded with this written Declaration of Vacation, and further that the assent of the Decatur City Planning Commission to the foregoing vacation shall be procured, and said assent to be evidenced by a resolution adopted by the said Decatur City Planning Commission, a copy of which, certified by the Secretary thereof, shall be

Pugh/Wright Job No. D-77-92
Page 1 of 7

attached to and filed and recorded with this written Declaration of Vacation.

IN WITNESS WHEREOF, _____ has caused
this instrument to be executed this 22nd day of April, 1992.

LEISURE ENTERTAINMENT, INC.

David M. Kahn V.P.
David M. Kahn, Authorized Agent

STATE OF ALABAMA)
COUNTY OF MORGAN)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that DAVID M. KAHN, whose name as Authorized Agent of LEISURE ENTERTAINMENT, INC. is signed to the foregoing declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the declaration, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 22nd day of April, 1992.

Deanna D. Flair
Notary Public
My Commission expires
4-23-93

STATE OF ALABAMA)
)
COUNTY OF MORGAN)

RESOLUTION

BE IT RESOLVED by the Planning Commission of the City of Decatur that in accordance with 35-2-54 of the CODE OF ALABAMA, 1975 determination has been made upon presentation of material facts submitted by the owner of certain real property, to-wit, LEISURE ENTERTAINMENT, INC., that the portion of the drainage and utilities easement contained within the boundaries of the hereinafter described property, to-wit:


The southerly eight (8.00') feet of a twenty-five (25.00') feet drainage and utilities easement which is evenly off the northerly boundary of Parcel No. 1 of Beltline Plaza Ltd., a Certificate to Subdivide, as recorded by map or plat in the Office of the Judge of Probate for Morgan County, Alabama, on the 6th day of May, 1982, in Plat Book 6, at Page 109; leaving the northerly seventeen (17.00') feet of said easement intact.

is determined to be void of public benefit and superfluous to any interest the City of Decatur, a municipal corporation in the State of Alabama, may have in the reasonable facilitation of traffic flow, utility installations, or any other municipal interests, and

BE IT FURTHER RESOLVED that the Planning Commission of the City of Decatur does hereby recommend to the City Council of Decatur, the governing body of the municipality having interest and jurisdiction in said drainage and utilities easement that said governing body adopt and place on file and of record in the Office of Probate Judge, Morgan County, Alabama, a duly certified resolution effecting the abandonment and vacation of any and all rights and interests under the Laws of Alabama to that certain drainage and utilities easement as described above.

ADOPTED this 4th day of May, 1992.

ATTEST:


L.W. Johnson, Secretary to the
Planning Commission of the
City of Decatur

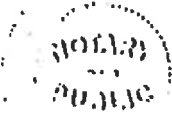
STATE OF ALABAMA)
)
COUNTY OF MORGAN)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that L.W. JOHNSON, whose name as Secretary of the City

of Decatur Planning Commission, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instruments, he in his capacity as such officer, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 4th day of May, 1992.

Juan B. Hancock
NOTARY PUBLIC



RESOLUTION

BE IT RESOLVED by the City Council of the City of Decatur that in accordance with 35-2-54 of the CODE OF ALABAMA, 1975 determination has been made upon presentation of material facts submitted by the owner of certain real property, to-wit; LEISURE ENTERTAINMENT, INC., that the portion of the drainage and utilities easement contained within the boundaries of the hereinafter described property, to-wit:

The southerly eight (8.00') feet of a twenty-five (25.00') foot drainage and utilities easement which is evenly off the northerly boundary of Parcel No. 1 of Beltline Plaza Ltd., a Certificate to Subdivide, as recorded by map or plat in the Office of the Judge of Probate for Morgan County, Alabama, on the 6th day of May, 1982, in Plat Book 6, at Page 109, leaving the northerly seventeen (17.00') feet of said easement intact.

is determined to be void of public benefit and superfluous to any interest the City of Decatur, a municipal corporation in the State of Alabama, may have in the reasonable facilitation of traffic flow, utility installations, or any other municipal interests, and

BE IT FURTHER RESOLVED that the assent of the City Council of the City of Decatur, Alabama, being the governing body of the municipality in which the above described portion of the drainage and utilities easement is located, be and the same is given to the vacation by LEISURE ENTERTAINMENT, INC., the owners of all land abutting thereon, of said drainage and utilities easement;

BE IT FURTHER RESOLVED that the City Clerk of the City of Decatur, Morgan County, Alabama, be and she is hereby, authorized and empowered to attach a certified copy of this resolution to the declaration of vacation.

ADOPTED this _____ day of _____, 1992.

APPROVED BY:

ATTEST:

Councilman

City Clerk

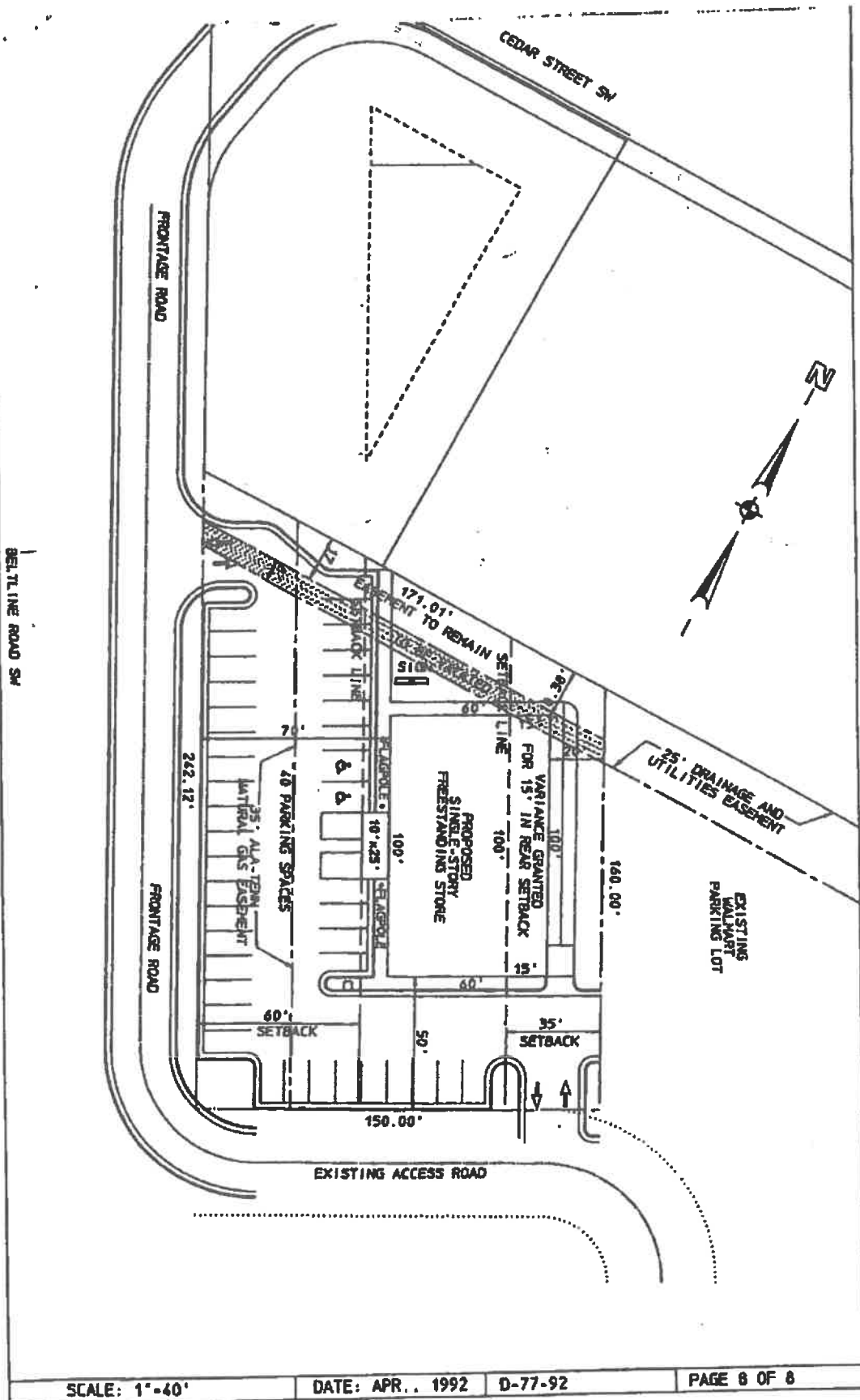
CERTIFICATE OF CLERK

STATE OF ALABAMA)
)
COUNTY OF MORGAN)

I, GAIL BUSBEY, City Clerk of the City of Decatur, Alabama, do hereby certify that the above and foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Decatur, Alabama, on the _____ day of _____, 1992.

