

Standard Form of Agreement Between Owner and Architect for a Complex Project

AGREEMENT made as of the «28 » day of « April » 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)

« Utah Transit Authority
669 West 200 South
Salt Lake City, Utah 84101»« »
« »
« »
« »

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

« Skidmore, Owings, & Merrill LLP»« (SOM) »
« One Maritime Plaza, Ste 500
San Francisco, California 94111 »
« »
« »

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

UTA Headquarters and Salt Lake Central Station

The Owner and Architect agree as follows.

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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.)

« See attached scope document 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.)

« The Utah Transit Authority (UTA) is preparing for the design and construction of its new headquarters, to be located within a mixed-use tower with a new transportation station between the Salt Lake Central Frontrunner and TRAX platforms, at approximately 300 South and 600 West in Salt Lake City. The current phases of work include Programming and Concept Design.

Later phase services TBD »

§ 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.)

«To be provided At this time, no federal funding is being utilized for this contract »

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

- .1 Design phase milestone dates, if any:

[Redacted]

Later phase milestones TBD if authorized »

- .2 Construction commencement date:

«TBD » Naming and Concept Design milestones set forth in Exhibit C- Schedule

- .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.)

« Construction Manager/General Contractor Project Delivery »

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

«Packages to be mutually agreed »

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

«TBD »

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall define the terms, conditions and services related to the Owner's Sustainable Objective in the manner consistent with Section 4.1.3 of this Agreement. The Owner shall incorporate, or cause its contractor to incorporate the termterms of Sections 4.1.3 and 12.1.5 – 12.1.9 of this Agreement pertaining to such Sustainable Objective terms, conditions and services into the agreements with the Owner's consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

«Sean Murphy
TOD Project Manager
UTA Transit-Oriented Communities
669 W. 200 S.
Salt Lake City, UT 84101
smurphy@rideuta.com,
801-712-9612

Paul Drake

Director of Real Estate & TOD
UTA Transit-Oriented Communities
669 W. 200 S.
Salt Lake City, Utah 84101
pdrake@rideuta.com
801-237-1975»

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

« N/A »

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

.1 Cost Consultant:

«TBD »« »
« »
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.2 Scheduling Consultant:

« TBD»« »
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« »

.3 Geotechnical Engineer:

«TBD »« »
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.4 Other, if any:

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

« TBD »

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

«Audra Herriges

Project Manager
Skidmore, Owings, & Merrill
1700 K Street NW, Suite1000
Washington, District of Columbia 20006
Audra.herriges@som.com
202-937-6306

Kristopher Takacs
Principal
Skidmore, Owings, & Merrill
1700 K Street NW, Suite1000
Washington, District of Columbia 20006
kristopher.takacs@som.com
201-303-1128

Carrie Byles
Partner
Skidmore, Owings, & Merrill
One Maritime Plaza, Ste 500
San Francisco, California 94111
carrie.byles@som.com
415-981-1555

Michael Duncan
Partner
Skidmore, Owings, & Merrill
One Maritime Plaza, Ste 500
San Francisco, California 94111
michael.duncan@som.com
415-981-1555

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

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«Skidmore, Owings & Merrill LLP (SOM) »« »
« One Maritime Plaza, Ste 500
San Francisco, California 94111 »
« »
« »
« »

.2 Mechanical Engineer:

« WSP USA Buildings, INC. (WSP) »« »
« 1600 Broadway, Suite 1100»
« Denver, CO 80202 »
«303-832-9091 »

« »

.3 Electrical Engineer:

« WSP USA Buildings, INC. (WSP) »« »
« 1600 Broadway, Suite 1100 »
« Denver, CO 80202 »
« 303-832-9091 »
« »

§ 1.1.12.2 Consultants retained under Supplemental Services:

« Transportation Planning
WSP USA Buildings, INC. (WSP)
1600 Broadway, Suite 1100
Denver, CO 80202

Sustainability Consulting
WSP USA Buildings, INC. (WSP)
1600 Broadway, Suite 1100
Denver, CO 80202

Fire Protection/ Code Consulting
WSP USA Buildings, INC. (WSP)
1600 Broadway, Suite 1100
Denver, CO 80202

Landscape and Civic Realm
Design Workshop
1390 Lawrence Street, Suite 100
Denver, Colorado 80204
720 907-9347

Civil Engineering
PSOMAS
11456 South Temple Drive, Suite 200
South Jordan, UT 84095
801.284.1310