Witness my hand and seal of office this the _____ day of _____, 1992.

City Clerk of the City of
Decatur, Alabama



SCALE: 1"=40'

DATE: APR., 1992

D-77-92

PAGE 8 OF 8

VACATION
REQ # 225-92

CEEDAR STREET SW

FRONTAGE ROAD

FRONTAGE ROAD

EXISTING ACCESS ROAD

PROPOSED SINGLE-STORY FREESTANDING STORE

171.01' EASEMENT TO REMAIN

10' 225' 100' 60' 50' 150.00'

40' PARKING SPACES

35' ALTERNATE LATERAL GAS EASEMENT

60' SETBACK

35' SETBACK

25' DRAINAGE AND UTILITIES EASEMENT

EXISTING WALMART PARKING LOT

VARIANCE GRANTED FOR 15' IN REAR SETBACK

160.00'

100' 100' 60' 50'

12' 70'

242.12'

SCALE: 1"=40'

DATE: APR., 1992

D-77-92

PAGE 8 OF 8

SCALE: 1"=40'

DATE: APR., 1992	D-77-92
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D-77-92

PAGE 6 OF 8

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Herman Marks, Legal

ITEM TYPE: Agreements

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-054: Approve DDRA Johnston Alley
Improvements Project Agreement

FINANCIAL IMPACT: None

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-054 DDRA Johnston Street Alley Project approval.pdf](#)
[DDRA alley agreement final.docx](#)

RESOLUTION NO. 23-054

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Mayor is authorized on behalf of the City to execute the attached agreement with the Decatur Downtown Redevelopment Authority regarding the Johnston Street Alley Improvements Project.

ADOPTED this 6th day of March 2023.

STATE OF ALABAMA)
)
COUNTY OF MORGAN)

AGREEMENT

THIS AGREEMENT is made this the ____ day of _____, 2023, by and between the Decatur Downtown Redevelopment Authority, (hereinafter referred to as "DDRA"), and the City of Decatur, Alabama (hereinafter referred to as "City").

WITNESSETH: For and in consideration of the mutual covenants and agreements and of the payments hereinafter mentioned, the parties hereto agree as follows:

1. TERMS.

- a. DDRA shall enter into an agreement(s) with various contractors for the placement and installation of an entertainment and recreation alley area known as Johnston Street Alley Improvements Project ("hereinafter referred to as "Alley Improvements Project"), located south of Johnston Street, SE, and north of Grant Street, SE, Decatur, Alabama, adjacent to Lots 1-12, Block 51, Decatur Land Improvement & Furnace Co. Addition No. 3, Decatur, Alabama, as shown by map or plat on file and of record in the Office of the Judge of Probate of Morgan County, Alabama, in Map Book 1 at Page 17, which area will be provided for the use of visitors, which will enhance the quality of life for the residents of, and visitors to, the City.
- b. DDRA shall be the project manager for the Alley Improvements Project for the purposes stated herein, with the City to maintain ownership of the subject property. DDRA shall comply with all bidding laws. Upon completion of construction of the Alley Improvements Project, DDRA's responsibility for said Alley Improvements Project will

cease and said Alley Improvements Project shall be maintained by the City as part of its routine maintenance program.

- c. The City Council of Decatur, Alabama has reviewed this Agreement and the attached site plan along with the drawings and specifications for the Alley Improvements Project submitted by John Godwin and hereby approves same and authorizes the Mayor of the City to sign this Agreement between DDRA and the City.
- d. All construction, including installations required or allowed to be placed pursuant to the Alley Improvements Project, including without limitation the location, materials used, style, appearance, event, and/or method of installation, shall be presented to and approved by DDRA as project manager. In no event shall any construction occur or installation be affixed, either permanently or otherwise, to any public property so as to damage or deface said public property. DDRA understands and agrees that the City may require construction and installations to be modified at any time and from time to time for public safety and convenience. All construction shall occur and installations shall be installed at the sole cost and expense of funds donated from multiple sources to DDRA for the Alley Improvements Project. DDRA shall manage said funds and all payments for construction of the Alley Improvements Project shall be paid from said funds by DDRA.
- e. Any major change in the use or layout of the alley area which differs substantially from the attached site plan or the drawings and specifications for the Alley Improvements Project submitted by John Godwin must be approved by the City Council of Decatur,

Alabama prior to said change in the use or layout.

- f. The layout and positioning of contractors and any construction and installations cannot block access to rights of way or prevent the provision of emergency services.
- g. DDRA shall require all vendors and contractors until construction is complete to acquire adequate liability insurance during the terms of its agreement(s) with vendors and contractors. The City, its officials, officers, employees, and agents shall not be liable for any loss, injury, death, or damage to persons or property which at any time may be suffered or sustained by the City, its officials, officers, employees or agents; by DDRA; or by any person who may at any time be using or occupying or visiting the alley area or using or occupying any installations in the alley area if such loss, injury, death or damage shall be caused or result from or arise out of the negligence of DDRA or of any occupant, visitor or user of any portion of the premises or installations under the terms of DDRA's agreement(s) with vendors and contractors or this Agreement. DDRA shall indemnify and hold harmless the City, its officials, officers, employees, and agents and does hereby indemnify against claims, liability, loss judgments, suits, penalties, costs, expenses and damages aforesaid (including but not limited to reasonable attorney's fees and expenses and court costs and fees). DDRA's duty to indemnify shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of the City, its agents or employees. Nothing contained in this paragraph, (g.) shall be construed as a waiver of any immunity or statutory protection of the City of Decatur, Alabama and no third party may expand any recovery against the City due to the DDRA's duty of

indemnification.

- h. The failure of City or DDRA to insist upon strict performance of any of the covenants, conditions, or terms of this Agreement in one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions, or terms, but the same shall be and remain in full force and effect.
- i. This Agreement contains the entire agreement between the parties concerning the matters herein, and neither is bound by any previous representation, agreement, negotiation discussions or understanding of any kind concerning these matters except as expressed herein.
- j. Attached to this Agreement is a concept image that will be used, with minor adjustments as DDRA deems appropriate.

2. MODIFICATION OF AGREEMENT.

This Agreement may be altered, amended, or superseded only by a printed rider signed by the executive director of DDRA, or another designee by the board of directors of DDRA, and an authorized representative of the City; changes made in any other manner are void. The terms and conditions in any duly executed rider between the parties are a part of this contract.

IN WITNESS WHEREOF, the parties hereto executed this contract as of this day and year above written. DDRA and the City have caused this Agreement to be executed by their duly authorized representatives.

Decatur Downtown Redevelopment
Authority

City of Decatur, Alabama a municipal Corporation

BY:.....
Kelly Thomas, Executive Director

BY:.....
Tab Bowling, Mayor

Acknowledged by:

Its _____

Stephanie Simon, Chief Clerk

This instrument was prepared by:
Douglas R. Bachuss, Jr.
Nowlin, Bachuss & Gray Law Firm
118 Moulton Street East
P. O. Box 1149
Decatur, Alabama 35602
(256) 353-8601

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Herman Marks, Legal

ITEM TYPE: Agreement - Financial

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-055: Authorize the Mayor to execute Goodwyn Mills Cawood, LLC Contract regarding proposed recreation center at Wilson Morgan

FINANCIAL IMPACT: Settlement funds and borrowing

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-055 GMC Architect Services.pdf](#)

[B101-2017 - decatur rec.pdf](#)

RESOLUTION NO. 23-055

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Mayor is authorized on behalf of the City to execute the attached Agreement with Goodwyn Mills Cawood, LLC. regarding Architect services for the proposed recreation center complex at Wilson Morgan Park; with funding from 3M settlement and future warrant being issued.

ADOPTED this 6th day of March 2023.

AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the tenth day of February in the year 2023
(In words, indicate day, month and year.)

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

The City of Decatur, Alabama
402 Lee Street NE
Decatur, AL 35601

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

Goodwyn Mills Cawood, LLC
2400 5th Avenue South, Suite 200
Birmingham, AL 35233

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

Recreation Center located at Wilson Morgan Park
A new recreation center of approximately 100,000 square feet, including a gymnasium with four (4) 84' basketball courts and associated storage; 3-lane track above the basketball courts; a 10-lane, 25-yard pool with adjacent therapy pool, retractable bleachers and associated pump room/chemical room; a cardio room; a racquetball court; community room, with multi-use rooms, and administrative offices. Scope to include 12 covered exterior pickle ball courts.
Sitework includes primary circulation drives, resurfacing existing parking lots, replacement of approximately 500 existing parking spaces and the addition of 750 new parking spaces for the recreation center, and a courtyard/plaza community space.
Landscaping, irrigation and site lighting is included in scope for areas above.
See Exhibit A for extent of scope of work under this agreement.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

TABLE OF ARTICLES

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

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

See Exhibit B

§ 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.)

§ 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.)

\$55,000,000

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

.1 Design phase milestone dates, if any:

TBD

Init.

/

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User Notes:

(1466316911)

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive bid to pre-qualified General Contractors

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

N/A

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

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Mr. Jason Lake, Executive Director
City of Decatur Parks and Recreation
610 Fourth Avenue SE
Decatur, AL 35601

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

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

.1 Geotechnical Engineer:

N/A

Architect will provide geotechnical engineering services as a supplemental service under this agreement.

.2 Civil Engineer:

Provided in Basic Services

.3 Other, if any:

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

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

Goodwyn Mills Cawood, LLC
Bob Gray, AIA
2400 5th Avenue South, Suite 200
Birmingham, AL 35233

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Tucker-Jones Engineers Assoc., P.C.
3300 Cahaba Road, Suite 210
Birmingham, AL 35223

.2 Mechanical Engineer:

Newcomb & Boyd
303 Peachtree Center Avenue NE, Suite 525
Atlanta, GA 30303

.3 Electrical Engineer:

Jackson Renfro & Associates, Inc.
141 Village Street, Suite 1
Birmingham, AL 35242

.4 Civil Engineer:

Goodwyn Mills Cawood, LLC.
2400 5th Avenue South, Suite 200

Birmingham, AL 35233

.5 Landscape Architect:
Goodwyn Mills Cawood, LLC
2400 5th Avenue South, Suite 200
Birmingham, AL 35233

§ 1.1.11.2 Consultants retained under Supplemental Services:

- * Swimming Pool Design Consultant
Counsillman-Hunsaker & Associates
- * Cost Estimating
Eitzen Preconstruction Services
- * ALDOT Permitting Set
Goodwyn Mills Cawood, LLC

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

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

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

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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

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

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

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

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000) for each occurrence and one million dollars (\$ 1,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$) 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.

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

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$ 2,000,000) per claim and four million dollars (\$ 4,000,000) in the aggregate.

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

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 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 and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the

commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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

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

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

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

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

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

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

§ 3.3 Design Development Phase Services

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

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

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

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

§ 3.4 Construction Documents Phase Services

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

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

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

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

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

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

§ 3.5.3 Negotiated Proposals

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

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

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

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

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

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

§ 3.6.2 Evaluations of the Work

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

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

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

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

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

§ 3.6.3 Certificates for Payment to Contractor

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

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

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

§ 3.6.4 Submittals

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

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

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information

given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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

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

§ 3.6.5 Changes in the Work

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

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise

specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(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>
§ 4.1.1.1 Programming	Owner
§ 4.1.1.2 Multiple preliminary designs	N/A
§ 4.1.1.3 Measured drawings	N/A
§ 4.1.1.4 Existing facilities surveys	N/A
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	N/A
§ 4.1.1.7 Development of Building Information Models for post construction use	N/A
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	N/A
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	See Note 2 of 4.1.2.1
§ 4.1.1.13 On-site project representation	N/A
§ 4.1.1.14 Conformed documents for construction	N/A
§ 4.1.1.15 As-designed record drawings	N/A
§ 4.1.1.16 As-constructed record drawings	N/A
§ 4.1.1.17 Post-occupancy evaluation	N/A
§ 4.1.1.18 Facility support services	N/A
§ 4.1.1.19 Tenant-related services	N/A
§ 4.1.1.20 Architect's coordination of the Owner's consultants	N/A
§ 4.1.1.21 Telecommunications/data design	Owner
§ 4.1.1.22 Security evaluation and planning	N/A
§ 4.1.1.23 Commissioning	Owner
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	N/A
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect – See Note 1 of 4.1.2.1
§ 4.1.1.29 Other services provided by specialty Consultants	See Notes 3, 4, 5, and 6 of 4.1.2.1
§ 4.1.1.30 Other Supplemental Services	

§ 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.

Init.

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(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.)

Note 1: The Architect will select and specify FF&E as a supplemental service.

Note 2: Cost Estimating Services will be provided by Eitzen Preconstruction Services.

Note 3: Swimming Pool Consulting Services will be provided by Counsilman-Hunsaker

Note 4: Geotechnical Services will be provided by Goodwyn Mills Cawood.

Note 5: Construction Materials and Special Inspections will be provided by Goodwyn Mills Cawood.

Note 6: ALDOT Permitting – Goodwyn Mills Cawood will serve as the civil engineer for ALDOT Permitting. Scope includes a set of ALDOT permit plans for any drive modifications, addition of lanes, potential median closure, and the permitting process.

§ 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.)

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

§ 4.2 Architect's Additional Services

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

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

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

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

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

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

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

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Forty (40) 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.

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

§ 4.2.5 If the services covered by this Agreement have not been completed within forty-eight (48) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

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

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

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

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

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

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

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

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

ARTICLE 6 COST OF THE WORK

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

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

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

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

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

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

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

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

§ 8.2 Mediation

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

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

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

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

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

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

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

(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 (\$0.00)

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

Twenty percent of the value of services not complete as of date of termination.

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

Four and one-half percent (4.5 %) of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

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

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

1. FF&E design and procurement assistance will be provided for a fee of 5% of the cost of the work.
2. Cost Estimating: A lump sum amount of \$65,000. Scope of work will include cost estimation at the completion of schematic design and at the completion of 60% Construction Documents.
3. Swimming Pool Consultant: A lump sum amount of \$122,600.
4. Geotechnical: A lump sum amount of \$5,000.
5. Construction Material Testing: Three quarters of one percent of construction (0.75%).
6. ALDOT Permitting: A lump sum of \$15,000.

§ 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.)

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

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

N/A

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

Schematic Design Phase	ten	percent (	10	%)
Design Development Phase	twenty	percent (	20	%)

Init.

/

Construction Documents Phase	forty	percent (	40	%)
Procurement Phase	five	percent (	5	%)
Construction Phase	twenty-five	percent (	25	%)
Total Basic Compensation	one hundred	percent (	100	%)

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

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

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

See Exhibit C – GMC Standard Hourly Rates

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

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

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

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

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$ 0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

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

six percent (6 %) per annum

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

.2

(Paragraphs deleted)

Exhibits:

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

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

☒ 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 – Extent of Scope of Work

Init.