Historic Preservation
MJSA Architects
255 West 700 South
Salt Lake City, Ut 84101
801-364-5161

Parking Structure Design (Structural and Functional Engineering)
Walker Consultants
10375 Park Meadows Drive, Suite 425
Lone Tree, CO 80124
303-694-6622

Vertical Transportation
VDA Associates
50 West Broadway, Suite 300
Salt Lake City, UT 84101
385-215-8893

Cost Consulting
Rider Levett Bucknall
999 18th Street, Ste1125N
Denver, CO 80202
720 904 1480»

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

« N/A »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately 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 in accordance with the terms of this Agreement, including, without limitation, Section 1.3.1.

§ 1.3.1 Owner recognizes that the documents and other information and materials prepared by the Architect and its consultants (herein collectively referred to as "Documents") may be generated, stored, transmitted or published in various media, including, but not limited to traditional hard-copy (i.e., blue-prints), CADD formats, via Internet or Extranet websites or other electronic or other media and the Documents may be subject to modifications by parties over whom Architect has no control. The Documents are also subject to discrepancies as a result of numerous factors, including transmission and translation errors resulting from differences in computer software, hardware and equipment-related problems, disc malfunctions and user error. If requested, Architect shall provide Owner with the Documents in electronic form and Owner shall accept the Documents "AS IS" and release Architect and its consultants from any claims as a result of differences between the hard copy and the electronic form of the Documents. Architect disclaims constructability and all warranties of any kind, expressed or implied, including the implied warranties of merchantability and fitness for a particular purpose, in connection with the electronic media and this Agreement. Architect may also require Owner and its consultants, contractors and other third parties to sign an electronic document disclaimer form. Architect shall also have no responsibility or liability for any delays or damages caused by the failure of the project internet or extranet site and any related computer software and hardware (collectively, the "Site") to function properly and shall not be liable to Owner or to any contractor, consultant or any third party for any delays, errors or omissions in Architect or its consultants' services caused by the failure of the Site to function properly.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement.

§ 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 insurance required in Exhibit D until termination of this Agreement.

§ 2.5.1 N/A

§ 2.5.2 N/A

§ 2.5.3 N/A

§ 2.5.4 N/A

§ 2.5.5 N/A

§ 2.5.6 N/A

§ 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.

Health Insurance

Insurance Coverage for Employees.

If the Contract Price is \$2,000,000 or more, Contractor shall, prior to the effective date of the Agreement, demonstrate to UTA that Contractor has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Contractor's employees and the employee's dependents during the duration of the Contract.

If the Contractor enters into any subcontracts under the Contract Documents in an amount of \$1,000,000 or more, then Contractor shall also demonstrate to UTA that such subcontractor(s) have and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the subcontract

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3.. 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 as set forth below, communicate with members of the Project team and report design team 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 and the Scheduling Consultant's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. 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 and Scheduling Consultant, 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 Upon the Owner's reasonable request, the Architect shall submit information to the Scheduling Consultant and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 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.

§ 3.1.6 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.

§ 3.1.7 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 Program & Concept and Phase Services

§ 3.2.1 See scope set forth in Exhibit A. In addition, the Architect shall review the program and other information furnished by the Owner, and shall review current laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect's services during programming include identifying, discussing, and prioritizing values, goals, and objectives to establish performance and design criteria for the Project.

§ 3.2.3 Based on the size of the Project, the type of facilities and the level of specialized functions that will be required, the Architect and the Client shall identify programming participants to be included with the programming process, including participants from the Architect, the Architect's consultants, the Client, the Client's Consultants, and users of the project as well as other stakeholders.

§ 3.2.4 The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Client and the Client'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 Client and the Client's consultants. The Architect shall provide prompt written notice to the Client if the Architect becomes aware of any error omission or inconsistency such services or information.

§ 3.2.5 The Architect shall submit program documents to the Client for evaluation and approval at intervals appropriate to the process. The Architect shall be entitled to rely upon approvals received from the Client to complete the programming services.

§ 3.2.6 The Architect and the Architect's consultants will perform a site evaluation. These services may include evaluating the site by: making site observations; assessing the physical characteristics of the site; assessing codes, ordinances, and regulations that impact the Client's development objectives; assessing utilities available to the site; assessing the access, circulation, and parking for the site. The Architect will make recommendations to the Client based on its site evaluation.

§ 3.2.7 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 that the Architect may become aware of.