Exhibit B – Owner’s Programming
Exhibit C – GMC Standard Hourly Rates
Exhibit D – GMC Certificate of Insurance
Exhibit E – AIA Document A201-2017

- .4** Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*

Tab Bowling, Mayor
(Printed name and title)

ARCHITECT *(Signature)*

Robert W. Gray, Sr. Vice President
(Printed name, title, and license number, if required)



WILSON MORGAN SCOPE LIMITS

DECATUR, AL 10.27.2022

Exhibit B: Conceptual Program for Decatur Rec Center

Gymnasium
4-84' basketball courts Retractable seating 3-lane track above with Cardio Equip One Racquetball Court Storage
TOTAL = 35,750 sf

Natatorium
10-lane 25 yard pool Rehab pool Raised Bleachers Pump room/Chem room
TOTAL = 18,000 sf

Admin & Community Spaces (2 Levels)
5 offices Conference room Break room Entry Lobby Restrooms Locker Rooms Multi-Use Rooms Community Room
TOTAL = 30,000 sf

Building Support
Circulation Storage MEP space
TOTAL = 16,250 sf
TOTAL BUILDING = 100,000 sf

Site Scope
12 Covered Pickleball Courts Primary Access Drives & Site Entrances 1,250 Parking Spaces (new & renovated) Courtyard/Plaza Community Space Landscaping within Scope Limits



2023
Standard Rate and Fee Schedule

Standard Hourly Rates

Executive Vice President	\$ 300.00
Senior Vice President	\$ 250.00
Vice President	\$ 225.00
Senior Professional (Architect, Engineer Regional Technical Leader, Interior Design, Scientist, Project Manager)	\$ 250.00
Professional III (Architect, Engineer Design Manager, Interior Design, Scientist, Project Manager)	\$ 225.00
Professional II (Architect, Engineer State Technical Leader, Interior Design, Scientist, Project Manager)	\$ 200.00
Professional I (Architect, Engineer Design Coordinator, Interior Design, Scientist, Project Manager)	\$ 185.00
Senior Professional Staff (Architect, Project Engineer, Interior Design, Scientist, Assistant Project Manager)	\$ 160.00
Professional Staff III (Architect, Engineer Project Professional, Interior Design, Scientist)	\$ 135.00
Professional Staff II (Architect, Engineer Staff Professional, Interior Design, Scientist)	\$ 120.00
Professional Staff I (Architect, Interior Design, Scientist)	\$ 100.00
Senior Technical (Technical Spec., Contract Spec., CADD Tech., Designer, Drafting, CA, ROW, Inspector)	\$ 160.00
Technical III (Contract Spec., CADD Tech., Designer, Drafting, CA, ROW, Inspector)	\$ 140.00
Technical II (Contract Spec., CADD Tech., Designer, Drafting, CA, ROW, Inspector)	\$ 115.00
Technical I (Contract Spec., CADD Tech., Designer, Drafting, CA, ROW, Inspector)	\$ 95.00
Intern/Co-op II (Architecture, Engineering, Interior Design, Environmental Sciences)	\$ 90.00
Intern/Co-op I (Architecture, Engineering, Interior Design, Environmental Sciences)	\$ 70.00
Executive Administrative Assistant	\$ 115.00
Administrative Assistant II	\$ 95.00
Administrative Assistant I	\$ 75.00
Surveying:	
Professional Land Surveyor	\$ 180.00
Survey Crew (four-man survey crew)	\$ 310.00
Survey Crew (three-man survey crew)	\$ 250.00
Survey Crew (two-man survey crew)	\$ 185.00
Field Tech III	\$ 105.00
Field Tech II	\$ 80.00
Field Tech I	\$ 65.00

Reimbursable Expenses

Travel Expenses	
Vehicle Transport	\$0.655 per mile
Travel/ Meals/ Lodging	Cost
Other Out-of-Pocket Expenses	Cost plus twenty percent
Sub-Consultant/ Sub-Contractors	Cost plus twenty percent
Sub-Consultant/Sub-Contractors reimbursable expenses	Cost plus twenty percent
Printing & Shipping	
Out of house reprographic services	Cost
In-House B&W reprographic services (small format)	\$0.10/ sheet (8.5 x 11)
	\$0.15/ sheet (11 x 17)
In-House Color reprographic services (small format)	\$0.10/ sheet (8.5 x 11)
	\$0.15/ sheet (11 x 17)
In-House B&W reprographic services (large format)	\$0.15/ sf
In-House Color reprographic services (large format)	\$0.20/ sf
GPS equipment	\$250.00 per day



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/08/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER RSC Insurance Brokerage, Inc. 109 Columbiana Road Birmingham AL 35209		CONTACT NAME: Jackie Murk PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: jmurk@risk-strategies.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: XL Specialty Insurance Company	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			DPR9995830	07/01/2022	07/01/2023	Each Claim \$1,000,000 Aggregate \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**Specimen
For Evidence Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/04/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Harmon Dennis Bradshaw, Inc. 334-273-7277 P.O. Box 241667 Montgomery, AL 36124		CONTACT NAME: Julie Faulkner PHONE (A/C, No, Ext): 334 273-7277 E-MAIL ADDRESS: jfaulkner@hdbinsurance.com FAX (A/C, No): 334-273-9197	
		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A : Charter Oak Fire Insurance Co.	25615
		INSURER B : Travelers Property Casualty Co of Amer	25674
		INSURER C : AGCSIF/Midwest Employers Casualty Co.	23612
		INSURER D : Midwest Employers Casualty Company	23612
		INSURER E : Phoenix Insurance Company	25623
		INSURER F : Continental Insurance Company	35289

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	6600J635966	03/03/2022	03/03/2023	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
E	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X	X	8100N418627	03/03/2022	03/03/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE			CUP7K3140622243	03/03/2022	03/03/2023	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000
F	DED <input checked="" type="checkbox"/> RETENTION \$0			6050024662EXCESS	03/03/2022	03/03/2023	\$6,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N <input checked="" type="checkbox"/> N			CA1452023AL Only	01/01/2023	01/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
C				EWC009234	01/01/2023	01/01/2024	E.L. EACH ACCIDENT \$1,000,000
D	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			PHSC180024	01/01/2023	01/01/2024	E.L. DISEASE - EA EMPLOYEE \$1,000,000
							E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

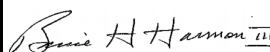
CERTIFICATE HOLDER

CANCELLATION

Proof of Coverage

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AUTHORIZED REPRESENTATIVE



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

TABLE OF ARTICLES

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12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS
14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES

ADDITIONS AND DELETIONS:

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Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents 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 Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract 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 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 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.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim 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 the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 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 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.

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Herman Marks, Legal

ITEM TYPE: Agreement - Financial

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-056: Authorize the Mayor to execute Frameworks Architecture agreement regarding professional services for proposed sports complex (near Austin High School)

FINANCIAL IMPACT: Funding from 3M settlement and proposed warrant issue

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-056 Frameworks Architect Services.pdf](#)
[Frameworks Contract-Sports Complex.pdf](#)

RESOLUTION NO. 23-056

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Mayor is authorized on behalf of the City to execute the attached Agreement with Frameworks Architecture PC regarding Architect services for the proposed sports complex adjacent to Austin High School; with funding from 3M settlement and future warrant being issued.

ADOPTED this 6th day of March 2023.



AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the _____ day of _____
in the year _____
(In words, indicate day, month and year.)

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

The City of Decatur Alabama
402 Lee Street
Decatur, Alabama 35601

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

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

Frameworks Architecture PC
709 Bank Street NW
Decatur, Alabama 35601

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

New Softball Complex for the City of Decatur
North of Modaus Rd./East of Austin High in Decatur, Alabama
Physical Address: 2912 Modaus Road SW, Decatur, Alabama 35603.

Provide Architectural, Structural, Mechanical, Electrical Engineering for all building structures associated with the new Softball Complex in Decatur, Alabama.

Provide Landscape Architectural design as required for the entire complex.

The Owner and Architect agree as follows.

Init.

TABLE OF ARTICLES

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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.)

Design of a new 8 field softball complex that may include but not necessarily be limited to, layout, grading/drainage, field lighting, park building structures, vehicular roadways/access, parking areas, landscape development, landscape irrigation, signage, fencing, landscape buffers, and any other item associated with the complex.

§ 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.)

Property includes approximately 34.06 acres owned by the City of Decatur, plus an additional area of approximately 11.64 acres owned by the Decatur City Schools that will be developed for joint parking and site circulation.

Civil survey, civil engineering and geotechnical exploration report is provided by the City.

§ 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.)
Yet to be determined

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

- .1 Design phase milestone dates, if any:
- .2 Construction commencement date:
- .3 Substantial Completion date or dates:
- .4 Other milestone dates:

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)
Competitive Bid

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)
Not Applicable

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

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Jason Lake
Executive Director
City of Decatur Parks & Recreation
256-341-4930

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

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

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

§ 1.1.11.1 Consultants retained under Basic Services:

- .1 Structural Engineer:
Advanced Structural Design, Inc.
1515 Sparkman Street NW
Hartselle, Alabama 35640
256-502-8333
- .2 Mechanical Engineer:
Engineered Solutions, Inc
333 Franklin Street SE, Suite 40
Huntsville, Alabama 35801
256-533-3482
- .3 Electrical Engineer:
APF Engineering, Inc.
963 Bethel Road
Decatur, Alabama 35603
256-751-2794one million

§ 1.1.11.2 Consultants retained under Supplemental Services:

§ 1.1.12 Other Initial Information on which the Agreement is based:
Landscape Architectural design to be included in the Architect's Basic Service.

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

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

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's

sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

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

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

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

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

§ 2.5.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000) for each occurrence and one million (\$ 1,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million (\$ 1,000,000) 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.

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

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million (\$ 1,000,000) each accident, one million (\$ 1,000,000) each employee, and one million (\$ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million (\$ 1,000,000) per claim and two million (\$ 2,000,000) in the aggregate.

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

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 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 and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

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

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

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

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the

Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

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

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

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

§ 3.3 Design Development Phase Services

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

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

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

§ 3.4 Construction Documents Phase Services

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

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

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

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

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

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

§ 3.5.3 Negotiated Proposals

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

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

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

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

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

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

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work

completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

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

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

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

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

§ 3.6.3 Certificates for Payment to Contractor

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

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

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

§ 3.6.4 Submittals

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

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

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

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

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

§ 3.6.5 Changes in the Work

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

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

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Supplemental Services	Responsibility (Architect, Owner, or 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.)

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

§ 4.2 Architect's Additional Services

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

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

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

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

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

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

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

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

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

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

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

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

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

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

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

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

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead

and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

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

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

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

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

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

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

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

§ 8.2 Mediation

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

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

stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

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

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

§ 8.3 Arbitration

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

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

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

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

§ 8.3.4 Consolidation or Joinder

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

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

.1 Termination Fee:

5% of total architectural compensation as listed in Article 11, in addition to paying Architect for services rendered up to the date of termination.

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

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

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

.3 Other
(Describe the method of compensation)

Percentage of the actual cost of work based on the attached "FA Schedule of Basic Fee Rates for Group III Projects". See Attachment #1.

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

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

§ 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.)

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 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	Ten percent (	10 %)
Design Development Phase	Fifteen percent (	15 %)
Construction Documents Phase	Fifty percent (	50 %)
Procurement Phase	Five percent (	5 %)
Construction Phase	Twenty percent (	20 %)
<hr/>		
Total Basic Compensation	one hundred percent	(100%)

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

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

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

Employee or Category	Rate (\$0.00)
Architect	\$190.00 per hour
Landscape Architect	\$190.00 per hour

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;

- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent (15 %) of the expenses incurred.

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

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

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of

(N/A) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of

(N/A) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid

Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

%

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

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

- .3 Exhibits:

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

☐

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

☐

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.)

- .4 Other documents:

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

Attachment #1 “FA Schedule of Basic Fee Rates for Group III Projects”

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

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

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



Init.



FA Schedule of Basic Fee Rates for Group III Projects

Cost Of The Work	Fee in Percentage	
	A/S/M/E	LA%
Up to \$100,000	11.00%	7.00%
100,001 to 200,000	10.50%	6.30%
200,001 to 300,000	9.50%	5.60%
300,001 to 400,000	9.40%	5.53%
400,001 to 500,000	9.20%	5.46%
500,001 to 600,000	9.00%	5.39%
600,001 to 700,000	8.80%	5.32%
700,001 to 800,000	8.60%	5.25%
800,001 to 900,000	8.40%	5.18%
900,001 to 1,000,000	8.30%	5.11%
1,000,001 to 1,250,000	8.20%	5.04%
1,250,001 to 1,500,000	8.10%	4.97%
1,500,001 to 1,750,000	8.00%	4.90%
1,500,001 to 2,000,000	7.90%	4.83%
2,000,001 to 2,500,000	7.80%	4.76%
2,500,001 to 3,000,000	7.70%	4.69%
3,000,001 to 3,500,000	7.60%	4.62%
3,500,001 to 4,000,000	7.50%	4.55%
4,000,001 to 5,000,000	7.40%	4.48%
5,000,001 to 6,000,000	7.30%	4.41%
6,000,000 to 8,000,000	7.20%	4.34%
8,000,001 to 10,000,000	7.10%	4.27%
10,000,001 to 12,000,000	7.00%	4.20%
12,000,001 to 14,000,000	6.90%	4.13%

A: Architecture
 S: Structural Engineering
 M: Mechanical Engineering (HVAC, Plumbing, Fire Protection)
 E: Electrical Engineering
 LA: Landscape Architecture

Frameworks Architecture

709 Bank Street, Decatur, AL 35601
frameworksarchitecture.com

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Herman Marks, Legal

ITEM TYPE: Agreement - Financial

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 22-057: Authorize the Mayor to execute Pugh Wright McAnally Inc. design services agreement for sports complex (near Austin High School)

FINANCIAL IMPACT: Funding from 3m settlement and future warrant issue

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-057 Pugh Wright McAnally design services agreement.pdf](#)
[PWM Design Contract- Jack Allen Sports Complex.pdf](#)

RESOLUTION NO. 23-057

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Mayor is authorized on behalf of the City to execute the attached Agreement with Pugh Wright McAnally, Inc. regarding Design services for the proposed sports complex adjacent to Austin High School; with funding from 3M settlement and future warrant being issued.

ADOPTED this 6th day of March 2023.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

SPECIAL NOTE ON USE OF THIS FORM

This abbreviated Agreement form is intended for use only for professional services of limited scope and complexity. It does not address the full range of issues of importance on most projects. In most cases, Owner and Engineer will be better served by the Standard Form of Agreement Between Owner and Engineer for Professional Services (EJCDC E-500, 2008 Edition), or one of the several special purpose EJCDC professional services agreement forms.

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SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT _____, **2023** ("Effective Date") between

The City of Decatur ("Owner")

and

Pugh Wright McAnally, Inc. (PWM) ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Jack Allen Softball Complex ("Project").

Engineer's Services under this Agreement are generally identified as follows:

Civil Engineering and Land Surveying, See Exhibit "A",

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services related to preparation of Construction Plans for bidding within a reasonable time, or within the following specific time period: **90 Days or before.**
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding **12 months**. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

2.01 *Payment Procedures*

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days

after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

3.01 *Termination*

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional: or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- #### B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner

and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.

- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances, or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

1. **A Lump Sum amount of \$252,000.00**

- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

- 7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus, reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

Exhibit A, PWM proposal dated February 7, 2023 (Civil Eng. & Surveying Scope).

Exhibit B, PWM Opinion of Probable Cost

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Moulton

By: _____

Title: Mayor

Date Signed: _____

ENGINEER: Pugh Wright McAnally, Inc.

By: H. Blake McAnally

Title: President

Date Signed: 2/7/2023

Firm's Certificate of Authorizations: CA-94-E,
CA-21-S

State of Alabama

Address for giving notices:

Honorable Tab Bowling, Mayor

City of Decatur

402 Lee Street NE

Decatur, AL 35650, (256) 341-4500

Address for giving notices:

H. Blake McAnally, PE/PLS

Pugh Wright McAnally, Inc.

P.O. Box 2419

Decatur, AL 35602, (256) 353-3937



This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated April 26, 2021.

Engineer's Standard Hourly Rates

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02 and are subject to annual review and adjustment.

B. Schedule of Hourly Rates:

Hourly rates for services performed on or after the Effective Date are:

HOURLY RATE SCHEDULE

PROJECT MANAGER.....	\$158.75 per hour
PRINCIPAL ENGINEER.....	\$140.75 per hour
LICENSED PROFESSIONAL ENGINEER.....	\$124.50 per hour
GRADUATE ENGINEER.....	\$107.00 per hour
SENIOR PARTY CHIEF (Licensed Professional Surveyor)	\$ 91.00 per hour
CIVIL DESIGNER II.....	\$ 93.00 per hour
CIVIL DESIGNER I.....	\$ 83.00 per hour
CIVIL TECHNICIAN.....	\$ 55.00 per hour
PARTY CHIEF.....	\$ 74.00 per hour
INSPECTOR.....	\$ 76.50 per hour
CLERICAL.....	\$ 42.50 per hour
<u>SURVEY CREWS:</u> (Includes electronic Total Station and Data Collector)	
2-man.....	\$120.00 per hour
3-man.....	\$156.00 per hour
Each additional man.....	\$ 44.50 per hour

EQUIPMENT CHARGES:

GPS (SMARTROVER STATIONS)	\$ 52.00 per hour
LEICA MS 50 SCANNER.....	\$160.00 per hour
VELODYNE SCANNER/M-600 UAS.....	\$375.00 per hour

REIMBURSABLES: 4% of above Hourly Totals (Includes prints, copies, telephone, fax, postage, stakes, hubs, iron pins, flagging.)

OTHER COSTS (Sub-Contracts, Over-night shipping, Permits and Fees, Travel): As Required by Client shall be invoiced at Cost + 10%

The hourly rates are portal-to-portal from our office at 310 8th Avenue, N.E., Decatur, Alabama, and include all payroll taxes, fringe benefits, overhead, and profit. The rates are for nine hours daily, Monday through Friday. Saturday work or daily work required in excess of nine hours shall be 1.3 times the foregoing rate schedule. Sunday or holiday work shall be 1.5 times the foregoing rate schedule.

Pugh Wright McAnally, Inc. will keep accurate records of the number of hours charged for each employee assigned to the work and such records will be available for inspection by your authorized representative. Terms of payment will be net monthly.

Pugh Wright McAnally, Inc. maintains in full force and effect the following minimum insurance coverage's:

- Insurance to protect against claims under any applicable Workmen's Compensation Law, State or Federal. Employer's Liability insurance with limits of \$500,000 per accident.
- Public Liability insurance with limits of \$1,000,000 combined single limit for property damage and bodily injury.
- Automobile Liability insurance with limits of \$1,000,000 combined single limit for bodily injury and death and/or property damage.
- In addition to the above coverage, we also carry an excess umbrella policy of \$2,000,000.
- Professional Liability insurance with limits of \$2,000,000 each claim, \$2,000,000 aggregate.

Certificate's evidencing said insurance and containing a ten-day notice of cancellation clause shall be furnished upon request.



310 8TH AVENUE NE | DECATUR, ALABAMA 35601 | POST OFFICE BOX 2419 | 35602

256.353.3937P

256.350.2285F

EXHIBIT "A"

February 7, 2023

Mr. Jason Lake, Director
City of Decatur, Parks and Recreation
Jack Allen Softball Complex
 610 4th Avenue, SE
 Decatur, Alabama 35601
 P. O Box 1315, 35602
 (256) 341-4930

via e-mail: jlake@decatur-al.gov

RE: Proposal for Professional Design Services, Surveying and Civil Engineering for The City of Decatur Jack Allen Softball Complex, Modaus Road SW, Decatur, AL

Mr. Lake,

Thank you for allowing Pugh Wright McAnally, Inc. (PWM) the opportunity to submit our proposal for civil site design and surveying for the project referenced above. Our proposed Scope of Work for the completion of the design and approval of your project will consist of the items listed below.

Civil Engineering & Survey Scope:

Civil Construction Plans:

- Update Topographic Survey
- Site Geometric/Layout Plan
- Site Grading & Drainage Plan
- Stormwater Management Plan & Detention as required by City Engineering
- Site Utility Plan for Sewer, Electrical Primary, and connection to existing water
- Roadway Plan and Profiles, Typical Sections
- Design Two Asphalt Parking Lots w/Curb & Gutter
- Concrete Pavement and Walkway Design inside the fenced area, full buildout.
- Grading Plan for Future Tennis Courts
- Water, Sewer, Electrical Conduit Plans
- Storm Drain System & Detention Basins
- Erosion Control Plan & BMP Details
- Sections and Details as required.
- Specifications and Contract Documents
- Phasing Plan as required.
- Utility As-Builts and Easements as required.

ADEM NPDES Permit:

- Prepare Permit (*Fee of \$1400 shall be paid by City of Decatur*)
- Perform Inspections as required.
- Prepare Reports
- Prepare Closeout Documents

Const. Admin:

- Assist in the Bidding Process
- Review RFI's
- Review Submittals
- Site Visits as required.
- Approval of Monthly Pay Applications and other contract requirements.

Basis of Design Fee – An Opinion of Probable Construction Cost has been prepared by PWM and is included as an attachment to this proposal. This Opinion of Cost is based on preliminary layout and design prepared during the fall of 2022 by PWM. The quantities are expected to be accurate within 10% +/- and the unit prices are common prices in the market at the time of preparation. Final construction cost will depend solely upon the material labor costs at the time of the bid. Bid prices have fluctuated significantly over the past year.

The design fee is taken from the State of Alabama Division of Construction Management's Basic Fee Schedule in the Manual of Procedures. This project type falls into a Group III project, which has a maximum fee of 6.4% for projects in the range of \$4M - \$5M construction value.

- Probable Civil Site Construction Cost = \$4,200,000.00
- \$4,200,000 x 6% = **Design Fee of \$252,000.00**

Exclusions for Civil Engineering Scope: (*All of these items can be provided via sub-consultant*)

- Architectural and Architectural Engineering Design
- Geotechnical Services (*Exploration or Construction*)
- Traffic Studies
- Environmental Studies/Surveys
- Site Lighting Design
- Field Surface Fine Grading and Underdrain Systems
- Landscape & Irrigation Plan
- Construction Staking
- Construction Engineering Onsite Fulltime
- Post Construction As-Built Surveys
- Fees for Reviews, Applications, Permits

It is expected that PWM have a contract with the City of Decatur with this Proposal Letter as an attachment to the contract.

PWM will attend meetings required by The City of Decatur and agencies reviewing the project and will provide the required copies of the plans for review. All work will be performed under the responsible charge of Professional Engineers and Surveyors licensed to practice in the State of Alabama. It is expected that work for this project will be bid to meet the State of Alabama Public Bid Law.