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

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

§ 3.2.10 Owner has retained Architect to provide programming and Concept Design and not to provide further design services as of the signing of this Agreement. In the event that Owner decides to move forward with the following later phases it will authorize SOM to proceed, and SOM will provide a proposal for the services, including fee and scope for mutual agreement at that time.

§ 3.3. Schematic Design Phase Services

§ 3.3.1 Whether this Phase is initiated and performed is within the sole discretion of UTA. It shall only be initiated upon written direction from UTA. Based on the Owner's written 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.

§ 3.3.2 At the Owner's option, 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.

§ 3.3.3 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.

§ 3.3.4 The Architect shall submit the Schematic Design Documents to the Owner and the Cost Consultant. If directed by the Owner, the Architect shall meet with the Cost Consultant to review the Schematic Design Documents.

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

§ 3.4 Design Development Phase Services

§ 3.4.1 Whether this Phase is initiated and performed is within the sole discretion of UTA. It shall only be initiated upon written direction from UTA Based on the Owner's written 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.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Cost Consultant. If directed by the Owner, the Architect shall meet with the Cost Consultant to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.2 Whether this Phase is initiated and performed is within the sole discretion of UTA. It shall only be initiated upon written direction from UTA Based on the Owner's written approval of the Design Development Documents and of the Architect's proposed Construction Documents scope, 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, where applicable, 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.

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

§ 3.5.4 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of 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.

§ 3.5.5 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Construction Documents.

§ 3.5.6 Upon receipt of the Cost Consultant's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Procurement Phase Services

§ 3.6.1 General

Whether this Phase is initiated and performed is within the sole discretion of UTA. It shall only be initiated upon written direction from UTA The Architect shall assist the Owner upon request 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.

§ 3.6.2 Competitive Bidding

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

§ 3.6.2.2 The Architect shall assist the Owner upon request in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 participating in 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 as an Additional Service.

§ 3.6.2.3 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 as an Additional Service.

§ 3.6.3 Negotiated Proposals

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

§ 3.6.3.2 The Architect shall assist the Owner upon request 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 participating in a reasonable number of selection interviews with prospective contractors; and
- .3 preparing a reasonable number of responses to questions from prospective contractors and providing a reasonable number of clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda as an Additional Service; and,
- .4 participating in a reasonable number of negotiations with prospective contractors.

§ 3.6.3.3 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.

§ 3.7 Construction Phase Services

§ 3.7.1 General - Whether this Phase is initiated and performed is within the sole discretion of UTA. It shall only be initiated upon written direction from UTA

§ 3.7.1.1 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 including the Architect's supplemental conditions. 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.

§ 3.7.1.2 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 since these are solely the Contractor's responsibility under the Contract Documents, 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.

§ 3.7.1.3 Subject to Section 4.2 and except as provided in Section 3.7.6.5, 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.

§ 3.7.2 Evaluations of the Work

§ 3.7.2.1 The Architect shall perform on-site observations of construction not to exceed [XX] Person – days per month at times the Architect and UTA mutually consider to be considers appropriate on the progress of the Contractor's operations, 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 Construction 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 Construction Documents, and (2) Construction2) defects and deficiencies observed in the Work.

§ 3.7.2.2 The Architect has the authority to advise the Owner to reject Work that does not conform to the Construction 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.

§ 3.7.2.3 The Architect shall interpret and advise UTA regarding matters concerning performance under, and requirements of, the Construction 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.

§ 3.7.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Construction 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, 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.

§ 3.7.2.5 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.

§ 3.7.3 Certificates for Payment to Contractor

§ 3.7.3.1 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 professional knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Construction 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 Construction Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Construction Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.7.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive 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.

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

§ 3.7.4 Submittals

§ 3.7.4.1 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 In accordance with the Architect-approved submittal schedule, 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 Construction 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.

§ 3.7.4.3 If the Construction 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 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 Construction Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy, accuracy and completeness 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 Construction Documents. The Architect shall set forth, in the Construction 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.

§ 3.7.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor

§ 3.7.5 Changes in the Work

§ 3.7.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Construction 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 as an Additional Service for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.7.6 Project Completion

§ 3.7.6.1 The Architect shall:

- .1 conduct on-site observations 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 Construction Documents.

§ 3.7.6.2 The Architect's on-site observations shall be conducted with the Owner to check conformance of the Work with the requirements of the Construction Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.7.6.3 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.

§ 3.7.6.4 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.

§ 3.7.6.5 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 one 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 in Exhibit E are not included in Basic Services but may be required for the Project.

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 See Exhibit E

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§ 4.1.2.2 See Exhibit E

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§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainable Design Services as provided in a mutually agreed upon proposal, that outlines the scope and compensation, and in Sections 12.1.5 – 12.1.9.

§ 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 Additional Services until the Architect receives the Owner's written authorization: Examples of Additional Services are listed below and as set forth in Exhibit E:

- .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, or bid packages in addition to those listed in Section 1.1.6;
- .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.

- .12 Services necessitated by the Owner's request for extensive sustainable design services, such as unique system designs, in-depth material research, energy modeling, or LEED® certification that exceed those Sustainable Design Services set forth in Section 4.1.3.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services with the Owner's written consent, 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 within 10 days of the Architect's notice to Owner. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice and the Architect shall not be obligated to further perform such services.

- .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;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

§ 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 « » (« ») 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 « » (« ») 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 « » (« ») inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 , 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.

§ 4.2.5 If the services covered by this Agreement have not been completed within « » (« ») 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 furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project

until final completion. The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner 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.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs and such costs and associated delays do not constitute an error or omission on behalf of the Architect.

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

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

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in Article 4.1.3.

§ 5.9 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 and other liability insurance, as appropriate to the services or work provided.

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

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

§ 5.12 The Owner shall provide prompt written notice to the Architect 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.

§ 5.13 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.

§ 5.14 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 which include the Architect's Supplement thereto. Notwithstanding the above, the Contract Documents including the General Conditions shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement.

§ 5.15 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.

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

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 perform those phases of the Work which have been authorized in writing by UTA. For the authorized Phases, the cost of work shall include all elements designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. 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 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

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

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, 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.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 make a determination not to proceed with subsequent Phases of the Work. No termination will be required. Use of the documents is subject to Article 7.
- .3 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3 the Owner shall, within 5 days of the completion of the Design Development Phase, request that, the Architect, without additional compensation incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1.

The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates negotiated proposals or bona fide bids that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment. without the Owner's knowledge and consent

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner represent 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 or the Owner terminates pursuant to Section 9.4 or 6.5.2 and the Architect is not adjudged in default, 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, defend 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.. and the Architect is judged in default. If for any reason the Architect does not complete all its services contemplated by this Agreement, the Architect shall not be responsible for the accuracy or workability or constructability of any incomplete drawings, specifications or other documents prepared by Architect should such incomplete documents or any part thereof be used by the Owner or any other party.

§ 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 or modification 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 N/A

§ 8.1.3 The Architect shall indemnify, (but not affirmatively defend), and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. . The Owner and persons claiming through Owner agree to limit the liability of the Architect, its agents, consultants, partners, principles and employees for all claims arising out of, in connection with or resulting from the performance of Services under this Agreement to the amount equal to three times the Architect's total fee, with gross negligence, fraud, and wilful misconduct excluded from this limitation for the work authorized through programming and Concept Design. The Parties agree to negotiate a new limitation of liability if authorized to proceed for work into the later phases. . The Owner shall indemnify and hold the Architect and the Architect's officers, directors, partners, consultants and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Owner, its employees, agents, consultants, contractors or construction managers in the performance of their work or services.

§ 8.1.4 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 (JAMS) as a condition precedent to litigation. 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 litigation.

§ 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 or other mutually agreed to qualified forum. 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 but, in such event, mediation shall proceed in advance of litigation 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

§ 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.

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. For the avoidance of doubt, if Owner elects not to proceed with any Phase of the Work beyond the initial Program & Concept Phase, it shall not be considered as a suspension or termination for convenience and the Contractor shall not be entitled to any type of suspension or termination expenses described in this Article.

§ 9.7

§9.7.1 Should the Owner continue to use the Instruments of Service pursuant to Section 9.7, the Owner may not use or associate the Architect's name in connection with the Project and shall remove Architect's name from the Instruments of Service.

§ 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.

§ 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 and the Architect's Supplemental Conditions.

§ 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 the requested date of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities or liability 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.

§ 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 to the extent permitted by law in the following circumstances: 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, to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute, to avoid creating risk of significant harm to the public or to prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. 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, based upon Exhibit F (and advance written agreement from the Owner):

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

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§ 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 agreed.

§ 11.4 Invoice & Payment

Architect shall invoice Client monthly for rendering of professional services in accordance with an approved progress or periodic billing schedule. Architect shall submit invoices to ap@rideuta.com for processing and payment. In order to timely process invoices, Architect shall include the following information on each invoice:

- i. Architect Name
- ii. Unique Invoice Number
- ii. UTA Contract Number
- iii. Invoice Date
- iv. Architect to provide a Percent Complete for each month for design services, against the current phase.
- v. Total Dollar Amount Due

Client shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Software or Services. Approval by Client shall not be unreasonably withheld. Client shall also have the right to offset (against payments) amounts reasonably reflecting the value of any claim which Client has against Architect under the Contract. Payment for all invoice amounts not specifically disapproved or offset by Client shall be provided to Architect within thirty (30) calendar days of invoice submittal to ap@rideuta.com. Invoices not submitted electronically will shall be paid thirty (30) calendar days from date of receipt by Client's accounting department.

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§ 11.5

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

§ 11.6 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 in Exhibit F attached hereto. The Architect's consultants can be provided at a later date. The rates shall be adjusted annually 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.)

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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 (and as approved by the Client), as follows:

- .1 Transportation and authorized out-of-town travel and subsistence (consistent with the Client's Travel Policy, travel expenses shall be paid at time of travel. Actual cost shall be in accordance with per diem rates published on the www.gsa.gov site);
- .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 and expense of sales, use, occupancy, service ad valorem, profits, salaries V.A.T. duties and other such taxes;
- .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 <<zero>> percent (<<0>> %) of the expenses incurred.

§ 11.9

N/A << >>

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 N/A

§ 11.10.1.2 N/A

§ 11.10.2 Progress Payments

§ 11.10.2.1 N/A

§ 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

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

§ 12.1.1 In reviewing shop drawings, Architect shall affix Action Stamps denoting “A Action”, “B Action”, “C Action”, or “D Action”. The Action Stamps shall mean as follows:

“A Action” means that fabrication, manufacture or construction may proceed providing submittal complies with the Construction Documents.

“B Action” means that fabrication, manufacture or construction may proceed providing submittal complies with the notations of the Architect and the Construction Documents. If, for any reason, Contractor cannot comply with the notation, Contractor shall make revisions and resubmit as described for submittal stamped “C Action”.

“C Action” means that a portion of the submittal does not comply with the design intent of the Construction Documents. Other portions of the submittal, as noted, means that fabrication, manufacture, or construction may proceed providing submittal complies with the notations of the Architect and the Construction Documents. Contractor shall make revisions and resubmit entire submittal only revising portions as noted.

“D Action” means that submittal does not comply with the design intent of the Construction Documents. Submittals stamped “D Action” are not to be used. Contractor shall make revisions and resubmit.

§ 12.1.2 Owner shall cause the Construction Contracts to include provisions describing Architect’s role as stated in this Agreement with respect to construction and shall require the Contractor to guarantee to Owner and Architect that the Work of the Contractor(s) complies with requirements of the Contract documents in language as expressed in Paragraph 3.5.1 of AIA A201 (2017 Edition) and to indemnify Owner and Architect as provided in the language of paragraph 3.18 of AIA A201 (2017 Edition). Owner shall also cause Contractor(s) to name Owner and Architect as additional insured on all insurance required of Contractor(s) on the Project.

§ 12.1.3 It is understood that Architect’s services being performed solely for Owner’s benefit and no contractor or subcontractor, supplier, fabricator, manufacturer, consultant or other third party shall be deemed to be a third party beneficiary of the performance of the services provided by Architect on the Project.

§ 12.1.4 Owner shall include in the Contract Documents provisions causing Contractor(s) to warrant and guarantee to Owner and Architect that the Work will be performed by all workers at the site in a safe and careful manner without injury or death to any such workers and in compliance with the provisions of all safety statutes, ordinances, laws, rules and regulations, including but not limited to the applicable Labor Law, and the Occupational Safety & Health Act.

Include if Project is seeking LEED / other sustainability accreditation

§ 12.1.5 If the Program includes any level of, Green Building or Wellness Rating System (such as LEED®, BREEAM, Living Building Challenge, US Passive House Institute, Chinese Green Building Evaluation, Label, Well, Fitwel or other similar environmental guidelines such as HPD, EPD, Cradle to Cradle, Greenguard, Green Seal, Watersense, Energy Star, RELi) (collectively "Sustainability ") certification for the Project, the Owner recognizes that the achievement of such certification is subject to third parties over whom Architect has no control, and may require the cooperation of the Owner, Owner Consultants, the Contractor and others. The Owner acknowledges and understands Sustainability guidelines, such as LEED or other similar environmental guidelines is subject to various and possibly contradictory interpretation. Therefore, the parties agree that if Sustainability certification or other similar environmental guidelines is a stated goal of the Owner, Architect shall use reasonable care in its design to achieve the same but makes no warranty or guarantee that the Project, when completed, will actually achieve any Sustainability certification or other similar environmental guidelines. In addition, the Owner

acknowledges its desire to achieve Sustainability certification or other similar environmental guidelines may impact the available design and product options and impact the overall cost, schedule and performance. Owner has accepted these potential impacts in the recognition of the importance it has placed on the values of building which includes Sustainability certification or similar environmental guideline. In addition from time to time, Architect may request Owner to sign an AIA form Owner Waiver and Informed Consent to use Experimental Green Products.

[Include if Project is seeking LEED / other sustainability accreditation]

§ 12.1.6 If the Program includes goals or requirements for Project energy usage, such as Net Zero, Net Zero Ready Nero Energy Certification, Energy Star, Building Energy Quotient, or other similar energy usage goals or requirements, the Owner agrees to confirm the energy goals and usage in writing to the Architect. The Owner recognizes that the achievement of such goals or requirements is subject to operational and maintenance activities and decisions over which the Architect has no control. Furthermore, continued LEED or other Sustainability compliance may involve factors beyond the control of the Architect including, but not limited to, the Owner's or the Owner's agents' use and operation of the completed Project. Therefore, the parties agree that Architect shall use reasonable care in its design to achieve the energy usage goals or requirements but makes no warranty or guarantee regarding actual energy usage.

[Include if Project is seeking LEED / other sustainability accreditation]

§12.1.6.1 The Owner agrees they will review and execute any and all agreements that are a part of the LEED certification process and be responsible for the LEED application including the Confirmation of Agent's Authority Agreement. If the Owner disagrees with any agreement that is a part of the LEED certification, the Owner can, in its sole discretion, decide to discontinue LEED certification for the Project. The Owner agrees to waive any and all claims and damages, including consequential damages against Architect if the Owner determines to no longer seek LEED certification.

[Include if Project is seeking LEED / other sustainability accreditation & related tax credits]

§ 12.1.7 If the Program includes goals for qualifying for energy related tax credits, deductions, incentives, etc., the Owner recognizes that qualifying for such goals is subject to certification or decisions by third parties over whom Architect has no control. Therefore, the parties agree that Architect shall use reasonable care in its design to achieve such goals but makes no warranty or guarantee regarding qualification.

[Include if Project is seeking LEED / other sustainability accreditation & related tax credits]

§ 12.1.8 If the Owner's Project per the Program requirements qualifies the Project for tax deductions and or tax credits and the Owner cannot or will not use these tax deductions or tax credits, the Owner assigns such deductions and or credits to the Architect and will assist the Architect by signing documents needed for the Architect to claim such deductions and/or credits.

[Include if Project using BIM / digital modeling]

§ 12.1.9 The parties shall establish a mutually agreeable BIM Execution Plan based on the Architects' Standard Form Template that shall establish the level of development of the BIM Model for each phase of the Project and each element of the design with a clear understanding as to the extent that each party can rely upon the BIM Model.

§ 12.1.10 UTAH ANTI-BOYCOTT OF ISRAEL ACT

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

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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 B103™-2017, Standard Form Agreement Between Owner and Architect as modified herein.

.2 Intentionally omitted.

.3 Exhibits:

- Exhibit A – Scope
- Exhibit B - Site Diagrams
- Exhibit C – Schedule
- Exhibit D – Insurance
- Exhibit E – Additional Services
- Exhibit F – Architect’s Fee Proposal

.4 Other documents:

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

UTA Design and/or Construction Standard Terms & Conditions as applicable and subservient to the terms and conditions contained in the body of this contract.

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

OWNER *(Signature)*

Jay Fox, Executive Director

(Printed name and title)

Date:

Mary DeLoretto, Chief, Service Development
Officer

Date:

Paul Drake, Director of Real Estate and TOD

Date:

Michael Bell 4-28-23

Michael Bell, Assistant Attorney General

ARCHITECT *(Signature)*

« Carrie Byles, FAIA, Partner » « SOM »

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