Fees for additional services may be provided upon request. Minor scope additions may be accomplished using the Hourly Rates schedules if desired. Deliverables will include signed and sealed originals and electronic CADD files. All permitting, review, application, and recording fees shall be paid by or reimbursed by the Owner and/or Contractor.

We at Pugh Wright McAnally, Inc. appreciate your consideration and look forward to working with you.

PUGH WRIGHT McANALLY, INC

A handwritten signature in black ink, reading "H. Blake McAnally". The signature is written in a cursive, flowing style.

H. Blake McAnally, PE/PLS
President

Attachments: Rate Schedule, Preliminary Opinion of Probable Cost

Jack Allen Softball Complex - Decatur, AL Engineers Opinion of Cost

ABBREVIATIONS

LS-LUMP SUM

EA-EACH

SY-SQUARE YARD

TN-TONS

LF-LINEAR FOOT

INCLUDES COMPLETE AND IN PLACE CONSTRUCTION PER SPECIFICATIONS

ADJUSTMENTS

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
1	1980	TN	Asphalt Pavement for Roads (3" Thick) (12,000SY)	\$180.00	\$356,400.00
2	3172	TN	Asphalt Pavement for Parking (2.5" Thick) (23,071SY)	\$180.00	\$570,960.00
3	13200	SY	Gravel Aggregate Base for Roads (6" Thick)	\$12.00	\$158,400.00
4	24271	SY	Gravel Aggregate Base for Parking (6" Thick)	\$12.00	\$291,252.00
5	11358	LF	Concrete Curb & Gutter (30" Wide)	\$30.00	\$340,740.00
6	1334	SY	Concrete Sidewalk (10' Wide, 5" Thick)	\$60.00	\$80,040.00
7	330	LF	12" RCP	\$35.00	\$11,550.00
8	388	LF	15" RCP	\$50.00	\$19,400.00
9	2151	LF	18" RCP	\$65.00	\$139,815.00
10	1409	LF	24" RCP	\$80.00	\$112,720.00
11	1276	LF	30" RCP	\$95.00	\$121,220.00
12	1287	LF	36" RCP	\$110.00	\$141,570.00
13	255	LF	42" RCP	\$125.00	\$31,875.00
14	184	LF	48" RCP	\$140.00	\$25,760.00
15	6	EA	24" Headwall	\$1,200.00	\$7,200.00
16	2	EA	36" Headwall	\$2,000.00	\$4,000.00
17	1	EA	48" Headwall	\$3,500.00	\$3,500.00
18	29	EA	Drop Inlet	\$3,500.00	\$101,500.00
19	29	EA	Curb Inlet	\$4,500.00	\$130,500.00
20	4	EA	Junction Box	\$2,500.00	\$10,000.00
21	2090	LF	8" PVC Sewer Main	\$100.00	\$209,000.00
22	613	LF	4" PVC Sewer Service	\$50.00	\$30,650.00
23	7	EA	Sewer Cleanout	\$2,500.00	\$17,500.00
24	7	EA	Sewer Manhole	\$6,000.00	\$42,000.00
25	1745	LF	8" DI Water Main	\$110.00	\$191,950.00
26	844	LF	3" DI Water Service	\$60.00	\$50,640.00
27	3	EA	3" Gate/Iso Valve	\$1,200.00	\$3,600.00
28	4	EA	8" Gate/Iso Valve	\$1,800.00	\$7,200.00
29	2	EA	Fire Hydrant & Assembly	\$4,000.00	\$8,000.00
30	3138	LF	2-4" PVC UGE	\$50.00	\$156,900.00
31	81410	CY	Unclassified Excavation	\$4.00	\$325,640.00
32	1	LS	Rock Excavation	\$250,000.00	\$250,000.00

33	1	LS	Landscaping	\$200,000.00	\$200,000.00
34	1	LS	Erosion Control	\$45,000.00	\$45,000.00
			Civil Scope Subtotal		\$4,196,482.00
			Contingency (15%)		\$4,825,954.30

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Resolutions

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-058: Approve designation for Voting Delegate and Alternates for ALM Business Session

FINANCIAL IMPACT: NA

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-058 ALM Voting Delegates.pdf](#)

[Voting_Delegate_Clerk_Letter_2023.pdf](#)

[Voting-Delegate-Auth-Form-2023 \(2\).pdf](#)

RESOLUTION NO. 23-058

BE IT RESOLVED by the City Council of the City of Decatur, Alabama that the Voting Delegate and Alternate Voting Delegates for the Annual League of Municipalities Business Session on May 12, 2023 are hereby designated and authorized as listed on the attached form to be submitted to the Alabama League of Municipalities

ADOPTED this 6th day of March, 2023.

Gregory D. Cochran, CAE
Executive Director



Mayor Lawrence "Tony" Haygood, Jr., Tuskegee
League President

*The voice of Alabama's
municipalities since 1935*

DATE: February 15, 2023

COPY

TO: Municipal Clerks

FROM: Gregory D. Cochran, Executive Director

SUBJECT: Voting Delegate, Annual Business Session

ENCLOSURE: Voting Delegate Authorization Form

The Annual Convention of the Alabama League of Municipalities will be held on May 10-13, 2023, in Birmingham. The membership's Annual Business Meeting will be held at 3:00 p.m. on May 12, 2023, at the Birmingham Jefferson Convention Complex.

The League Constitution contains the following provision pertaining to voting powers of member municipalities at the Business Meeting:

"Each member municipality shall have one vote on any issue voted on during the annual meeting of the League membership, and that vote may only be cast by the delegate authorized by the governing body of the member municipality."

Enclosed is the official Voting Delegate Authorization Form to be returned to the League. The City or Town Council is charged with designating your municipality's official voting delegate and alternates who will be eligible to cast the municipality's vote during the business meeting. A copy was also sent to each mayor as required by the League's Constitution. **Only one completed form** should be returned by each League member municipality.

Please put this on your council meeting agenda at your earliest convenience so that the council may vote. The completed form must be returned to the League by April 25, 2023, so that your municipality will be eligible to cast its vote at the Convention.

We look forward to you joining us in Birmingham.

Greg Cochran
Executive Director

VOTING DELEGATE AUTHORIZATION FORM

The City or Town Council must select the voting delegates and this form must be completed and returned to the **Alabama League of Municipalities on or before April 25, 2023**, in order for the municipality named below to be eligible to have its designee cast a vote at the **Annual Business Meeting of the League on Friday, May 12, 2023, at 3:00 p.m.**

The League Constitution REQUIRES that Voting Delegates and Alternates be Elected Municipal Officials and they must be selected by a vote of the City or Town Council.

Deadline to submit completed form is April 25, 2023!

The Following person(s) is authorized to cast the municipality's vote at the business session of the Annual Convention of the Alabama League of Municipalities on May 12, 2023.

Please print the requested information

1. **Voting Delegate:** Tab Bowling
Name

Mayor
Title

2. **1st Alternate Voting Delegate:** Votes only in absence of Voting Delegate

Jacob Ladner
Name

Council President
Title

3. **2nd Alternate Voting Delegate:** Votes only in absence of Voting Delegate & 1st Alternate

Carlton McMasters
Name

Council Pro-Tempore
Title

Voted on by the City or Town Council on this the 6th day of March, 2023

Form Completed by: Stephanie Simon City Clerk
(Please Print) Name Title

Decatur Date
City/Town

Return form to: Alabama League of Municipalities
P.O. Box 1270, Montgomery, Alabama 36102 or by Fax to (334) 263-0200 or Email to
DPascal@almonline.org

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Allen Stover,Community Development

ITEM TYPE: Resolutions

AGENDA SECTION: RESOLUTIONS:

SUBJECT: Resolution No. 23-059: Authorize grant application for Historic Structures Report on the Old Bank

FINANCIAL IMPACT: General Fund Unassigned Fund Balance

SUGGESTED ACTION:

ATTACHMENTS:

[Res No 23-059 CLG OSB Historic Sturctures.pdf](#)

RESOLUTION NO. 23-059

WHEREAS, grant funds are available through the Alabama Historical Commission for Historic Preservation funding; and

WHEREAS, there is a need for a Historic Structures Report for all the stone structures Old Bank; and

WHEREAS, the total project cost is estimated at \$55,000.00; and

WHEREAS, this grant is for \$12,000; and

WHEREAS, the \$43,000.00 would come from general fund unassigned fund balance.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Decatur, Alabama, as follows:

SECTION 1: That Mayor Tab Bowling is hereby authorized to apply for this grant from the Alabama Historical Commission in the amount of \$12,000.

SECTION 2: That the match and over match for this grant will come from general fund unassigned balance.

SECTION 3: That Mayor Tab Bowling is hereby authorized and directed to act as the official representative for the City of Decatur in connection with this grant,

SECTION 4: That Mayor Tab Bowling shall take any such other actions as may be requested or required in the implementation of this grant.

Approved this 6th day of March, 2023.

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Herman Marks, Legal

ITEM TYPE: Ordinances

AGENDA SECTION: ORDINANCES:

SUBJECT: Ordinance No. 23-4550A: Change effective date of Section 14-103 and Section 104 amendment

FINANCIAL IMPACT: None

SUGGESTED ACTION:

ATTACHMENTS:

[Ord No 23-4550A Amendment_to_Section_14-103_and_14-104_Ordinance_effective_date..pdf](#)

ORDINANCE NO. 23-4550A

BE IT ORDAINED by the City Council of the City of Decatur, Alabama as follows:

Section 1. That Section 14-103 of the CODE OF DECATUR, ALABAMA is hereby amended to read as follows:

“Section 14-103.

There is hereby levied and imposed in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person engaging within the corporate limits of the city in:

(1) The business of renting or furnishing any room or rooms or lodgings to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms or lodgings are regularly furnished to transients for a consideration, said tax to be in an amount equal to seven (7) percent of the charge for such room, rooms or lodgings, including the charge for use or rental of personal property and services furnished in such rooms; provided, that charges for property sold or services furnished which are required to be included in the computation of the tax levied in article 1, chapter 23, of title 40 of the Code of Alabama, 1975, said article being commonly referred to as the State Sales Tax Statutes, shall not be included in computing the tax levied in this article.

(2) The tax referred to in both subparagraph (1) and subparagraph (4) of this section shall be subject to all exemptions as provided for in chapter 26 of title 40 of the Code of Alabama, 1975, as may be amended from time to time.

(3) As part of the tax levy of this section and subject to the provisions of subparagraph (2) above, there is hereby levied the additional sum of two dollars (\$2.00) per rented room for each day of its occupancy, beginning September 1, 2007.

(4) As part of the tax levy of this section there is hereby levied and imposed for designated recreation and economic development purposes in addition to all other taxes of every kind imposed by this section, a privilege or license tax upon every person engaging within the corporate limits of the city in the business of renting or furnishing any room or rooms or lodgings to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms or lodgings are

regularly furnished to transients for a consideration, said tax to be in an amount equal to three (3) percent of the charge for such room, rooms or lodgings, including the charge for use or rental of personal property and services furnished in such rooms; provided, that charges for property sold or services furnished which are required to be included in the computation of the tax levied in article 1, chapter 23, of title 40 of the Code of Alabama, 1975, said article being commonly referred to as the State Sales Tax Statutes, shall not be included in computing the tax levied in this article.”

Section 2. That Section 14-104 of the CODE OF DECATUR, ALABAMA is hereby amended to read as follows:

“Section 14-104.

There is hereby levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person engaging outside the corporate limits but within the police jurisdiction of the city in:

(1) The business of renting or furnishing any room or rooms or lodgings to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms or lodgings are regularly furnished to transients for a consideration, said tax to be in an amount equal to three and one half (3.5) percent of the charge for such room, rooms or lodgings, including the charge for use or rental of personal property and services furnished in such rooms provided, that charges for property sold or services furnished which are required to be included in the computation of the tax levied in article 1, chapter 23, of title 40 of the Code of Alabama, 1975, said article being commonly referred to as the state sales tax statutes, shall not be included in computing the tax levied in this article.

(2) The tax referred to in both subparagraph (1) and subparagraph (4) of this section shall be subject to all exemptions as provided for in chapter 26, of title 40 of the Code of Alabama, 1975, as may be amended from time to time.

(3) As part of the tax levy of this section and subject to the provisions of subparagraph (2) above, there is hereby levied the additional sum of one dollar (\$1.00) per rented room for each day of its occupancy, beginning September 1, 2007.

(4) As part of the tax levy of this section there is hereby levied and imposed for designated recreation and economic development purposes in addition to all other taxes of every kind imposed by this section, a privilege or license tax upon every

person engaging outside the corporate limits but within the police jurisdiction of the city in the business of renting or furnishing any room or rooms or lodgings to transients in any hotel, motel, inn, tourist camp, tourist cabin or any other place in which rooms or lodgings are regularly furnished to transients for a consideration, said tax to be in an amount equal to one and one half (1.5) percent of the charge for such room, rooms or lodgings, including the charge for use or rental of personal property and services furnished in such rooms; provided, that charges for property sold or services furnished which are required to be included in the computation of the tax levied in article 1, chapter 23, of title 40 of the Code of Alabama, 1975, said article being commonly referred to as the State Sales Tax Statutes, shall not be included in computing the tax levied in this article.”

Section 3. This Ordinance shall take effect on June 1, 2023 upon its approval and publication as provided by law.

Adopted this _____ day of March, 2023.

APPROVED this _____ day of March 2023.

Mayor

ATTEST:

Stephanie Simon, City Clerk

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Michelle Washington to the Historic Preservation Commission with term expiring March 19, 2025

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Position - District 1

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Trudy Grisham to the Historic Preservation Commission
with term expiring March 19, 2025

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Position - District 2

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Caroline Duncan to the Historic Preservation Commission with term expiring March 19, 2024

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Position - District 3

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Angie Whittington to the Historic Preservation Commission with term expiring March 19, 2025

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Position - District 4

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Phil Wirey to the Historic Preservation Commission with term expiring March 19, 2026

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Position - District 5

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint John Allison to the Historic Preservation Commission with term expiring March 19, 2026

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Mr. Allison was a prior HPC member and is continuing to serve on the amended board.
He is the Morgan County Archivist.

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE:	March 6, 2023
SUBMITTED BY:	Stephanie Simon, City Clerk
ITEM TYPE:	Board Appointments & Reappointments
AGENDA SECTION:	BOARDS AND COMMITTEES:
SUBJECT:	Appoint Ellis Chenault to the Architectural Review Committee with term expiring March 19, 2024
FINANCIAL IMPACT:	NA
SUGGESTED ACTION:	Mr. Chenault previously served on the Historic Preservation Commission
ATTACHMENTS:	

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Lynn Schuppert to the Architectural Review Committee with term expiring March 19, 2024

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Ms. Schuppert previously served on the Historic Preservation Commission

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Bill Stone to the Architectural Review Committee with term expiring March 19, 2026

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Mr. Stone previously served on the Historic Preservation Commission and his term has expired.

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Jacob Woods to the Architectural Review Committee with term expiring March 19, 2026

FINANCIAL IMPACT: NA

SUGGESTED ACTION: Mr. Woods previously served on the Historic Preservation Commission and is an architect.

ATTACHMENTS:

CITY COUNCIL AGENDA ITEM REPORT

DATE: March 6, 2023

SUBMITTED BY: Stephanie Simon, City Clerk

ITEM TYPE: Board Appointments & Reappointments

AGENDA SECTION: BOARDS AND COMMITTEES:

SUBJECT: Appoint Bonnie Crow to the Architectural Review Committee with term expiring March 19, 2026

FINANCIAL IMPACT: NA

SUGGESTED ACTION:

ATTACHMENTS: