

AGREEMENT
BETWEEN
ARCHITECT AND OWNER

3715.011 SAN FRANCISCO, SWISS HOUSE MISSION STREET

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AGREEMENT BETWEEN ARCHITECT AND OWNER

This Agreement Between Architect and Owner (“**Agreement**”) is made as of _____, 2022 by and between THE SWISS CONFEDERATION, A FOREIGN STATE REPRESENTED BY THE SWISS FEDERAL OFFICE OF BUILDINGS AND LOGISTICS FBL/BBL (“**Owner**”) and [Architect], a(n) [Architect entity], (“**Architect**”) for the project located at 1525-1535 Mission Street, San Francisco, California (the “**Property**”), as such project is more fully described on Exhibit A attached hereto (the “**Project**”), to be used by Owner for “consular premises” as defined in the Vienna Convention on Consular Relations (VCCR) and/or as a “foreign mission” as defined in the Foreign Missions Act of 1982.

1. DEFINITIONS; ARCHITECT’S SERVICES AND RESPONSIBILITIES

1.1 Definitions. When used in this Agreement, unless otherwise specifically provided herein, the following terms shall have the following meanings, applicable as appropriate to both the singular and plural forms of the terms defined:

“**Additional Consultants**” is defined in Section 1.17 below.

“**Additional Services**” means those services enumerated in Article 3 below.

“**Applicable Laws**” means all laws, ordinances, statutes, rules, regulations, orders, injunctions, writs, or decrees (collectively, “Laws”) of the United States or any state or other political subdivision thereof and any other quasi-governmental or public authorities having jurisdiction over the Property, but as to Owner only to the extent that any such Laws are applicable to foreign States and/or foreign missions within the United States; provided however, that as to the Property, as used in this Agreement, Applicable Laws include the Federal Occupational Safety and Health Act, the Americans with Disabilities Act of 1990 (as amended), Title 24 of the California Code of Regulations, CALGreen California Green Building Standard Code for Nonresidential Projects, as set forth in Part 11 of the California Building Standards Code in Title 24 of the California Code of Regulations (the “CALGreen Code”), and all Environmental Laws, whether or not applicable to Owner. Applicable Laws, include, but are not limited to, the Foreign Sovereign Immunities Act, the Foreign Missions Act of 1982, and the Vienna Conventions on Diplomatic and Consular Relations.

“**Architect**” is defined in the Preamble to this Agreement.

“**Architect’s Consultants**” is defined in Section 1.5 below.

“**Architectural Documents**” means all Drawings and Specifications, and all other prints, models, drawings, designs, specifications, computations, sketches, test data, photographs, renderings, models, plans, shop and proposal drawings, and other materials relating to the Project.

“**Basic Fee**” means the fee for Basic Services as set forth in Exhibit B.

“**Basic Services**” means the design and other services to be performed by Architect pursuant to this Agreement other than the Additional Services.

“**Bid Documents**” is defined in Section 2.4(b).

“**Bid/Negotiation Phase**” is described in Section 2.4.

“**Change Order**” means an order executed by Owner, pursuant to the Construction Contract, authorizing or approving any change in the Work, or adjustment in the Contract Time or the Guaranteed Maximum Cost.

“**City**” means the City of San Francisco, California.

“Claims” means all losses, damages, charges, liabilities (direct or indirect), claims, costs, expenses (including reasonable attorneys’ fees and expenses) and suits, proceedings or other causes of action of any nature whatsoever.

“Concept Design Phase” is described in Section 2.1.

“Construction Administration Phase” is described in Section 2.5.

“Construction Contract” means the Construction Contract between Owner and Contractor to be entered into after the date of this Agreement, including the general conditions contained therein, as modified by any Change Orders during the effective term of this Agreement, including as to each document, all exhibits and attachments thereto as may now or hereafter be in effect during the effective term of this Agreement.

“Construction Documents” means the permitted set of Drawings and Specifications, any Owner-approved Architect Supplement Instructions (ASIs) and Owner-approved Engineer Supplemental Instructions (ESIs) and another Owner-approved revisions to the Drawings and Specifications, as may now or hereafter be in effect during the effective term of this Agreement, including as to each document, all exhibits and attachments thereto.

“Construction Documents Phase” is described in Section 2.3.

“Consultants” means Architect’s Consultants and Owner’s Consultants.

“Contract Documents” means this Agreement, the Construction Contract, and the Construction Documents, including all exhibits and attachments thereto.

“Contract Time” means the period of time allotted for Substantial Completion of the Work pursuant to the Construction Contract.

“Contractor” means the general contractor(s) designated by Owner from time to time.

“Cost Estimate” or **“Estimate”** means an independent estimate prepared by the Contractor or Owner’s cost consultant (as applicable, the **“Cost Consultant”**) of the total cost to Owner of all elements of the completed Project, including, without limitation, allowances for overhead, labor and material costs.

“Design Development Documents” means all Architectural Documents associated with the Design Development Phase.

“Design Development Phase” is described in Section 2.2.

“Design Schedule” means the schedule for performance of the Basic Services attached hereto as Exhibit C, as it may be subsequently amended in accordance with this Agreement.

“Development Requirements” means all conditions of approval imposed by any governmental or public authorities to the extent applicable to the Project including by way of example, but not limited to, those delineated in any conditional use permits or other governmental approvals, and all associated amendments and exhibits thereto

“Disputes” is defined in Section 12.11 below.

“Drawings and Specifications” means all drawings and specifications setting forth in detail and prescribing all work to be done for the Project prepared by Architect, Architect’s Consultants, and Owner’s Consultants, including by way of example, but not limited to, materials, workmanship, finishes and equipment required for the Project such as architectural; structural; heating; air-conditioning; ventilating; telephone; energy management; mechanical; plumbing; elevator; security; life safety; electrical; civil; landscaping; on-site amenities and facilities; and all addenda thereto and modifications thereof, as approved by Owner.

“Environmental Laws” means (i) any and all federal, state, or local environmental and/or safety laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, plans, risk management plans, recorded property covenants and/or restrictions, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future relating to the environment or to any Hazardous Materials; (ii) all Environmental Covenants and Restrictions on Property, if any; and (iii) the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 1906 *et seq.*) (“**CERCLA**”) which are or become applicable to the area in which the Project is being performed.

“Excusable Delay” is defined in Section 1.10 below.

“Final Completion” means completion of the Punch List Work and acceptance of the Project by Owner.

“Final Payment” means the payment of any remaining amount of compensation payable to Architect under this Agreement, minus amounts retained for coverage of Punch List Work, following Architect’s satisfactory Application for Payment.

“Guaranteed Maximum Cost” is defined as the total allowable cost of construction in the Construction Contract, whether in the form of a guaranteed maximum price or a not-to-exceed number.

“Hazardous Material” means any substance, material, or waste that, because of its quantity, concentration or physical or chemical characteristics, poses a significant present or potential hazard to human health or safety or to the environment, including, but not limited to, petroleum, petroleum-based products, natural gas, or any substance, material or waste that is, or shall be, listed, regulated or defined by federal, state, or local statute, regulation, rule, ordinance, or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.

“Indemnified Party” is defined in Section 7.2(a).

“Losses” is defined in Section 7.2(a).

“Owner” is defined in the Preamble to this Agreement.

“Owner’s Consultants” means the Owner-Retained Consultants and the Additional Consultants, if any.

“Owner-Retained Consultants” is defined in Section 1.4.

“Phase” means a phase of Architect’s services referred to in Article 2 below.

“Plan Review Documents” is defined in Section 2.1(f).

“Preliminary Project Budget” means the all-inclusive estimated cost of the Project as set forth in attached Exhibit D.

“Preliminary Spatial Requirements” is defined in Section 1.6(b).

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information to illustrate a material, product or system for some portion of the Work.

“Project” is defined in the Preamble to this Agreement.

“Project Budget” means the all-inclusive estimated cost of the Project based on one hundred percent (100%) complete Design Development Documents prepared in connection with the Design Development Phase.

“Project Manager” means the person designated by Owner as the representative authorized to act on Owner’s behalf with respect to the Project, as such person may change from time to time.

“Project Manual” is defined in Section 2.1(e).

“Project Representative” means the person designated by Architect in accordance with Section 1.4 below.

“Proposed Regulations” is defined in Section 1.9.

“Punch List Work” means the items of Work still to be completed or corrected after Substantial Completion occurs and which can be completed within thirty (30) days after Substantial Completion (or such other period of time as may be approved by Owner in its discretion).

“Reimbursable Expenses” means those actual and reasonable expenses described in Section 5.4 below, without markup.

“Samples” means physical examples which illustrate materials, equipment or workmanship, and establish standards by which the Work will be judged.

“Schematic Design Phase” is described in Section 2.1.

“Schematic Design Documents” means all Architectural Documents associated with the Schematic Design Phase.

“Services” means the Basic Services and the Additional Services, collectively.

“Shop Drawings” means drawings, diagrams, layouts, schematics, descriptive literature, schedules, and similar materials prepared by Contractor, any subcontractor, any manufacturer, supplier, distributor or any other party to explain in detail specific portions of the Work. Shop Drawings shall be reviewed by Architect as provided herein.

“Spatial Discrepancy” is defined in Section 1.6(b).

“Standard of Care” is defined in Article 11 below.

“Substantial Completion” means that all of the following have occurred: (i) the Work shall have been fully completed to Owner’s satisfaction in accordance with the Contract Documents (except for Punch List Work) such that the Project can be used and occupied for its intended purpose; and (ii) the Project is in compliance with all Applicable Laws and Development Requirements and all certificates, permits and/or licenses of any governmental authority having jurisdiction over the Work or operation of the Project allowing the use and occupancy of the Project for its intended purpose shall have been delivered to Owner.

“Systems” is defined in Section 2.1(b) below.

“Work” means all design services, materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements, labor, supervision, accounting, transportation, utilities, storage and services required to perform and completely finish the Project in accordance with the Contract Documents.

“Work Product” is defined in Section 12.13(a).

1.2 Architect’s Services. Architect is responsible for, among other things, assisting Owner in obtaining municipal, state, and federal approvals for, among other things, entitlement acquisition, code-compliance, permitting, building permits, and any other necessary or desirable approvals or permits. Architect shall be responsible for providing “Concept Design Phase,” “Schematic Design Phase,” “Design Development Phase,” “Construction Documents Phase,” “Bidding Negotiation Phase” and “Construction Administration” services for the Project.

Architect shall be the architect-of-record for the Project. Architect agrees to not deviate from the Standard of Care, based on Architect's skill and knowledge of the Project. Architect agrees to perform all Services in a professional and expeditious manner, in accordance with the Standard of Care. Such Services shall include drawings and designs as may reasonably be deemed necessary to illustrate the function and relationship of Project components, as well as the coordination of Architect's Services and those of Architect's Consultants with the services of the Owner's Consultants. Architect agrees to perform all of its work and render all Services in a professional and expeditious manner in accordance with the Standard of Care and in keeping with such Standard of Care, do such acts and things for and in connection with providing complete architectural and, if applicable, engineering services, for the Project so that the Project, as designed, will operate as a complete and integrated facility, including, but not limited to, all such work and Services on the part of Architect as are herein described or which are necessary to the performance of the Services set forth in this Agreement and consistent with generally accepted architectural practice for completion of the Project. Based on the information available to Architect at the time of signing this Agreement, Architect represents to Owner that in the opinion of Architect, the Basic Services and Additional Services to be performed by Architect, including the services to be performed by any Additional Consultants, comprise all of the design and engineering services required for the completion of the Project.

1.3 Relationship to Contractor. Architect agrees to use its skill and judgment and to cooperate with Owner, Project Manager and Contractor to facilitate Contractor's responsibility to construct the Project in accordance with the Contract Documents by the established completion date for not more than the Preliminary Project Budget established by Owner.

1.4 Project Personnel. Architect acknowledges that Owner or Owner's Project Manager may have heretofore retained certain other professionals, engineers, consultants and contractors in connection with the Project, including, without limitation, a geotechnical engineer, a civil engineer, and a pre-construction consultant, (collectively, "**Owner-Retained Consultants**"). Architect has appointed an authorized competent Project Representative designated on attached Exhibit E, who has been accepted by Owner and who shall be available to Owner as set forth in this Agreement as required for the proper performance of all matters relating to the Project. The Project Representative shall be a licensed architect with not less than ten years of experience in the design and construction of projects similar to the Project. The Project Representative may act on behalf of Owner only to the extent set forth in this Agreement. Architect shall require that the minimum participation of other members of Architect's firm shall be at least the percentage of their full time employment and efforts listed by Phase on the attached Exhibit E. Any changes in assignment or replacement of the Project Representative listed in Exhibit E may be done only with the prior written consent of Owner at Owner's sole discretion. Architect shall replace any person assigned to the Project as reasonably required by Owner.

1.5 Architect's Consultants. If required by Owner or otherwise deemed necessary by Architect and approved by Owner, certain of Architect's services will be performed by consultants engaged by Architect ("**Architect's Consultants**"). When any such services are to be performed by Architect's Consultants, the selection of such Architect's Consultants shall be subject to Owner's prior written approval and Architect shall be fully responsible for the payment of such Architect's Consultants to the extent Owner has paid Architect for such services. If required by law, any such Architect's Consultants shall be duly licensed in their respective fields of specialization by the State of California and shall be approved in writing by Owner. In performing its services under this Agreement, Architect has recommended and agrees to retain and use the Consultants listed on attached Exhibit F for the services listed therein. Architect shall provide Owner with the details of Architect's arrangement with the Architect's Consultants, including the amount and manner of their compensation for design, construction and post-Construction Administration Phases, for Owner's approval. All contracts between Architect and Architect's Consultants shall be subject and subordinate to this Agreement and shall expressly provide that Owner may elect to assume or assign such contracts, at Owner's election, in case of termination of this Agreement. Any changes in Architect's Consultants listed in Exhibit F may be made only with the prior written consent of Owner. Architect shall be fully responsible for the timely and proper performance of all work and services performed by Architect's Consultants and for the cost of their services. Architect shall retain no consultant except upon the prior written approval of Owner in the form of amendment or change order to this Agreement setting forth the particular consultant, the consultant's scope of work and the consultant's fee structure, which fees shall be paid by Owner as Reimbursable Expenses as provided in Section 5.4 below. Architect shall enter into a written agreement with each Architect's Consultant, which shall be subject and subordinate to the terms of this Agreement and a copy of the agreement entered into between Architect and each Architect's Consultant shall be promptly forwarded to Owner. All such agreements shall be cancellable by

Owner at any time upon not more than five (5) business days' written notice without payment of a termination fee of any kind (other than actual fees incurred by such consultant through the date of termination).

1.6 Coordination of Consultants.

(a) Architect acknowledges that the performance of its services shall require extensive coordination with Owner's Consultants. Architect agrees to coordinate with, and integrate its work product with the work product of, Owner's Consultants. Without limiting the generality of the foregoing, Architect acknowledges its obligation to review, assess and bring to the attention of Owner, any deficiencies in the work product of Owner's Consultants which are known to Architect or should be known to Architect based on the Standard of Care. To the extent such deficiencies are known by Architect, Architect shall alert Owner prior to Architect's performance of any work required to be coordinated with, or which is dependent upon, the work of such other of Owner's Consultants. Architect acknowledges that all of the foregoing coordination and integration are included in Basic Services for which Architect shall not be entitled to any additional compensation.

(b) Architect will be responsible for coordinating its services with the services of all design consultants retained by Architect. In connection with this coordination obligation, Architect will forward CADD files and reproducible of its drawings (backgrounds) to all applicable design consultants to show the locations of interior design elements that influence the layout and design of engineering and other systems. In furtherance of the foregoing, Architect, as a Basic Service, shall (i) review, approve or take other appropriate action on separate design and engineering submittals for purposes of confirming conformance to all performance and outline specifications, design and space limitations; and (ii), upon approval, coordinate the same into the Architectural Documents with the objective to achieve an integrated and coordinated Project. Notwithstanding the foregoing, in connection with its duties in subclause (i) above, Architect does not guarantee, and shall not have responsibility or liability for, the engineering design, code compliance, installation or performance of any systems designed by Owner's Consultants, unless (w) Architect has actual knowledge of any such failure or design deficiency and fails to communicate the same to Owner in writing, (x) Architect deviates from the Standard of Care, or (y) any such failure or design deficiency should have been apparent to Architect based on the Standard of Care, given Architect's level of skill and familiarity with the Project, or (z) the lack of necessary coordination by Architect has caused or contributed to such failure or design deficiency. In connection with its obligations in clause (i) above, Architect shall communicate and coordinate with the design consultants in order to determine the size and space required to accommodate installation and operation of the improvements designed by each design consultant, who shall respond in writing to Architect, and upon such response Architect may rely to the extent reasonable based on the Standard of Care (the "**Preliminary Spatial Requirements**"). The Architectural Documents shall be drawn to accommodate the Preliminary Spatial Requirements indicated in writing as required by all design consultants. If there is a discrepancy between the actual size and space required to accommodate installation and operation of the improvements designed by any design consultant(s) and the Preliminary Spatial Requirements (a "**Spatial Discrepancy**"), Architect and the appropriate design consultant(s) shall confer to determine whether the Architectural Documents must be revised or if the work of the design consultant must be revised. To the extent that Architect has provided necessary coordination and the Architectural Documents must be revised because of a Spatial Discrepancy caused by the failure of any system designed by a design consultant who is also an Owner Consultant to conform to the Preliminary Spatial Requirements, such revisions shall be an Additional Service hereunder, except to the extent Architect knew of such discrepancy or should have known based on the Standard of Care, on the basis of the information provided by such Consultant and Architect's familiarity with the Project. In all other cases, revisions to the Architectural Documents required due to any Spatial Discrepancy shall be performed by Architect as part of Basic Services.

(c) At each stage of the Project, Architect shall confirm that Owner's Consultants together with Architect and Architect's Consultants shall constitute all design professionals necessary to complete the design of Owner's Project in a cohesive manner in accordance with all Applicable Laws.

(d) Notwithstanding anything in this Agreement to the contrary, if any Architectural Documents at any stage of the Project either (i) fail to include a sufficient level of detail to generate an accurate Cost Estimate for the Project, or (ii) introduce a new element not previously approved by the Owner, and such design detail (or lack thereof) requires design modifications to conform to the then-current Cost Estimate, Architect shall make necessary design revisions as a Basic Service, at no additional cost to the Owner, to comply with the Project Budget and Owner's design approvals.

1.7 Review of Cost Estimate. Architect shall review and comment on all Cost Estimates as required hereunder, as a Basic Service and without additional compensation. Architect shall perform its review as a design professional, and not as a cost consultant, quantity surveyor, construction manager or project manager. Architect shall advise Owner of any inconsistencies or other problems with the Cost Estimates identified by Architect and shall assist and cooperate with Owner and Cost Consultant in connection with the preparation of the Cost Estimates which are satisfactory to Owner and Architect.

1.8 Meetings. Architect shall lead, and Architect's Consultants shall attend, meetings and conferences with Owner, Contractor, and others as necessary to provide for the efficient performance of the Services. These include, but are not limited to, regular Project meetings attended no less often than weekly for the duration of the Project, and special meetings with Owner as reasonably requested, and special meetings with applicable governmental review departments or boards and any other governmental, quasi-governmental and other authorities with jurisdiction over the Project. Meetings shall be in-person or via telephone/video conference, as specified in Section 2 below. If Architect or Architect's Consultants are required to attend an additional number of meetings with governmental authorities due to the nature of the Project, attendance at such additional meetings shall be an Additional Service. Unless otherwise directed by Owner, until commencement of construction under the Construction Contract, Architect shall conduct weekly Project meetings and shall prepare minutes thereof, which minutes shall be distributed not less than two (2) business days prior to the next regularly-scheduled meeting. Architect will advise and consult with Owner as required by Owner with respect to matters relating to the Project and shall also consult with Owner's project manager, Cost Consultant, Contractor and designated subcontractors as to details of construction, planning, cost estimation, and development of cost savings.

1.9 Compliance with Applicable Laws and Development Requirements; Sustainability.

(a) Architect is responsible for designing the Project so that the Project, as designed, will comply with all Applicable Laws and Development Requirements. To the extent any Applicable Laws or Development Requirements are inconsistent or are unclear, to the extent Architect knows of such inconsistency or lack of clarity, Architect shall advise Owner in writing of the existence and possible resolution of such inconsistencies; provided, however, to the extent Architect should have known of such inconsistencies based on the Standard of Care, Architect shall be responsible for the failure to advise Owner. Any such inconsistencies shall be resolved as determined by Owner, which Owner shall set forth in writing. At the request of Owner, Architect shall seek to resolve any such conflict or inconsistencies with the appropriate agency or body so that the Project complies with Applicable Laws and Development Requirements. If additional permits, approvals or amendments to existing permits or approvals are required of Architect to perform the Services, Architect is responsible for obtaining such necessary approvals, permits or amendments to existing approvals or permits. Architect shall not be responsible, as a Basic Service, for changes in the Drawings and Specifications required as a result of a change in Applicable Laws or Development Requirements after the commencement of the Construction Documents Phase; provided that Architect in preparing the Drawings and Specifications has advised Owner in writing of any proposed regulations or requirements which have been published and by the terms of such publication are likely to be adopted and become applicable to the Work (any of the foregoing being herein referred to as "**Proposed Regulations**") and Architect has incorporated the Proposed Regulations if so directed by Owner. Architect shall have no liability (i) for any changes necessitated by enactment of such Proposed Regulations if Owner has been advised thereof and has directed Architect not to incorporate the same, or (ii) for additional costs resulting from the incorporation, at the direction of Owner, of any such Proposed Regulations which were not enacted.

(b) Owner has established certain sustainability objectives for the Project, including taking certain measures to benefit the environment and improving energy efficiency (collectively, the "**Sustainability Objectives**"). Architect will meet with the Owner to discuss the Sustainability Objectives, implementation strategies for achieving the Sustainability Objectives, the roles and responsibilities of Owner, Architect, and third parties in achieving the Sustainability Objectives, and documentation required in connection with the Sustainability Objectives.

1.10 Schedule of Services. Architect shall perform the Basic and Additional Services as expeditiously as is consistent with the Standard of Care. Prior to the execution of this Agreement, Owner has approved the Design Schedule attached as Exhibit C, which has been established by mutual agreement between Owner and Architect, and which may be amended from time to time by mutual agreement. The Design Schedule indicates by date estimated completion times of each of the Concept Design Phase, Schematic Design Phase, Design Development Phase,

Construction Documents Phase, Bidding Negotiation Phase, and Construction Administration Phase, and specifies target dates for completion of each Phase and task milestones for the design and approval process sufficient to allow monthly status checking. Upon request of Owner, Architect shall submit for Owner's approval, from time to time, any requested adjustment to the Design Schedule which shall include allowances for periods of time required for Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. The Design Schedule approved by Owner shall not, except as the result of Excusable Delay (as defined below), be exceeded by Architect. Architect's services under the Construction Administration Phase shall be performed in a timely manner so as not to delay the Work of the Contractor or any other aspects of the design and construction of the Project. As used herein, the term "**Excusable Delay**" means any delay resulting from a cause beyond the reasonable control of the party delayed thereby, such as strikes or other labor disputes, severe weather disruptions or other natural disasters, fires, riots, war or other emergencies or acts of God, discovery of Hazardous Materials at the Project not caused by Architect or Architect's Consultants, failure of any government agency to act in a timely manner; or the failure of the Owner or its contractors or consultants to act within the time periods set forth in the Schedule, provided that any failure of Architect's Consultant's to perform, or any financial or other internal difficulty of Architect, shall not be deemed to be a cause beyond Architect's reasonable control. By accepting late or otherwise inadequate performance of any of Architect's obligations, Owner shall not waive its rights to require thereafter timely performance or performance that strictly complies with this Agreement. No exercise of any right or remedy by Owner or Architect shall constitute a waiver of any other rights or remedies contained in this Agreement or provided by law.

1.11 Confidentiality. All information, plans, reports, documents and other materials of any type furnished by or on behalf of or belonging to Owner and all information, studies, analyses, reports or other work discovered or produced by Architect, the Consultants and of their employees, agents, and/or subconsultants, including, without limitation, all Work Product (defined below) (collectively, "**Confidential Information**") shall be maintained by Architect, and the Consultants and their employees, agents, and subconsultants in the strictest confidence, and will neither be used for any purpose, other than as specifically contemplated by this Agreement, nor disclosed to anyone without the prior written permission of Owner, unless (i) the Confidential Information has previously been made generally publicly available by someone other than Architect or its employees, agents or subconsultants, or (ii) Architect is compelled to do so by a court of competent jurisdiction in which case Architect shall immediately provide written notice to Owner setting forth the nature and extent of the compelled disclosure. Notwithstanding the foregoing, (a) Architect may disclose the Confidential Information as necessary in the normal course of performing Architect's work under this Agreement, and (b) Architect may use the Work Product for marketing purposes, if and only if Architect provides a copy of the proposed marketing materials incorporating the Materials to Owner for Owner's review and receives Owner's prior written approval, in Owner's sole and absolute discretion. Architect agrees that all of the Confidential Information is proprietary and confidential in nature, that disclosure of same in violation of the provisions of this Section will cause harm to Owner, that in disclosing same to Architect, Owner has not waived any claims of privilege or confidentiality, and that Architect will use its best efforts to assure that all Consultants and all of its and their employees, agents and subconsultants who receive the Confidential Information will fully comply with the provisions of this Section 1.11. Notwithstanding the foregoing, Architect shall also comply with the Secrecy Agreement attached hereto as Exhibit J.

1.12 Review of Existing Data. Architect shall review site surveys, existing record documents, seismic data, mechanical, geotechnical and other test reports, environmental documents and other information furnished to Architect pursuant to Article 4 below, and, after examining the Project site, shall advise Owner as to whether additional data are needed and, upon request, advise upon the manner in which it should be obtained.

1.13 Owner's Approval. Any approval of Owner required hereunder shall be in writing and may be given or withheld in the sole discretion of Owner. No review, approval or acceptance by Owner of any plans, drawings, specifications, or other documents prepared by Architect, shall relieve Architect from responsibility for negligent errors or omissions in Architect's services.

1.14 Alternatives. From time to time Owner may desire alternatives to be analyzed. If so directed in a separate writing by Owner, Architect and Architect's Consultants shall prepare and submit studies of alternatives, including cost, safety and reliability analyses. Owner will manage this process to prevent an undue burden on Architect. If alternatives are not included in the scope of Architect's Basic Services pursuant to Article 2 herein, Architect shall be compensated for such alternatives as Additional Services pursuant to Article 3 herein.

1.15 Royalties and Patents. If any design, device, material or process covered by patent or copyright is used by Architect, Architect shall obtain all necessary authorizations and licenses to use the same, and shall indemnify and hold harmless Owner from any and all loss or expense arising out of, or in connection with, the use of such design, device, material or process or any claim that any Architectural Documents infringe the copyright or trade secrets of another. Compensation for such royalties and fees is included in the compensation for Basic Services as agreed upon between Owner and Architect. Architect, its personnel and its other agents shall not infringe any United States patent, copyright, trade secret or other proprietary right for any material, product or part of any material or product (for example, software, firmware, hardware, service, design or equipment) used or furnished under this Agreement. Architect shall defend suits or claims for infringement of any such rights by Architect and shall hold Owner harmless from loss, on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by Owner or when such defense or loss arises out of the incorporation of any document, image, text illustration, or file which Owner provided to Architect directly or through any agent or representative of Owner. Notwithstanding the foregoing, if Architect knows that such required design, process, or product is an infringement of any such right, Architect shall be responsible for such loss unless Architect advises Owner in writing and Owner elects in writing to proceed with such design, process, or product.

1.16 Specifications. Except as otherwise approved by Owner in writing, Architect shall specify, where possible, at least three (3) acceptable manufacturers.

1.17 Additional Consultants. Owner reserves the right to retain other architects, engineers and consultants in connection with the Project. With respect to any portion of the design of the Project that is to be performed by any architect, engineer or consultant retained by Owner pursuant to a separate agreement, after the acceptance of this Agreement (any such separate architect, engineer or consultant being herein referred to as an “**Additional Consultant**”), Architect, as a Basic Service shall coordinate, subject to the Standard of Care, the design and the Services with the work product prepared by such Additional Consultants to achieve conformance to the design, space limitations and performance criteria for the Project. Owner reserves the right to retain such Additional Consultants to perform an independent review of Architect’s Drawings and Specifications. Architect shall cooperate fully with such third-party reviewers and shall revise its Drawings and Specifications as directed by Owner to respond to such Additional Consultants’ comments.

1.18 Submissions Requirements. Architect shall deliver electronically CADD and PDF versions of drawings and plans and other items required to be submitted for each phase of the Basic Services to Owner, unless otherwise specified in writing by Owner. To the extent paper copies are requested, the reproduction costs of which shall be a Reimbursable Expense.

2. BASIC SERVICES

All of the Services described in this Article 2 and in Exhibit K shall be performed by Architect as part of Basic Services:

2.1 Concept Design Phase; Schematic Design.

(a) Architect shall meet with Owner to determine Owner’s desired program and design for the Project and all elements thereof. Architect shall review the proposed program and other information furnished by Owner, and shall review the Development Requirements and all Applicable Laws and codes applicable to Architect’s Services. Architect shall undertake a review of, become familiar with, and evaluate all current conditions at the Site, and the results of all reports and tests provided by Owner, including, without limitation, (i) that certain Structural Due Diligence Assessment Report dated March 12, 2021; (ii) that certain Preliminary Historic Status Memorandum dated March 12, 2021; (iii) that certain Phase I Environmental Site Assessment dated July 7, 2021; and (iv) that certain Preliminary Geotechnical Evaluation dated October 1, 2021. Notwithstanding the foregoing, Architect shall make recommendation to Owner of destructive testing or subsurface investigation where it is reasonably aware the same should be undertaken. Notwithstanding the provisions of this Section 2.1(b), Architect has become familiar with the electrical, electrical distribution, and other utility systems serving the Site.

(b) Architect shall prepare preliminary evaluations and conclusions to Owner in a timely fashion, and shall demonstrate and provide details of Architect’s proposed design and construction of the Project

consistent with the Project requirements, including the feasibility of sensitively incorporating environmentally responsible design approaches. Architect shall confirm that the concept design proposed by Architect meets Owner's requirements for the Project and shall not proceed to the Schematic Design Phase until Owner has approved the concept design.

(c) During the Schematic Design Phase, Architect shall coordinate its services with those of all Consultants. The Schematic Design Phase shall include an additional consultation with local authorities will be via phone, on-line and e-mail (or in-person as necessary).

(d) Based on Owner's preferred design, Architect shall prepare all of the Schematic Design Documents in compliance with the Preliminary Project Budget and other requirements, and shall advise Owner in writing of any discrepancies. Architect shall provide copies of all Schematic Design Documents to Owner, including all drawings and other documents prepared by Architect, including the site plan, and preliminary building plans, sections, and elevations; and, to the extent applicable, any study models, perspective sketches, digital modeling, and other forms of imagery. Architect shall respond to all comments of Owner on such Schematic Design Documents and shall make modifications as requested.

(e) Architect's deliverables in connection with the Schematic Design Phase shall include, but are not limited to:

- Site Plan
- Preliminary Code Study Site Plan
- Building Floor Plans
- Exterior Building Elevations
- Building Sections
- 3-Dimensional Visualization
- Related Consultant drawings (collectively, the "**Schematic Design Documents**")

In addition, during the Schematic Design Phase, Architect shall review all submittals and coordinate with all Consultants to provide a project manual including a summary of the basis of design and outline specifications (the "**Project Manual**").

(f) Architect shall prepare all documents, plans, drawings and other submissions to the applicable San Francisco Planning Department and the applicable Department of Building Inspection submissions (collectively, the "**Plan Review Documents**") that are required in connection with the plan review by the City, in compliance with all Applicable Laws and with all deliverables to satisfy all Development Requirements and all other City requirements. Architect's services during the Plan Review Phase will include preliminary consultation with local authorities over the Project and both in-person and remote meetings. Architect shall coordinate with the City, Architect's Consultants, Project Manager, and the other Owner's Consultants in order to obtain all required City approvals..

(g) Architect shall consider responsible design alternatives, such as material and systems options, together with other considerations based upon Project requirements, program, and aesthetics, in developing designs which are consistent with Preliminary Project Budget and Owner's program, schedule, and intentions. Architect shall meet with Owner's Consultants to determine and incorporate their special requirements as they may affect the design.

(h) Architect shall consider the value of alternative materials, building systems, equipment, et cetera, together with other appropriate considerations based upon the Project program, requirements, and aesthetics when developing designs for the Project which are consistent with Owner's program, schedule, Preliminary Project Budget, and intentions.

(i) Architect shall provide weekly updates of the Design Schedule.

(j) Architect shall submit the Schematic Design documents to Owner, and shall request Owner's written approval. Architect shall not proceed to the Design Development Phase until Architect has secured

Owner's written approval of the Schematic Design and the updated Design Schedule, and has Owner's written instructions to so proceed.

2.2 Design Development Phase.

(a) Architect shall develop the design of the Project in preparation for the Construction Documents Phase, fixing and describing in further detail the size and character of the entire Project as to, for example but without limitation, architecture, structure, all Systems; space requirements, materials and such other elements as may be appropriate. Architect shall continue the development of the approved Schematic Design, (i) illustrating and describing the refinement of the design of the Project, establishing the scope, relationships, forms, size, appearance of the Project and identifying major materials and systems and establishing in general their quality levels; (ii) coordinating Architect's services with Architect's consultants, and Owner's Consultants; (iii) assisting Cost Consultant in obtaining preliminary cost estimates; (iv) perform all necessary and appropriate Code analysis; (v) submitting approximate 50% Design Development package to the Owner and Cost Consultant for review and approval. The process shall be an interactive process, involving weekly meetings between, among others, Owner, Architect, and any other required parties, and separate meetings on special issues. The documents to be prepared by Architect shall incorporate those prepared by Owner's Consultants, if required, and shall include, among others:

(i) Architectural Drawings. Architect shall prepare all of the Architectural Drawings for the Project, including, but not limited to:

- (A) Cover Sheet.
- (B) Site plan showing proposed driveways, all exterior utilities, sidewalks, bicycle parking, loading dock, drop-off zone, other site improvements, grades, and drainage.
- (C) Code Study Site Plan and Floor Plans.
- (D) Floor plans for each floor, including roof, showing space assignments, sizes, and location of installed, fixed and movable equipment which affect the design of the spaces, and a tabulation of areas, including net and gross areas of various parts of the Project. Floor plans should include structural elements, doors, windows, fixed counters and shelving, and utility systems outlets (electrical, telecommunications, mechanical, plumbing, computer, etc.) to facilitate furniture and equipment layout and interior design. Floor plans should incorporate furniture layout to facilitate review of proposed telecom and data placement.
- (E) Reflected Ceiling Plans.
- (F) Exterior Building Elevations.
- (G) Building sections showing structural members, dimensions, accommodation of functional systems and other dimensions.
- (H) Preliminary wall sections sufficient to indicate materials, openings, and major features.
- (I) Preliminary Door Window, Assembly and Finish Schedules.
- (J) Enlarged Exterior Elevations, Plans and sections indicating exterior design elements and features including fenestration, colors, materials, lighting, Systems, structural elements

(including any unusual building maintenance requirements) and electrical features appearing on walls, roofs, and adjacent areas.

(K) Interior plans and elevations, including, without limitation, core elements, bathrooms, elevator lobbies, equipment, and Systems locations, based on Owner-approved requirements.

(L) Systems and other dimensions.

(ii) Structural Drawings. Architect shall be responsible for the preparation of structural drawings, including, without limitation:

(A) Plans and sections of sufficient clarity to show the extent and type of structures and foundations.

(B) Details and notes to show that the structure conforms to the provisions of Applicable Laws and Development Requirements, including structural peer review and municipal plan check requirements, and is otherwise sufficient.

(C) Notes to indicate that the foundation and structural design complies with the requirements of soils analysis and applicable seismic requirements.

(D) Notes on provisions to meet special requirements such as vibration and acoustical constraints.

(E) Legible sheets showing the structural engineering calculations for all primary structural components of the Project.

(iii) Mechanical & Plumbing Drawings and Performance Criteria. Architect shall be responsible for preparation of the MP Design Drawings and the performance criteria for the MP portion of the Project, including, but not limited to:

(A) Plans for each floor and roof top mechanical rooms showing single line layouts with approximate sizing of major duct and piping systems on architectural plan backgrounds, including an outline of central heating, cooling, and ventilation equipment.

(B) Plans showing sections through critical areas showing coordination of architectural, structural, mechanical, and electrical elements.

(C) Riser diagrams showing single line flow schematics for hot and cold water and condenser water.

(D) Notes on provisions to meet special requirements such as vibration and acoustical constraints.

(E) Energy Performance Model based on a the overall design.

(F) Size building requirements and coordination of utility requirements for gas, domestic water, fire water, sewer, and storm drain connections.

(G) Coordination of preparation of performance criteria and

- (iv) Electrical and Low Voltage Drawings and Performance Criteria. Architect shall be responsible for the preparation of electrical and low voltage Design Drawings and the performance criteria for the Project, including, but not limited to:
- (A) Plans for each floor, amenity spaces, and roof top mechanical rooms showing single line layouts with approximate sizing of major electrical, data, communications, and security/access control systems on architectural plan backgrounds.
 - (B) Plans for each floors and roof top mechanical rooms showing space assignment, sizes, and outline of heating, cooling, and ventilation equipment.
 - (C) Sections through critical areas showing coordination of architectural, structural, mechanical, and electrical elements.
 - (D) Riser diagrams.
 - (E) Notes on provisions to meet special requirements such as vibration and acoustical constraints, if any.
 - (F) Energy Performance Model.
 - (G) Size requirements for appropriate systems.
 - (H) Utility services, including, but not limited to, electrical service, transformers and metering location, connections to gas and electrical, communications, joint trench and distribution, and utility distribution on site.
 - (I) Coordination of performance criteria for low voltage systems, including telecom data, fire alarm, audio visual, and power supply and conduits for the security systems.
- (v) Other. Architect shall be responsible for the preparation of 50% Design Development Documents and the performance criteria for the Life safety/fire/vertical transportation systems, and other drawings required to complete the Project, including, without limitation, landscape, security, graphics, signage, and art work programs.
- (vi) Project Manual Update; 50% DD Package. Architect shall coordinate with other project consultants to provide an update of the Project Manual, including all outline specifications (as provided below). Unless otherwise directed by Owner, Architect shall compile a “**50% DD Package**,” including the above-mentioned documents and plans, as well as the 50% Design Development Documents in the form of plans for landscape, civil, lighting, signage, security, waste management, water feature(s) and all other site features and amenities.
- (vii) Preliminary Specifications. Architect shall prepare the outline specifications the Project, including:
- (A) Architectural. Revised and expanded general description of the construction, including structural, interior and exterior materials and finishes (including colors), types and locations of acoustical treatment, typical and special floor and wall coverings.

- (B) Mechanical and Plumbing. Description of the plumbing, air-conditioning, heating, and ventilation systems and controls, duct, and piping systems, including provisions to meet any special criteria such as acoustic, air changes, filtration, humidity, vibration isolation and temperature controls.
- (C) Electrical. Description of all electrical, data, telecommunications, security (including access control), and control systems.
- (D) Equipment. Recommendations to Owner for purchases of specific equipment based upon Project requirements, Owner's needs, and Architect's evaluation of the suitability, efficiency and durability of the equipment.
- (E) Other: As deemed necessary.

- (viii) An updated code analysis identifying any changes in any Applicable Laws and identifying that the design is in accordance with all Applicable Laws, including, without limitation code and zoning requirements.
- (ix) Preparation of a narrative sequence of operation for all building systems, or if applicable, an update of the narrative sequence prepared as part of the Schematic Design Phase.

(b) Architect shall involve Cost Consultant whenever appropriate in the design process and shall provide Design Development Documents for review, at intervals appropriate to the progress of the Design Development Phase. Architect shall review and comment on and work with Owner and Cost Consultant in connection with the Cost Estimates, as provided in Section 1.7 above.

(c) Architect shall, in a timely manner, provide to Owner architectural drawings, narrative descriptions, and other pertinent data prepared by Architect, and Architect and Owner shall review the documents with the governmental authorities having jurisdiction over the Project.

(d) Architect shall provide Owner with weekly updates of the Design Schedule.

(e) Prior to the completion of the Design Development Phase, Architect shall select finish materials and colors to be incorporated in the Work and shall prepare schedules of such materials and colors for Owner's approval. The schedule shall note any materials or finishes which are expected to involve extraordinary delays in delivery.

(f) Upon completion of the Design Development Phase, Architect shall provide the required number of sets of drawings, outline specifications, CADD files and other documents for use by Owner and Cost Consultant in preparing the Cost Estimate. The reproduction costs of such sets shall be a Reimbursable Expense. In connection with the foregoing, Architect shall, among other things:

- (i) Assist Cost Consultant in Contractor's preparation of a preliminary cost estimate based on the 100% Design Development documents.
- (ii) Propose alternates and value engineering measures for Owner's consideration.
- (iii) Review drawings with the Owner and make necessary modifications.

- (iv) Coordinate Architect's services with the Consultants and Cost Consultant, including a reasonable number of coordination meetings at the Owner's office.

(g) If the Cost Estimate exceeds the Preliminary Project Budget, Owner may, in its reasonable discretion, require Architect to perform value engineering and to revise the design of the Project, as a Basic Service, so as to reduce the Project cost for the Work or applicable portion thereof to fall within Owner's desired budget therefor.

(h) Unless otherwise requested by Owner, Architect shall submit three (3) hard copies and an electronic copy of the Design Development Documents and the revised tabulation of areas for approval by Owner.

(i) Architect shall not proceed to the Construction Documents Phase until Architect has secured Owner's written approval of the Design Development Documents, revised tabulation of areas, and the updated Design Schedule, and has Owner's written instructions to so proceed.

2.3 Architect Construction Documents Phase.

(a) After receiving written approval by Owner of the Design Development Documents, and upon written authorization by Owner to proceed with the Construction Documents Phase, Architect shall provide the services and documents listed below in this Section 2.3. Architect and Architect's Consultants, as appropriate, shall attend all weekly and special meetings reasonably required by Owner, with Owner, Owners project manager and others to discuss and resolve specific issues. Regular Project meetings will be scheduled weekly and special meetings will be scheduled as needed in Owner's reasonable judgment.

(b) Architect shall continue to coordinate with Project Manager and others as provided in the Division of Responsibility (see Exhibit K).

(c) Unless otherwise directed by Owner, Architect's review of architectural drawings shall be on a weekly basis.

(d) During the Construction Document Phase, Architect shall continue to lead attend weekly meetings with Owner, Project Manager and others.

The Construction Documents, which for purposes of this Agreement shall include all working drawings and specifications which set forth in detail the requirements for the construction of the Project, shall comply with all Applicable Laws and Development Requirements, and shall be sufficient for contractors to perform the Work, and shall include:

- (i) Architectural drawings, details and specifications.
- (ii) Structural plans, details, calculations and specifications.
- (iii) Mechanical, plumbing, structural and electrical plans, details, calculations and specifications, including air flow specifications and procedures for balancing systems.
- (iv) Plans showing installation of other Systems and equipment.
- (v) Door hardware and equipment specifications and schedules showing the sizes, locations and manufacturers of doors, hardware and equipment.
- (vi) Reflected ceiling plans of all areas, and special details showing the patterns and types of ceilings, ceiling heights, breaks, pockets for draperies and blinds, the types, dimensions and locations of lighting fixtures, air conditioning diffusers and any special features occurring at the ceiling.

- (vii) Architectural specifications and finish schedules to set standards for the Project to provide for complete understanding by Contractor, installers, fabricators and suppliers.
 - (viii) Detail drawings showing the design to be used in all areas such as special lighting, special partitions, cabinetwork, equipment, and for interior finishes such as wall coverings and floor coverings.
 - (ix) Supplementary conditions and special conditions, as necessary, such as those which may be required to achieve the Owner's Sustainability Objectives.
 - (x) An updated code analysis as described in Section 2.2(a)(viii) above identifying any changes and ensuring compliance of the design with applicable code and zoning requirements.
 - (xi) Coordinate an updated narrative sequence of operation for all building systems.
- (e) When Construction Documents are fifty percent (50%) complete, Architect shall so notify Project Manager and furnish documentation sufficient to allow Cost Consultant to prepare an updated Cost Estimate.
- (f) The Drawings and Specifications will include a requirement that Contractor and all subcontractors accurately and completely mark prints of the working drawings and specifications to show field changes therein. Architect shall immediately document and notify Owner of any field changes of which it is aware.
- (g) Architect shall provide Owner with weekly updates of the Design Schedule.
- (h) Architect shall provide, as a Basic Service, assist Owner's review of the fully detailed and biddable deduct alternatives, as reasonably determined by Owner, before the issuance of the 50% Construction Documents.
- (i) Architect shall consult and coordinate with Owner, Project Manager and Cost Consultant and, as appropriate, other consultants on the Project team regarding any changes in requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed. Final changes shall be reported so that Cost Consultant can adjust its Cost Estimate appropriately. Architect shall review and comment on any procedures manual developed by Owner or Owner's Consultants.
- (j) Architect shall obtain Owner's written approval of each package of the Construction Documents, the final tabulation of areas and the updated Design Schedule. The approval process may take place in stages consistent with the division of the Work.
- (k) Architect shall coordinate with a furniture vendor on the furniture plan and assist Owner will all furniture selections.
- (l) Architect shall provide Owner with the required number of sets of the Drawings and Specifications for review when the Construction Documents are fifty percent (50%) complete, seventy five (75%) complete for the "Permit Set" of drawings, and one hundred percent (100%) complete for the final Drawings and Specifications (or the "**Construction Document Set**") when the Construction Document Set is issued for construction, including after incorporation of all municipal, state, and federal plan check comment responses sufficient for permits and approvals. Architect shall also provide a set of construction drawings in CAD form. Specific details of this requirement shall be obtained from Owner. The reproduction costs of all such sets shall be a Reimbursable Expense.

2.4 Bidding Negotiation Phase.

- (a) This Phase shall begin during the Construction Documents Phase, so that bidding will not result in delays to the work of the Contractor in the field.

(b) As requested and authorized by Owner, Architect shall provide the 100% complete Construction Documents to Owner and Project Manager for the purpose of obtaining bids and negotiating prices for Contractor and all subcontractors under the Construction Contract (collectively, the “**Bid Documents**”). Architect shall:

- (i) Architect Issue Construction Documents in electronic format (PDF and CAD) to the Contractor for the purpose of obtaining bids and negotiating prices for the Contractor and all subcontractors under the Construction Contract (collectively, the “**Bid Documents**”). The cost of such reproductions shall be a Reimbursable Expense pursuant to Section 5.4 below.
- (ii) If applicable, include documents prepared by contractors or other consultants other than the Consultants retained by Architect, properly identified and signed, with the Bid Documents, provided that Architect shall have no responsibility for such other contractors’ or consultants’ work unless Architect deviates from the required Standard of Care.
- (iii) After obtaining Owner’s written approval, respond in writing to requests for clarifications of Architect’s work and issue addenda and other pre-contract documents as requested.
- (iv) Assist in the pre-bid conference and walk through, including giving technical narrative.
- (v) Provide Owner with a written analysis and recommendation of the bids and any alternatives included in each bid.
- (vi) Prepare and furnish to Owner the required number of stamped and signed copies of the Drawings and bound Contract Documents, including Specifications, appropriate to governmental requirements in reference to the Building Permit and fully prepared for execution. The cost of such reproductions shall be a Reimbursable Expense pursuant to Section 5.4 below.

(c) Architect acknowledges that it is of primary concern to Owner that the Project be constructed within the Project Budget and agrees to design the Project so that the Guaranteed Maximum Cost will not exceed the Project Budget. If the lowest bona fide bid or negotiated proposal for any portion of the Work exceeds the Project Budget for such portion of the Work, then Owner may, in its discretion, elect to exercise the deduct alternates so as to reduce the Project construction cost for such portion of the Work. If Owner requests revisions to the Project that were not identified as deductive alternates Architect shall, as an Additional Service, modify the Construction Documents, as so directed, in order to reduce the Project construction cost for such portion of the Work to within the Project Budget for such portion of the Work. It is recognized, that neither Architect nor 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, Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from Owner’s budget or from any estimate or evaluation prepared or agreed to by Architect.

2.5 Construction Administration Phase.

(a) The Construction Administration Phase will commence with the award of the Construction Contract to Contractor and will continue until Architect has completed all Services set forth in this Section 2.5. Unless otherwise provided in this Agreement, Architect shall be responsible to Owner for administration of the Construction Contract in accordance with the Contract Documents. The extent of the duties and responsibilities and the limitations of its authority thereunder shall be set forth in the Contract Documents.

(b) Architect shall be a representative of Owner during construction of the Project, and shall advise and consult with Owner and, upon request of Owner, will forward Owner's instructions to the Contractor. Architect shall have authority to act on behalf of Owner only to the extent authorized by Owner pursuant hereto.

(i) Architect shall visit the Project at intervals appropriate to the stage of construction but no less frequently than weekly to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in a manner indicating that the Work when completed will be in accordance with the Contract Documents. Architect shall undertake all inspections for Substantial Completion on a timely basis appropriate for approvals required of Architect as specified in the Contract Documents. On the basis of such on-site observations, Architect shall keep Owner informed of the progress and quality of the Work completed, and shall, to the extent consistent with the Standard of Care, guard Owner against defects and deficiencies in the Work. Architect shall make a written report to Owner of the progress and quality of the Work after each such on-site observation.

(c) Architect shall attend such job meetings as are necessary to determine proper performance of Architect's duties hereunder. There shall be mandatory weekly meetings at the Project site between Architect, Contractor and Owner at the Project site for the duration of the construction period. Contractor shall maintain minutes of the weekly meeting and distribute copies for approval by all parties at least two (2) business days prior to the next weekly meeting.

(d) Architect shall at all times have access to the Work wherever it is in preparation or progress.

(e) Architect shall have primary responsibility to review all payment applications received from Contractor and copies of requisitions received from subcontractors of the Contractor and material suppliers and other data requested by Owner to substantiate the Contractor's right to payments, and Architect shall sign all approved payment applications.

(f) Without limitation of the foregoing, any or all of any Application for Payment may be disapproved by Architect or Owner on account of (and Architect shall advise Owner of the same as provided in Section 2.5(j) below):

- (i) Defective work not remedied;
- (ii) Claims or liens filed;
- (iii) Failure of Contractor to make payments promptly to subcontractors or for labor, materials or equipment;
- (iv) Damage to Owner or another contractor;
- (v) Failure to carry out the Work in accordance with the Contract Documents; or
- (vi) Reasonable evidence that the Work cannot be completed for the unpaid balance of the established Guaranteed Maximum Cost or within the established Contract Time.

(g) Architect shall render, subject to the written approval of Owner, written interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either Owner or the Contractor. Interpretations of Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form, as required. All such interpretations and advice given by Architect shall be for the sole benefit of Owner and shall be without additional charge to Owner. Clarification and additional details or drawings required to clarify an ambiguity in the Drawings and Specifications are not an Additional Service.

(h) Architect and/or Architect's Consultants shall witness field and equipment performance tests and witness the startup and checkout of major and specialized systems such as waterproofing, window installation, and Systems start-up as a Basic Service. At the request of Owner, commissioning of the air conditioning and heating systems, including boilers, chillers, pumps and air handling equipment, and energizing of switch gear and substations shall be observed by Architect.

(i) Architect shall have the duty to advise Owner of any Work observed by Architect that does not conform to the Contract Documents and therefore should be rejected, and if Owner approves, to so advise Contractor that such Work is rejected. Whenever in its reasonable opinion Architect considers it necessary or advisable for the proper implementation of the intent of the Contract Documents, Architect will have a duty to inform Owner of the need for any special inspection or testing of any Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed. Where appropriate in Architect's professional judgment, the Specifications shall require that Work that will be concealed is tested and observed for conformance with the Construction Documents by the consultant who had primary design responsibility therefor prior to any Work being done which would cover the concealed Work from subsequent observation and testing. If Architect becomes aware that such Work has been covered prior to such testing and observation, Architect shall promptly so notify Owner.

(j) Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples with reasonable promptness so as to cause no delay, but in any event within the time periods provided in the schedule for submissions which shall be developed and agreed upon by Contractor, Architect and Owner prior to the start of construction. Subject to the provisions of Section 1.6 above, review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as quantities, installation, or performance of equipment or systems, and Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences, or procedures.

(k) Architect shall, when Contractor makes a request in accordance with the Contract Documents for a substitution for a specified product, evaluate with Owner the equivalence of the proposed substitutions for materials, products, things or services specified by brand name or trade names in the Contract Documents and, subject to Owner's approval, either approve or reject the substitution as equal in quality, utility and appearance.

(l) Architect shall review and recommend action on any and all Change Orders. After Owner's written approval of the Change Order, Architect shall prepare all documents necessary to effect the Change Order. Architect shall have authority, subject to the approval of Owner, to order minor changes in the Work not involving an adjustment in the Guaranteed Maximum Cost or an extension of the Contract Time and which are not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written field order issued to the Contractor with a concurrent copy to Owner.

(m) Architect shall periodically review for accuracy and completeness reproduces of the working drawings, and large and full scale detail drawings and specifications which have been marked by Contractor or subcontractors to show field changes made with respect to such drawings and specifications.

(n) Architect shall prepare and submit to Owner in a format approved by Owner twice monthly progress reports, which shall be issued on the 15th and last day of each month, which are to include evaluation of the Project schedule, status of field reports, evaluation of Change Orders, evaluation of Shop Drawings, and submittal and evaluation of "Request for Information" logs.

(o) Architect shall promptly notify Owner if at any time during the construction of the Work, Architect becomes aware that the Contractor has failed to follow Architect's instructions and shall provide details of the nature of the instructions and circumstance of Contractor's failure to follow instructions.

(p) Architect shall review and comment upon construction schedules prepared by Contractor. Architect shall review and comment upon Contractor's report as to any variations from the construction schedule.

(q) Architect shall maintain Construction Documents in CAD form and update such documents as reasonably needed to reflect all structural and other major changes.

(r) Architect shall monitor the maintenance of an up-to-date set of drawings reflecting construction conditions of the Work by Contractor and the subcontractors. Architect shall review at least monthly for accuracy and completeness the marked drawings and annotated specifications prepared by Contractor showing the field changes to the Drawings and Specifications, and shall similarly review the final as-built drawings and specifications prepared by Contractor following substantial completion of its services. Architect's review of marked and as-built drawings and annotated specifications shall be based on Architect's actual observations at the site and its knowledge of the Contract Documents, but Architect may otherwise rely upon the information provided by the Contractor to the extent such reliance is reasonable based on the Standard of Care. A final set of updates to the drawings ("**Record Drawings**") will be issued by Architect upon project completion that will incorporate Architect's design clarifications as well as Contractor's as-built Notes and Specifications. At Contractor's request and cost, Architect shall prepare the "As-Built" drawings based on detailed in-field measurements and site inspection.

(s) Upon Substantial Completion, and again upon Final Completion of the Project, Architect shall, subject to reasonable qualification with respect to remaining work and punch list items with regard to certification at Substantial Completion, certify its opinion to Owner and such other parties as Owner may designate, that the Work is in substantial compliance with the Contract Documents, Applicable Laws, Development Requirements and the Drawings and Specifications.

(t) Owner, Architect and Contractor shall jointly determine Substantial Completion of the Work. Architect shall conduct inspections required under the Contract Documents to determine the Date of Substantial Completion, identify Punch List Work, and determine the Date of Final Completion. Upon Final Completion, Architect shall issue a final Certificate for Payment. If Architect or Owner is not satisfied that all requirements for Final Payment have been met, either of them may change the designation of the payment application to "Progress Payment" and Contractor may apply again for Final Payment after all requirements have been met. Upon Substantial Completion, subject to reasonable qualifications with respect to remaining work and punch list items, and again upon Final Completion of the Project, Architect shall certify to Owner and such other parties as Owner may designate, that the Work is in substantial compliance with the Contract Documents, Applicable Laws, Development Requirements and the Drawings and Specifications. Architect's Completion Certificate is attached hereto as Exhibit H and incorporated herein.

(u) Upon completion of the construction of the Work, Architect shall review and forward to Owner, for Owner's review and approval, written warranties and related documents required by the Contract Documents and assembled by the Contractor. General Contractor shall compile an operation and maintenance manual on all applicable Systems (in addition to those provided by manufacturer) for Owner's review and approval.

(v) Upon completion of construction of the Work, Architect shall deliver to Owner two (2) copies of the Specifications based upon information supplied by Contractor annotated to show clearly all changes, revisions and substitutions that have been approved by Architect and Owner during construction of the Work. In the event of a specification that allows Contractor to elect one of several brands, makes or types of material or equipment, Architect, shall revise the specifications to show which of the allowable items the Contractor furnished.

(w) During construction period, Architect shall revise its Drawings and Specifications, and shall coordinate the Consultant's Drawings and Specifications, to reflect material changes to the Contract Documents (including but not limited to changes that require owner consent under the GC contract). As an Additional Service, Architect and Architect's Consultants will produce drawings to illustrate as-built locations of all mechanical equipment, on-site utility lines, ducts, and outlets. In connection with the preparation and coordination of such revised Drawings and Specifications, Architect may rely on construction changes which are part of the Project record prepared by Contractor, to the extent such reliance is reasonable based on the Standard of Care. In the event of a specification that allows Contractor to elect one of several brands, makes or types of material or equipment, Architect shall revise the specifications ("**Record Specifications**") to show which of the allowable items the Contractor furnished.

(x) From the revised Drawings and Specifications, Architect shall provide Owner with a reproducible set (or sets in such quantity as Owner may specify) of record drawings and all CAD files of Architect

and Consultants work as specified by Owner, with all wording clearly legible. In addition, Architect shall deliver two (2) sets of prints of the record drawings at one-half (1/2) the original scale in addition to PDF copies. Submitted materials shall be clearly marked "record set" and dated. The reproduction costs of such drawings and sets shall be a Reimbursable Expense. Architect shall not be responsible for documentation of off-site improvements.

(y) Eleven (11) months following Substantial Completion and prior to the expiration of any construction warranties and guarantees, Architect and, as appropriate, Architect's Consultants shall visit the Project with Owner and:

- (i) Review the Work and identify all observable defects and deficiencies.
- (ii) Evaluate the performance, durability, and appearance of installed projects, materials, and systems as they relate to suitability for the use intended and to meet the Project Budget.
- (iii) Evaluate the Project's function and Owner's use of the Project as reflections of the original program intent; and
- (iv) Submit a written report to Owner concerning the foregoing construction means, methods, techniques, sequences or procedures.

3. ADDITIONAL SERVICES

3.1 Authorization for Additional Services Required. When directed in writing by Owner, Architect shall provide Additional Services not otherwise included as Basic Services under this Agreement. The nature of such Additional Services shall be set forth in a writing specifically referring to this Agreement and all terms of this Agreement shall apply to such Additional Services except as expressly provided otherwise in said writing. An authorization of work or service is not an authorization of Additional Services unless the fact that Additional Services are involved is clearly expressed on the face of the document and Architect has provided Owner, prior to the requested authorization, an estimate of the cost of the Additional Service. In no event shall Owner be liable for payment for Additional Services unless Owner has specifically agreed to pay for the same in writing.

3.2 Additional Services. The following services shall be Additional Services:

(a) Making revisions in the Construction Documents when such revisions are inconsistent with any approval or instructions previously given by Owner or are required by the subsequent enactment or revision of any Applicable Law except to the extent such subsequently enacted Applicable Law was a Proposed Regulation of which Architect failed to advise Owner in accordance with Section 1.9 above, and except if caused or resulting, directly or indirectly, from the negligence of Architect or Architect's Consultants.

(b) Renderings and presentation models other than study models included in the Basic Services.

(c) Graphics, signage, and art work programs.

(d) Brochures, promotional, and publicity material.

(e) Any service expressly stated in this Agreement to be Additional Services.

(f) Preparation for, and attendance at, a public presentation, meeting, or hearing that is in excess of a 150-mile radius from San Francisco, California.

(g) Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where Architect is a party thereto.

(h) Any other services not otherwise included in, and not reasonably inferable from, this Agreement, and not customarily furnished in accordance with generally accepted architectural practice, including, without limitation, the design of future facilities not included in the Project, and the provision of services after completion of the Basic Services.

(i) “As-built Drawings” – as described in Section 2.5(s).

4. OWNER’S RESPONSIBILITIES

4.1 Information. Owner has provided and will continue to provide Architect as needed with information regarding Owner’s requirements for the Project, including the Project Budget, space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements, subject to the provisions of Section 1.6 above.

4.2 Project Manager. Owner shall designate the Project Manager who may be replaced upon written notice to Architect. Owner may designate additional members of Owner’s Project Team, and, upon such designation, shall notify Architect of such person’s identity and specific responsibilities. Any such person may be replaced upon written notice to Architect.

4.3 Site Survey. Owner has furnished a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site.

4.4 Soils. Owner has furnished the evaluations, reports, and services of soil engineers and other consultants where such services are reasonably required and deemed necessary by Architect or as required by local or State codes. Such services include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

4.5 Utility Survey. Owner has furnished a survey of the existing known utilities of the site, including location, size, inverts and depths.

4.6 Tests. Owner has furnished structural, mechanical, chemical, and other laboratory tests as may be required by law or the Contract Documents.

4.7 Owner’s Examination. Owner will examine the documents submitted by Architect and render decisions pertaining thereto so as not to cause unreasonable delay in the progress of Architect’s services.

4.8 Reliance. The services, information, surveys and reports required by Sections 4.3 through 4.6, inclusive, shall be furnished at Owner’s expense, and Architect shall be entitled to rely upon their accuracy and completeness, except that Architect may not rely upon and must question in writing to Owner any information which appears to Architect to be incorrect based upon Architect’s experience, site observations and knowledge of the Project or should appear to be incorrect based on the Standard of Care.

4.9 Construction Contract. Before executing the Construction Contract, Owner shall coordinate Architect’s duties and responsibilities set forth in the Construction Contract with the Services. Owner shall provide Architect a copy of the executed agreement between Owner and the Contractor, including the General Conditions of the Construction Contract.

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

5. COMPENSATION

5.1 Compensation for Basic Services. Owner shall pay Architect for all Basic Services under this Agreement the Basic Fee set forth in attached Exhibit B.

5.2 Payment of Basic Fee. Owner shall make payments to Architect monthly upon receipt of Architect's Statement on account of compensation for Basic Services, and the amount of the payment shall be the fraction of estimated compensation for Basic Services for the particular Phase, which fraction has the Services performed that month as the numerator and the total Services required within the particular Phase as the denominator. The payments shall be such that the total of all payments made shall not exceed the amounts and percentages of the total compensation to be paid to Architect at the completion of the various Phases for Basic Services set forth in Exhibit B. Notwithstanding the foregoing, to the extent Owner elects to decrease the scope of Basic Services or eliminates any material portion of the Project, the fee payable to Architect for Basic Services shall be adjusted proportionately .

5.3 Compensation for Additional Services. For Additional Services, as described in Article 3, Architect's compensation shall be computed at the rates set forth in the schedule of Architect's Personnel and Rates in Exhibit E attached hereto.

5.4 Compensation for Reimbursable Expenses.

(a) Subject to the provisions of this Section 5.4, Owner will compensate Architect for the actual and reasonable expenditures made by Architect, its employees, or its professional consultants, in the interests of the Project, for the following:

- (i) Building permit fees and associated fees paid to governmental authorities for securing approval of the Project;
- (ii) Expense of reproductions of the Drawings and Specifications, progress printing and plots, and other documents furnished by Owner and reasonable delivery costs; provided, all printing and reproductions shall be made using Owner's approved printing service;
- (iii) If authorized in writing in advance by Owner, the expense of renderings or models for Owner's use, but specifically excluding study models;
- (iv) If authorized in writing in advance by Owner, the expense of overtime work requiring higher than regular rates. Architect shall be responsible for all overtime work required to meet its Basic Service obligations within the Design Schedule. Any general authorization of work shall not be an authorization of overtime work unless the inclusion of overtime work is clearly identified and Owner has received an estimate of the cost of the overtime work prior to the approval;
- (v) Expense of any additional insurance coverage or limits required by Exhibit I herein, including professional liability insurance, to the extent that such coverage or limits are above the insurance normally carried by Architect; and
- (vi) If authorized in writing in advance by Owner, the expense for Architect's personnel performing direct Project services for travel and living accommodations, long distance telephone, mileage and parking, all in accordance with rates and procedures approved from time to time by Owner.

(b) Owner shall reimburse only for reasonable, actual out-of-pocket expenses, with no mark-up by either Architect or Architect's Consultants, and not for indirect costs or overhead. Architect shall utilize sound and prudent judgment in controlling Reimbursable Expenses. Architect shall provide Owner with monthly itemized invoices for all Reimbursable Expenses for the preceding month. All expenses incurred or which reasonably can be

inferred to have been incurred from the conduct of the Basic or Additional Services are included in the fees quoted therefor and no other expenses shall be reimbursed by Owner except as set forth above in this Section 5.4.

(c) Without limitation of any other requirement of this Section 5.4, Owner's prior written approval shall be required for any expense in excess of One Thousand Five Hundred Dollars (\$1,500.00) to constitute a Reimbursable Expense. No payment by Owner of any Reimbursable Expense shall constitute a waiver by Owner of its right to refuse any other similar or dissimilar expenses which were incurred without Owner's written approval or which are not otherwise reimbursable hereunder. The estimated total compensation for reimbursable expenses is set forth in Exhibit B. Prior to exceeding such estimate, Architect must provide Owner, for Owner's approval, a revised estimate which details Reimbursable Expenses by category, both on a Project to date and forecast basis.

5.5 Monthly Billings by Architect.

(a) Architect shall submit monthly fee billings separated into Basic Fee, Additional Services and Reimbursable Expense categories, in form approved by Owner. All charges shall be segregated into disciplines (e.g., mechanical, electrical, plumbing, civil, consultant's fees, etc.) and shall show the current billing period amount and the Project to date summary. Reimbursable Expenses shall be itemized and supported by documentation acceptable to Owner such as receipts and invoices.

(b) Architect shall submit monthly Conditional Waiver and Release Upon Progress Payment documents for the entire amount covered by the subject invoice in the form attached hereto as Exhibit L executed by Architect, Architect's Consultants, subconsultants and materialmen and any person who has filed a preliminary notice on the Project, with respect to all Work for which payment is requested, accompanied by all other statements and forms required for compliance with the mechanics' lien laws of the State of California. Architect shall submit monthly Unconditional Waiver and Release Upon Progress Payment documents in the form attached hereto as Exhibit M, executed by Architect, all Consultants, subconsultants and materialmen, with respect to all Work for which payment was made at least thirty (30) days prior to the submission of the current invoice, accompanied by all other statements and forms required for compliance with the mechanics' lien laws of the State of California.

(c) All billings shall be sent to the address listed on the signature page to this Agreement or to such other address or person as to which Owner may give Architect written notice.

(d) In the event Owner disputes any item invoiced by Architect, Owner shall notify Architect and Architect shall submit reasonable backup substantiating such item or a revised invoice. The dispute of any item within an invoice shall not be deemed cause for any delay in making payment of all undisputed items. Provided that payments of all undisputed items are made, Architect shall continue to perform its services without interruption in accordance with this Agreement notwithstanding such failure by Owner to pay such disputed item.

(e) Except as provided in subsection 5.5(d) above, with respect to disputed items, Owner shall pay amounts invoiced no later than the last day of the month following the month in which Owner actually receives Architect's invoice. Payments for disputed items shall not be late until thirty days after the resolution of the dispute. Architect shall submit invoices for Additional Services and Reimbursable Expenses within ninety (90) days after rendering such services or incurring such expenses.

(f) Final Payment, constituting the entire unpaid balance of the Basic Fee shall be paid by Owner to Architect when Conditional Waiver and Release Upon Final Payment documents for the entire amount covered by the final invoice in the form attached hereto as Exhibit N executed by Architect, all of Architect's Consultants, subconsultants and materialmen and any person who has filed a preliminary notice on the Project have been received by Owner. Architect shall submit Unconditional Waiver and Release Upon Final Payment documents in the form attached hereto as Exhibit O, executed by Architect, all of Architect's Consultants, subconsultants and materialmen, with respect to all work and Services for which Final Payment was made not later than ten (10) days following Final Payment.

5.6 Limitation. Changes in the Project Budget or subsequent iterations of the overall budget as determined or approved by Owner shall not affect the Basic Fee or result in any services not expressly enumerated as Additional Services under Article 3 being deemed to be Additional Services. The Basic Fee provides payment in full

for all costs incurred by Architect in the performance of this Agreement, unless reimbursement is specifically provided for elsewhere in this Agreement. Costs not to be reimbursed include, but are not limited to, correction of errors or omissions, computer time and services and in-house printing. Architect shall not perform any work or services which Architect believes involves a change in any fee without prior written agreement from Owner as to the amount of adjustment to the fee. Work and services performed by Architect without such written approval will be at Architect's sole cost. Adjustment of the Architect's Basic Services requires amendment of this Agreement and shall be made only if Owner materially increases or decreases the scope of services or materially suspends or extends Architect's Services, or terminates Architect's services, in which case fees shall be adjusted only to the extent set forth in this Agreement. Acceptance of final payment under Section 5.2 by Architect shall be conclusive that Owner has performed all of its obligations under this Agreement and Owner's obligations to pay for Additional Services performed hereunder after the acceptance of such final payment, and shall release Owner from all claims except those previously asserted by Architect in writing and still unresolved, and Owner's obligations to pay for Additional Services performed hereunder after the acceptance of such final payment.

6. TIME

6.1 Time of the Essence. Time is of the essence in this Agreement. The parties acknowledge that delay is one of the greatest causes of waste and increased expense in any construction project. Architect and Owner shall act diligently in performing their required tasks in a manner so as to not unreasonably delay the prosecution to the Project.

6.2 Design Schedule. The Design Schedule shall not be exceeded by any party for its respective tasks. The Design Schedule shall be adjusted as the Project proceeds as required due to causes other than the negligence of Architect and beyond the reasonable control of Architect, including, but not limited to, allowances for approvals of Owner, Contractor or governmental or other authorities or entities having jurisdiction over the Project; provided, however, any such changes to the Design Schedule shall not result in any change in the Basic Fee owing to Architect. Subject to the foregoing limitations, in which case Architect shall be granted an equitable extension of the Design Schedule, or be equitably compensated for any acceleration of performance requested by Owner, Architect agrees to perform all Basic Services and Additional Services with respect to the Project in order to meet the Design Schedule.

6.3 Notice of Delay. Architect shall, promptly upon ascertainment, notify Owner of any delay in: (i) the preparation and/or production of any of Architect's documents hereunder, (ii) the performance by Contractor, (iii) Architect's Services, or (iv) connection with any matter attended to by Architect or with which Architect is familiar (whether or not as the result of an act or omission of another) which would affect or delay the schedule. Architect shall consult and advise Owner in connection with any such delay and its effect on the schedule and shall take such action on Owner's behalf as Owner may request in accordance with the terms and conditions of this Agreement.

6.4 Specific Response Times. Owner may, in its sole discretion, establish reasonable response time standards for Architect's performance of services, *e.g.*, review and approval of Shop Drawings, preparation of Change Orders and field orders, interpretation of construction documents, and review of requests to substitute materials. The response times shall be established with Architect's reasonable approval. These specific response times shall be considered to be reasonable and Architect will not exceed them unless, at the time of the action which necessitates a response, Architect indicates that a longer response time is necessary and gives a written explanation of the reasons why an extended response time will be needed. Any extension of the response time must be approved by Owner. Insufficiency of personnel shall not be an adequate excuse for delay by Architect or Architect's Consultants.

6.5 Continuing Delays. In the case of a continuing cause of delay only one request shall be necessary, which request shall affirmatively state the delay is a continuing one and the reasons therefor. All delay requests or notices hereunder shall describe the nature of the delay and estimate the probable effect of such delay on the progress of Architect's services. The effect of any delay shall also be shown on the latest Design Schedule. Extension of the Design Schedule shall be Architect's sole remedy for such delays unless such delay justifies a Basic Fee adjustment pursuant to Section 5.6 above.

7. INSURANCE AND INDEMNITY

7.1 General. During the performance of its services, and until termination of this Agreement, unless otherwise specified, Architect, at its sole cost and expense, shall carry and maintain, insurance in accordance with Exhibit I attached hereto and incorporated herein.

7.2 Architect Indemnity.

(a) Professional Indemnity. Architect shall indemnify and hold harmless Owner, Project Manager and all of Owner's related government ministries, departments, diplomatic and consular missions, and agencies and each of their respective officers, directors, members, partners, manager, employees, agents, successors and assigns (collectively, the "**Indemnified Parties**" and each, individually, as "**Indemnified Party**"), from and against any and all losses, liabilities, damage, liens, obligations, interests, injuries, penalties, fines, judgments, settlement costs, and awards and costs and expenses (including reasonable attorneys' fees and costs and consultants' fees and costs and court costs) of whatever kind and nature known or unknown, contingent or otherwise, including the reasonable costs to the Indemnified Parties of carrying out the terms of any judgment, settlement, consent decree, stipulated judgment or other partial or complete termination of an action or a proceeding that requires the Indemnified Party or Parties to take any action, recoverable under Applicable Law (collectively, "**Losses**") to the extent the foregoing are actually caused by the professionally negligent acts, errors or omissions of Architect, Architect's Consultants, or others for whom Architect is liable, including without limitation any infringement of any copyright, patent or other proprietary or trade secret right arising out of the use of any Construction Documents furnished by Architect, Architect's Consultants or others for whom Architect is liable, as determined by a court or forum of competent jurisdiction; provided that the duty to indemnify shall not include a duty to provide any defense against allegations of Losses arising out of the subject matter of the indemnity set forth in this Section 7.2(a); as Architect's obligations under this Section 7.2(a) is limited to the obligation to reimburse Losses, including the cost of defense, upon a finding of negligence by a court or other forum of competent jurisdiction. This indemnity shall not be construed to negate, abridge or affect any right or obligation of indemnity or contribution which otherwise may exist as it relates to any person or entity described in this Section 7.2(a). The indemnifications contained in this Section 7.2(a) shall survive the expiration or earlier termination of this Agreement.

(b) Non-Professional Indemnity. Architect shall indemnify, hold harmless, and, at Owner's request, defend, Owner and each of the Indemnified Parties from and against any and all Losses resulting in bodily injury or property damage to the extent the foregoing are actually caused by the operations or non-professional activities of Architect, Architect's Consultants, or others for whom Architect is liable (except the professional negligence described in Section 7.2(a)) arising from or related to the Services. This indemnity shall not be construed to negate, abridge or affect any right or obligation of indemnity or contribution which otherwise may exist as it relates to any person or entity described in this Section 7.2(b). The indemnifications contained in this Section 7.2(b) shall survive the expiration or earlier termination of this Agreement.

(c) Additional Provisions. The obligations described in Section 7.2(a) above shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person indemnified pursuant to this Section 7.2. Any and all claims against one or more Indemnified Parties by any employee of Architect, Architect's Consultants, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be legally liable under the indemnification obligation under this Section 7.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Architect or its sub-subcontractors under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

8. ARCHITECT'S ACCOUNTING RECORDS

8.1 Maintenance of Records. Records of Reimbursable Expenses, Additional Services and any other charges based upon hourly rates or expenses of Architect shall be kept in accordance with generally accepted accounting principles consistently applied and all records of Architect pertaining to the Project shall be available to Owner and Owner's authorized representative during normal business hours with two (2) calendar days' advance notice. Owner shall be allowed to make copies of any of the foregoing records. Architect shall preserve all such

records and make such records available to Owner and Owner's authorized representatives, for a period of five (5) years after Final Payment to Architect under this Agreement.

8.2 Payment Without Prejudice. Owner's payments to Architect for Basic Services, Reimbursable Expenses, Additional Services or other payments based upon Architect's records shall be without prejudice to Owner's right to an examination of Architect's records relating to the Project.

8.3 Audits. At any reasonable time within five (5) years after Final Payment to Architect, and upon ten (10) days' prior written notice to Architect, Owner may cause an audit to be made of the records relating to the Project for any period covered by this Agreement. Except as hereafter provided, the cost of such audit shall be paid by Owner. Any such audit performed by a certified public accountant selected by Owner and reasonably acceptable to Architect shall be binding upon the parties. If it shall be determined as a result of such audit that there has been an overcharge to Owner then such overcharge shall become immediately due and payable to Owner. If the aforementioned overcharge is in excess of five percent (5%) of the amount paid by Owner for Basic Services, Reimbursable Expenses, Additional Services or other charges based upon Architect's records for the period covered by the audit, Architect shall also pay to Owner the cost of the audit, in addition to any refund of overcharges.

9. TERMINATION

9.1 Termination at Will. Owner shall have the right, at any time, acting in its sole discretion, with or without cause, to terminate Architect's rights under this Agreement by giving to Architect ten (10) days' prior written notice. A termination effected under this Article 9 shall take effect at the conclusion of such ten (10) day period; provided, however, that Architect shall, upon receipt of such notice, immediately stop its work under this Agreement and deliver possession of the Drawings and Specifications and all other Architectural Documents to Owner within seven (7) days after receipt of the undisputed portion of the Termination Payment (defined below). Except as hereinafter set forth, within thirty (30) days after the date of such termination, Owner shall pay to Architect, and Architect shall be required to accept in full and Final Payment of any and all claims, including, but not limited to, loss of profits, job, administrative or company overhead, or any other claims whatsoever which it may have by reason of the work performed to the date of receipt of such notice and by reason of cancellation of the remaining work, an amount equal to (a) any unpaid services which have been completed by Architect, plus (b) a proportionate part of the fee for the Phase of Architect's services then in progress, which is the same proportion as the portion of the services then completed (as to that Phase) bears to the total services to have been completed (as to that Phase), plus (c) the amount, if any, of Reimbursable Expenses and/or fees for Additional Services incurred up to the date of receipt of such notice as provided above and not previously paid by Owner, less any payments made by Owner to Architect which are not reimbursable pursuant to, or in accordance with, this Agreement, plus (d) reasonable post-termination costs of demobilizing (collectively, the "**Termination Payment**").

9.2 Termination for Cause. Architect's services may be terminated by Owner at any time immediately and without notice if any of the following events shall occur:

(a) Architect shall file a voluntary case in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file a case or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the present or any future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of Architect or of all or any substantial part of its properties (the term "acquiesce," as used in this Section 9.2, includes, but it is not limited to, the failure to file a case or motion to vacate or discharge any order, judgment or decree within twenty (20) days after entry of such order, judgment or decree or such lesser time as is required by law);

(b) A court of competent jurisdiction shall enter an order, judgment or decree approving a case filed against Architect seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and Architect shall acquiesce in the entry of such order, judgment or decree, or such order, judgment or decree shall remain unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of Architect or of all or any substantial part of its properties shall be appointed without the

consent or acquiescence of Architect and such appointment shall remain unvacated and unstayed for an aggregate of ninety (90) days (whether or not consecutive);

(c) Architect shall admit in writing its inability to pay its debts as they mature, or is generally not paying its debts as they mature;

(d) Architect shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations;

(e) Architect shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors;

(f) Architect materially defaults under any provision of this Agreement, which default is not cured within seven (7) days after written notice from Owner, or, in the event of a default which cannot reasonably be cured within such period, does not commence a cure of such default within seven (7) days after written notice from Owner and thereafter diligently prosecute such cure to completion; or

(g) The filing of a mechanic's or materialman's lien against the Project by any of Architect's Consultants based upon services for which Owner has previously paid Architect which lien is not discharged, or for which a release bond pursuant to applicable law is not posted, within ten (10) days after the filing of such lien.

(h) Upon the happening of any event set forth in Section 9.2(a) – (g) above, Owner may, without prejudice to any right or remedy under this Agreement or at law or in equity, by written notice to Architect terminate Architect's rights under this Agreement and take possession of all Architectural Documents and finish the Project by whatever method Owner may determine expedient. In such event, Architect shall not be entitled to receive any further payment until Final Completion of the Project. On the date of Final Payment, Architect shall be entitled to receive from Owner all amounts which it would have been entitled to receive under Section 9.1, above, less, however, all damages suffered by Owner, whether direct or indirect, consequential, or otherwise.

9.3 Delivery of Documents. In the event of any termination of this Agreement for any reason, and provided Owner has paid the undisputed portion of the Termination Payment to the extent applicable, reproductions of all Work Product and all finished and unfinished documents, cost estimates, studies, surveys, drawings, maps, models (including 3D models), photographs, CADD files, and reports prepared by Architect and Architect's Consultants in connection with the Project as part of its services under this Agreement shall be promptly delivered to Owner by Architect. All drawings shall be of high quality with all wording clearly legible.

9.4 Survival. All representations made by Architect herein, together with any and all causes of action and other rights and remedies which Owner may have as a result of breach of any term, covenant or condition or representation contained in this Agreement, together with all obligations of Architect under Articles 7, 8 and 12 hereof, shall survive any expiration or termination of Architect's rights under this Agreement. All rights and remedies of the parties hereunder are cumulative and the exercise of one or more of such rights and remedies shall not preclude the exercise of any other rights or remedies whether concurrently or sequentially.

9.5 Suspension. Owner may from time to time instruct Architect to suspend all or any part of the Services for any length of time. Such instruction shall be by written notice delivered to Architect not less than five (5) working days prior to the suspension. In the event the Project is suspended for a period of three (3) months or longer, Architect may request an adjustment in compensation due to re-mobilization and escalation costs. If Owner suspends the Project for more than 180 cumulative days for reasons other than the fault of Architect, Architect may terminate this Agreement by giving not less than ten (10) days' written notice, provided Owner does not elect to lift the suspension within such 10-day notice period.

10. CHANGES

10.1 Owner May Direct Changes. Owner may, at any time, direct changes in the general scope of the Services or work required by this Agreement or in work previously approved in earlier Phases. All changes directed by Owner shall be in writing specifying the change required. Architect acknowledges that a complex project such as

the Project involves numerous changes and revisions and that the Basic Services include such changes and revisions, except to the extent Owner requests a material and substantial change to the Project.

10.2 Architect's Responsibility. Upon receipt of a written notice of a substantial and material change that is outside the scope of contemplated changes in a Project of this type, Architect shall estimate the hours and costs associated with the change. Architect shall prepare a written statement showing the impact of the change on the Project construction schedule and on the functioning of the Project as a whole. This statement must be approved by Owner in writing prior to Architect proceeding with the change.

10.3 Compensation. Once approved, Architect shall be entitled to compensation as an Additional Service in an amount that Owner and Architect agree upon. In addition, Owner shall adjust the Project Budget and the Design Schedule by an amount determined by Owner after consultation with Architect. However, Architect shall not be compensated for correction of deficiencies in drawings, specifications or other documents prepared or reviewed by it except to the extent expressly set forth in Section 1.6 above.

11. STANDARD OF CARE

Architect and Architect's Consultants shall timely perform all Services under this Agreement consistent with the requirements of Owner and in a skillful and competent manner in accordance with standards of similarly situated and nationally recognized architectural professionals engaged in the design of complex projects similar to the Project (the "**Standard of Care**"). Architect shall be responsible to Owner for all damages due to Architect's or Architect's Consultants' failure to perform any or all Services under this Agreement in accordance with this Standard of Care. The parties acknowledge that no set of plans and specifications is entirely free of errors and omissions and that the mere existence of an error or omission does not automatically constitute a breach of Standard of Care. Neither review nor approval of Architect's or Architect's Consultants' work shall relieve Architect or Architect's Consultants from their duty to adhere to the Standard of Care in the performance of their duties. Architect shall design the Project so that, when constructed in accordance with the Drawings and Specifications, the Project will operate in all material respects as a functional, efficient, facility within the scope of the Project program. Notwithstanding any provision of this Article 11 to the contrary, in connection with any claim for tort damages only (as opposed to breach of contract) that relates to the performance of Services hereunder, the liability of Architect and Architect's Consultants shall be based on the standard of care as such standard of care is understood to prevail under applicable law in the absence of this Article 11.

12. GENERAL

12.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Owner and Architect and their respective partners, successors, assigns and representatives; provided that Architect shall not assign this Agreement or any moneys due or to become due hereunder, delegate any rights or obligations under this Agreement, or subcontract the performance or the services required hereunder, without Owner's prior written consent, which may be given or withheld in Owner's sole and absolute discretion. If Owner provides written consent to the subcontracting of Services hereunder, then Architect shall incorporate in its subcontract and make binding on the subcontractor all provisions of this Agreement. The parties understand and agree that Owner may assign its interest in this Agreement to an affiliate or successor in interest of Owner and effective upon such assignment, all references to "Owner" herein shall refer to such affiliate or successor. In addition, Architect hereby consents to the assignment of Owner's interest hereunder by Owner to a construction lender in connection with the funding of the construction loan for the Project. Except as set forth in Article 7, Exhibit I, this Section 12.1 or as expressly agreed in writing by Architect and Owner, no person other than the parties or their successors or assigns shall be a third-party beneficiary of the obligations contained in this Agreement or have the right to enforce any of its provisions.

(a) Services Prior to Execution. The parties recognize that if any portion of the Services required hereunder was performed prior to the date of execution of this Agreement, all of such Services shall be governed by the terms and conditions of this Agreement and shall be deemed to be included as a part of Basic Services. Architect shall not be entitled to any compensation for such prior activities and Services, except as expressly provided herein. Without limiting the foregoing, all of Architect's liabilities and obligations to Owner hereunder shall apply to all Services provided by Architect for the Project prior hereto, notwithstanding the fact that such Services may have been performed pursuant to prior negotiations, representations, agreements, understandings or otherwise. The

execution of this Agreement shall not however be deemed an approval or acceptance by Owner of any such Services heretofore performed by Architect.

12.2 Notices. Any and all notices or other communications required or permitted to be given under this Agreement, or by law, shall be in writing and either (i) personally delivered, (ii) sent by United States mail, registered or certified, or express mail, postage prepaid, return receipt requested, (iii) sent by FedEx or other nationally recognized overnight courier service that provides receipted delivery service, delivery charges prepaid, return receipt requested. Either party may change its address from time to time by written notice to the other party given as provided herein. Notice shall be deemed to have been given upon the date of delivery (or the date of refusal to accept delivery, as the case may be) or at such other address as either party may from time to time specify in writing to the other in the manner aforesaid..

12.3 Attorneys' Fees. In the event any suit, action or proceeding arising from or based upon this Agreement or Architect's services hereunder, shall be instituted between Architect and Owner, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and disbursements, including the cost of reasonable investigation, preparation and professional or expert consultation incurred by reason of such suit, action or proceedings. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

12.4 Governing Law. This Agreement and the rights and obligations of the parties shall be interpreted, construed and enforced in accordance with the Laws of the United States (including, but not limited to, the Foreign Sovereign Immunities Act, the Foreign Missions Act of 1982, and the Vienna Conventions on Diplomatic and Consular Relations), and/or any international treaties then in force, and, to the extent applicable to a foreign State and/or its foreign missions within the United States, the Laws of the State of California and any political subdivision thereof.

12.5 Integration. This Agreement and the Exhibits hereto, which are incorporated herein, represents the entire and integrated agreement between Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral.

12.6 Amendment and Waiver. This Agreement and any provisions hereof may be amended or waived only by an instrument in writing signed by the party against whom enforcement of the amendment or waiver is sought.

12.7 Interpretation. Words and phrases shall be construed to include the singular or plural number, and the masculine, feminine or neuter gender, as may fit the case. The captions of the Articles and Sections of this Agreement are for convenience of reference only and shall not define or limit the terms hereof. When the words "include" or "including" are used whether or not "but not limited to" is specified, the specific items referred to shall not be deemed to limit the items intended to be included in the reference.

12.8 Severability. In case any one or more provisions set forth in this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or the application of such provisions to other persons or circumstances, and this Agreement shall be enforceable to the greatest extent permitted by law. In addition to any rights afforded Owner under or pursuant to this Agreement, if, in Owner's judgment, such invalidity, illegality, or unenforceability materially alters this Agreement, Owner shall have the right to terminate Architect's rights under this Agreement in accordance with Article 9 hereof.

12.9 Relationship. Architect is an independent contractor and is not a joint venturer, partner, or employee of Owner. Nothing in this Agreement shall (a) create any express or implied relationship between Owner and Architect other than as expressly set forth herein, and (b) subject to Owner's privileges and immunities as a foreign State (which are hereby expressly reserved), otherwise create any express or implied obligation, liability, or duty by Architect to Owner, except as expressly set forth in this Agreement. Architect acknowledges and agrees that by entering into this Agreement, Owner does not waive any of Owner's privileges and immunities as a foreign State.

12.10 Use of Name. Architect shall not use any name, trademark or service mark of Owner without the prior written consent of Owner which consent may be given or withheld in Owner's sole discretion.

12.11 Disputes. If any dispute arises between Architect and Owner, Architect shall, unless Owner instructs otherwise, continue performance of all obligations under this Agreement without cessation or delay pending resolution of the dispute, regardless of the size or nature of the dispute. Likewise, Owner shall continue to make payments for undisputed amounts during such continued performance. Architect waives all rights to seek an injunction, temporary restraining order and any other relief which would stop or delay the progress of the Work.

12.12 Licensed Architects and Registered Engineers. The architectural and engineering services under this Agreement shall be done by, or shall be reviewed and approved by, architects licensed and engineers registered to practice as such by the State of California and qualified to do business in California. All drawings shall be stamped and signed by appropriate architects licensed or engineers registered in the State of California.

12.13 Ownership and Use of Documents.

(a) Perpetual Owner License. Upon execution of this Agreement, subject to payment of all undisputed sums due under this Agreement, Architect grants to Owner and its successors and assigns a perpetual, exclusive license to use all drawings, specifications, calculations, notes, documents, analyses, records, data, information and other work product including the Drawings and Specifications and all Architectural Documents (collectively, "**Work Product**"), including all trademarks, copyright privileges and other tangible and intangible rights attaching thereto, prepared by or in possession of, Architect with respect to the Project. Such Work Product shall be provided to Owner in CADD format or other format requested by Owner, and shall be used by Owner solely and exclusively for purposes of constructing, using, marketing, maintaining, altering and adding to the Project. Architect shall obtain similar exclusive licenses from Architect's Consultants consistent with this Agreement in favor of Owner. The license granted under this section permits Owner to authorize Contractor and any general contractor, contractor, subcontractors, and material or equipment suppliers, as well as Owner's Consultants and separate contractors, to use, reproduce, and modify all or any applicable portions of the Work Product solely and exclusively for use in constructing, using, maintaining, altering and adding to the Project. The Work Product shall become the property of Owner upon termination of this Agreement for any reason or final completion of the Project, provided that Architect has been paid for undisputed sums due under this Agreement, and may be used by Owner without restriction in connection with Owner's use, occupancy and future alterations of the Project. Architect shall retain an irrevocable license to use all of the referenced documents and materials, and all of the concepts developed by Architect in connection therewith, for use, information and reference solely in connection with the Project, without compensation to Owner, and in connection therewith may retain reproducible copies of Drawings and Specifications. Notwithstanding the foregoing, Architect shall retain ownership of its standard drawings, details, documents and specifications ("**Architect's Standards**") that may be incorporated into the Work Product, and Owner shall have a perpetual non-exclusive license to use the Architect's Standards in connection with Owner's use of the Work Product as provided in this Section 12.13.

(b) Work Product Modifications without Architect Participation. In the event Owner modifies the Work Product without retaining Architect to make such modifications, Owner releases Architect and Architect's Consultants from all claims and causes of action arising from such modifications. Owner, to the extent permitted by Applicable Laws, further agrees to indemnify and hold harmless Architect and Architect's 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 Owner's modification of the Work Product under this Section 12.13(b). In addition, if Architect prepares Construction Documents which are used by Owner to construct the Project, but Owner does not retain Architect to provide services during the Construction Administration phase of the Project, Owner shall assume full responsibility for, and hereby releases and, to the extent permitted by Applicable Laws, agrees to indemnify and hold harmless Architect and Architect's Consultant(s) from all claims and causes of action asserted by any third person or entity arising from, any interpretations of the Construction Documents by others, any shop drawings or submittals not reviewed by Architect, and any substitutions not authorized by Architect. Notwithstanding the foregoing, the terms of this Section 12.13(b) shall not apply if Owner rightfully terminates this Agreement for cause as provided under Section 9.2 above.

(c) Electronic Media. Owner recognizes that data, plans, specifications, reports, documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration, either intentional or unintentional due to, among other causes, transmission, conversion, media degradation, software error or human alteration. Accordingly, the electronic documents provided to Owner are for informational purposes only and are not intended as an end-product. Architect makes no warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, Owner agrees to waive any and all claims against Architect and the Architect's Consultants relating in any way to the unauthorized use, reuse or alteration of the electronic documents, except to the extent caused by the negligence or willful misconduct of Architect or Architect's Consultants.

12.14 Guaranties and Warranties. Architect shall assign to Owner all guaranties and warranties provided to Architect or Architect's Consultants or suppliers in the performance of the Services hereunder. The parties have agreed that Owner may assign any such guaranties and warranties at any time and in its sole discretion without the consent of Architect.

13. DISPUTE RESOLUTION.

13.1 Mediation. Claims, disputes, or other matters in controversy arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. 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 Agreement, 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 sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If a binding dispute resolution proceeding is stayed pursuant to this Section 13.1, the parties may nevertheless agree upon a schedule for later proceedings. 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 the United States District Court for the Northern District of California.

13.2 Binding Dispute Resolution – Exclusive Jurisdiction. Any Claim subject to, but not resolved by, mediation shall be subject to the exclusive jurisdiction of and shall be filed in the United States District Court for the Northern District of California in accordance with the provisions of the Foreign Sovereign Immunities Act ("FSIA") (28 U.S.C. §§1602 *et. seq.*) and any applicable provisions of the Vienna Convention on Consular Relations ("VCCR") and/or any international treaties then in force and in accordance with all Applicable Laws, including, but not limited to, the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. In no event shall Owner be required to participate in binding arbitration. The Parties agree that there shall be no discovery or pre-trial hearing depositions allowed in a mediation or court, or litigation proceeding under the Agreement, except that the U.S. District Court may order the production of specific documents if the requesting party has a compelling need for such, but only in strict compliance with the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "**Hague Convention**").

(b) Architect agrees that the provisions of this Section 13.2 shall be included in all subcontracts related to the Services or Work into which it may enter, and that if any dispute subject to binding dispute resolution under this Section 13.2 involves such subcontract, the rights and liabilities of Owner, Architect and all Consultants or other subcontractors who may be involved shall be determined in the single proceeding.

13.3 No Discrimination. In addition to any other provision contained in this Agreement, Architect expressly agrees that in the performance of any of its obligations under this Agreement in connection with the Services or otherwise, there shall be no discrimination against any employee or applicant for employment because of race, color, creed, religion, sex, gender identity, sexual orientation, age, marital status or domestic partner status, national origin or ancestry, or disability including HIV/AIDS.

[Remainder of Page Intentionally Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

“OWNER”

THE SWISS CONFEDERATION, A FOREIGN
STATE REPRESENTED BY THE SWISS
FEDERAL OFFICE OF BUILDINGS AND
LOGISTICS FBL/BBL

By: _____
Name: _____
Title: _____

Address for Notices and Billing:

Swiss Federal Office of Buildings and
Logistics (BBL)
Consulate General of Switzerland in San
Francisco
Pier 17, Suite 600
San Francisco CA 94111
Attn: Head of Operations

with a copy to:

Mr. Stephan Kessler
Project Management Abroad
Fellerstrasse 21
3003 Bern, Switzerland
Tel. +41 58 463 80 72
email: stephan.kessler@bbl.admin.ch

“ARCHITECT”

[Architect], a(n) [Architect entity]

By: _____
Name: _____
Title: _____

Principal Architect: _____
California State License No.: _____

Address for Notices:

[Architect]
[Address]
Email: _____

EXHIBIT A
Project Description

[SEE ATTACHED]

EXHIBIT B
FEE SCHEDULE

Not to Exceed Fee for Each Phase:					Fees
1	Schematic Design Phase	h		USD	
2	Design Development Phase	h		USD	
3	Construction Documents Phase	h		USD	
4	Procurement Phase	h		USD	
5	Construction Phase	h		USD	
Maximum Fee:				USD	-
Fees for Billing (hourly rates)					
[Architect to input personnel title and hourly rates]			h	USD	
			Specified person hours		Average hourly rate
Maximum Fee according to time spent				USD	-
(specified person-hours h x average hourly rate)					
Total fee incl. any additional work based on hourly rates set forth above (excluding VAT)				USD	-
Ancillary costs					
Cost ceiling for ancillary expenses			1.50	%	USD
(Total fee x stated percentage)					-
Maximum Fee incl. any additional work and ancillary expenses (excluding VAT)				USD-	

EXHIBIT C
Preliminary Design Schedule

[SEE ATTACHED]

EXHIBIT D

Preliminary Project Budget

[SEE ATTACHED]

EXHIBIT E

Architect's Personnel and Rates

[SEE ATTACHED]

EXHIBIT F

Architect's Consultants and Owner's Consultants

[SEE ATTACHED]

EXHIBIT G

[Intentionally Omitted]

EXHIBIT H

Architect's Completion Certificate

[DATE]

[ARCHITECT]

[ARCHITECT'S ADDRESS]

Attention: **[OWNER REPRESENTATIVE]**

Reference is made to: (i) that certain Agreement between Owner and Architect, dated as of _____, _____ (the "**Architect Agreement**"), between _____ ("**Owner**") and _____, a _____ ("**Architect**"); and (ii) the plans and specifications dated as of _____, _____ prepared by Architect (the "**Plans and Specifications**").

The undersigned hereby states its opinions as follows in its capacity as an architect:

1. The improvements contemplated by the Plans and Specifications (the "**Improvements**") have been completed substantially in accordance with such Plans and Specifications, a temporary certificate of occupancy has been issued by the appropriate governmental agency, the Improvements are ready for use and occupancy, and to the best of the knowledge of the undersigned, a final certificate of occupancy will be issued without undue delay or expense.
2. To the knowledge of the undersigned, the Improvements as so completed comply with reasonable interpretations of all applicable laws, rules, regulations and ordinances pertaining to the construction and occupancy thereof, including the applicable building and zoning laws, rule, regulations and ordinances, the Development Requirements as defined in the Architect Agreement, the Fair Housing Act, _____ and the Americans with Disabilities Act of 1990, 42 U.S.C. Section 1210 *et seq.* ("**ADA**"), as interpreted by all governmental and quasi-governmental authorities having jurisdiction over the Project.
3. Attached hereto are true and complete copies of the "record" set of the Plans and Specifications for the Improvements prepared by Architect, showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor (the "as-builts"), which "record" set Architect prepared pursuant to Sections 2.5 of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Architect's Completion Certificate on the date set forth above.

_____, a _____
By: _____ Name: _____
_____ Title: _____

[SEE ATTACHED]

EXHIBIT I

Insurance Requirements [To be reviewed by Risk Management]

This Exhibit I is attached to, made a part of, and incorporated by reference within the Agreement between Architect and Owner (“**Agreement**”) between Architect and Owner made as of _____, between _____ (“**Owner**”) and _____ (“**Architect**”) for services as defined and required by the Agreement (hereinafter “**Services**”). This Exhibit describes the insurance requirements applicable to the Services under the Agreement.

1.0 Insurance.

1.1 Architect’s Insurance. During the performance of its Services, and for such additional periods as specified below, Architect, at its sole cost and expense, shall secure and maintain, and shall cause Architect’s Consultants and subconsultants to secure and maintain, policies of insurance acceptable to Owner in accordance with this Exhibit.

1.1.1 Professional Liability Insurance. Architect shall secure and maintain a policy or policies of Professional Liability Insurance covering liability arising out of the performance of Services under the Agreement with limits of not less than Five Million Dollars (\$5,000,000) per claim and annual aggregate. Such insurance shall cover all Services performed by Architect from the first date such Services are performed until a minimum of five (5) years after acceptance by Owner of the completed Project, except as required by Section 2.11 below, and shall be non-cancelable by the insurance company except for non-payment of premium. Coverage placed on a “claims made” coverage form shall remain in force and/or a Tail purchased to provide coverage for ten (10) years following acceptance by Owner of the completed Project. Architect shall require that Architect’s Consultants also secure and maintain equivalent coverage for an equivalent period of time, except to the extent set forth in Section 2.7 below.

1.1.2 Commercial General Liability Insurance. Architect shall secure and maintain, and shall cause Architect’s Consultants and all subconsultants to secure and maintain, Commercial General Liability insurance on a form at least as broad as the standard ISO Commercial General Liability Insurance Policy (Occurrence Form, No. CG0010196). Such insurance shall provide coverage for all Architect’s operations and include independent contractors, products and completed operations, and shall be renewed, for ten (10) years after acceptance by Owner of the completed Project, contractual liability coverage including, to the maximum extent insurable, coverage for the liability assumed by the indemnity provisions of this Agreement, broad form property damage coverage, coverage for explosion, collapse, and underground hazards, and personal and advertising injury liability coverage. Such insurance shall contain a separation of insureds provision. The limits of such insurance shall not be less than \$1,000,000 per occurrence, \$2,000,000 Annual General Aggregate, \$2,000,000 Products and Completed Operations Aggregate, and \$1,000,000 for personal and advertising injury. Architect shall also maintain Umbrella or Excess Liability insurance, with limits of at least Three Million Dollars (\$3,000,000) for each occurrence and annual aggregate, with “form follows” coverage, naming the Commercial General Liability, Employers’ Liability and Automobile Liability policies as underlying coverage, as provided in Section 2.7 below. Any deductibles or self-insured retentions shall not exceed \$50,000.

1.1.3 Commercial Automobile Liability Insurance. Architect shall secure and maintain, and shall cause Architect’s Consultants and subconsultants to secure and maintain, liability insurance coverage for all owned, non-owned and hired automobiles, trucks and trailers utilized in connection with the Services performed under the Agreement. Such insurance shall provide coverage not less than the Standard Commercial Automobile Liability Policy provided on ISO Form No. CA00031293 or its equivalent, with limits of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Any deductible or self-insured retention shall not exceed \$25,000.

1.1.4 Workers’ Compensation and Employer’s Liability Insurance. Architect shall secure and maintain, and shall cause Architect’s Consultants and subconsultants to secure and maintain, workers’ compensation insurance as required in the state(s) where any operations are being performed, and Employer’s Liability Insurance with limits of not less than \$1,000,000 for bodily injury each accident, \$1,000,000 for bodily injury each

employee by disease, and \$1,000,000 policy limit for injury by disease. Such policy or policies shall contain a waiver of subrogation in favor of Owner, Contractor, any other contractors and subcontractors, Consultants and subconsultants, any other consultants and subconsultants, as well as the agents and employees of such entities connected with the Project. Architect shall require Architect's Consultants and subconsultants to provide similar waivers of subrogation in favor of the other parties enumerated herein.

2.0 General Insurance Requirements.

2.1 Additional Insureds. The Commercial General Liability Insurance specified in Section 1.1.2 shall be endorsed to provide that Owner, its Project Manager, and their members, partners, and agents, and each of their officers and employees and all other Indemnified Parties as defined in Section 7.2 of the Agreement, while acting in the scope of their authority, are named as additional insureds.

2.2 Notice of Cancellation. All insurance policies required to be maintained by Architect and Architect's Consultants and subconsultants pursuant to this Exhibit shall provide that written notice of cancellation, shall be mailed to Owner's Representative at least thirty (30) days in advance of the effective date thereof except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' prior written notice has been given.

2.3 Primary Insurance. Each insurance policy that names Owner as an additional insured that is required to be maintained by Architect and Architect's Consultants and subconsultants pursuant to this Exhibit shall provide that the insurance is primary, and that no other insurance or self-insured retention carried or held by Owner shall be called upon to contribute to a loss covered by such insurance.

2.4 Proof of Coverage. Architect and each of Architect's Consultants and subconsultants shall deliver to Owner's Risk Manager, prior to the commencement of the Services, a certificate of insurance evidencing such insurance coverage as required by this Exhibit on a standard ACORD Form and a copy of any required additional insured endorsement to Owner. The endorsement effecting such additional insured status shall provide coverage at least as broad as that provided by endorsement form number CG 20 10 11/85 or the combination of endorsement form numbers CG 20 10 07/04 and CG 20 37 07/04, each promulgated by the Insurance Services Office, or their respective equivalents acceptable to Owner. Upon request from Owner, Architect and each of Architect's Consultants shall deliver a complete copy of each insurance policy required under this Exhibit I, with the exception of Architect's professional liability policy, which Owner may review at Architect's office upon reasonable prior notice. The commencement of Services by Architect or any of Architect's Consultants or subconsultants without compliance with this or any other requirement of this Exhibit or the Agreement shall not constitute a waiver of any right of Owner under this Exhibit or the Agreement, nor a release or waiver of any duty or obligation owed by Architect or Architect's Consultants or subconsultants. Upon Owner's request, Architect and/or Architect's Consultants or subconsultants shall submit to Owner copies of the actual insurance policies or renewals or replacements thereof. All policies of insurance are required to be secured and maintained with A.M. Best-rated A-/VIII (or higher) insurance companies, shall be written by companies licensed to do business in California and otherwise be acceptable to Owner. Architect and/or Architect's Consultants or subconsultants shall pay all insurance premiums for such insurance, including any charges for required waivers of subrogation or endorsements of additional insureds. Architect shall be responsible for obtaining satisfactory evidence of insurance coverage from each of Architect's Consultants and subconsultants and submitting same to Owner prior to commencement of such Consultant's or subconsultant's performance of Services. Architect's failure to deliver satisfactory evidence of coverage shall not be construed as a waiver of Architect's obligation to provide the required insurance coverage. Owner reserves the right to increase (at Owner's sole cost) or decrease the required limits of liability or require additional coverage based on the type and scope of work or services performed.

2.5 Failure to Maintain Insurance. Architect shall indemnify, defend, and hold harmless Owner from all claims and liabilities arising out of the failure of Architect, or any of Architect's Consultants or subconsultants or any other entity or person for whom Architect may be responsible, to maintain the insurance coverages as described in this Exhibit. Owner, in addition to its other remedies, may withhold Architect's progress payments or Final Payment for any period in which (a) such insurance coverages are not in full force and effect or (b) Architect has not supplied Owner with required evidence of such insurance coverages.

2.6 Duty of Care. Nothing contained in this Exhibit or the Agreement shall relieve Architect or any of Architect's Consultants or subconsultants of their respective obligations to exercise due care in the performance of their duties in connection with the Services and to complete the Services in compliance with the Agreement. Nothing contained in the insurance requirements in this Exhibit or the Agreement is to be construed as limiting the type, quality or quantity of insurance Architect or Architect's Consultants or subconsultants should maintain or the extent of such parties' responsibility or liability for payment of damages resulting from Services negligently performed under the Agreement. The carrying of insurance as specified herein shall not be construed to be a limitation of liability on the part of Architect and/or Architect's Consultants and subconsultants, nor shall it relieve Architect and/or Architect's Consultants and subconsultants from any liability under the Agreement as a matter of law. Owner is not responsible for any loss or damage to property owned, rented or leased by Architect and/or Architect's Consultants or subconsultants or their employees or agents or any of them, unless such property is or would become a part of the permanent construction.

2.7 Consultant and Subconsultant Policies. Unless otherwise agreed in writing by Owner, Architect shall require Architect's Consultants and subconsultants to provide all insurance as set forth in this Exhibit, with the exception of Automobile Liability Insurance and Employer's Liability Insurance which may be maintained the following amounts: (i) Automobile Liability Insurance in the amount of \$1,000,000 per accident for bodily injury and property damage; and (ii) Employer's Liability Insurance in the amount of \$1,000,000 per accident. These policies will contain deductibles no greater than those of the Architect's policies as set forth herein.

2.8 Umbrella/Excess Insurance. The insurance required by Subsections 1.1.2, 1.1.3 and 1.1.4 may be made a part of an umbrella or excess policy which contains all the provisions required herein and does not reduce the coverage, impair the rights of owner or negate the insurance requirements of this Exhibit and this Agreement. Any umbrella or excess liability policy shall be in "following" form and shall provide that if the underlying aggregate is exhausted, the umbrella or excess coverage will drop down as primary insurance.

2.9 Compliance with Insurance Policies. Architect agrees that Architect shall comply will all of the terms of all insurance policies, and shall not act in any manner that impairs any coverage afforded thereunder. Without limitation, Architect agrees to promptly notify any insurer of any claim or potential claim arising out of the Services under this Agreement that Architect may become aware of consistent with the terms of the policy. Architect agrees that Architect shall be liable for the amount of any damages, costs or expenses, including reasonable attorneys' fees, that Owner incurs as a result of Architect's failure to comply or perform as required by the terms of any insurance policy and the same shall not be reimbursable by Owner.

2.10 Deductibles and Self Insured Retentions. Architect and Architect's Consultants and subconsultants shall be responsible for the payment of any and all deductibles and/or self-insured retentions for all policies of insurance required to be carried by Architect and Architect's Consultants and subconsultants pursuant to this Exhibit and under the Agreement. In no event will Owner be responsible for the payment of such deductibles and/or self-insured retentions.

2.11 Owner-Controlled Insurance Program. .

3.0 Owner is Self-Insured. Architect acknowledges that the Owner, as a foreign State, maintains a program of self-insurance and agrees that the Owner shall not be required to carry any third-party insurance with respect to this Agreement.

EXHIBIT J

Swiss Certification Forms

Deklartion Antikorruption

The bidder and the instructing party undertake to take all necessary measures to avoid corruption, in particular that no payments, gifts or other advantage will be offered or accepted. Should this integrity clause be disregarded, the contractor must pay a contract penalty. This will amount to 10 % of the contract value, a minimum of CHF 3 000 per contravention. The bidder should take note that a contravention of the integrity clause generally results in the annulment of the tender and the premature termination of the contract for important reasons by the instructing party.

Company:

Place, Date:

Signature(s):

** Only those signatures of persons who are authorized signatories for the company, firm or consortium of planning offices or bidders are valid.*

SECURITY AGREEMENT

Confidentiality agreement for providers

Based on Article 14 of the Ordinance on Security Matters subject to Federal Powers (FSO, SR 120.72) and Article 10 of the Ordinance on the Protection of Federal Information (InfoPO, SR 510.411), providers undertake to keep secret all information that comes to their knowledge while working on the project "New Construction of the Swiss Chancery in Nairobi, Kenya". The obligation to maintain secrecy will persist even after the termination of work on the project.

The undersigned confirm that their attention has been drawn to the confidentiality obligation and that they understand the content thereof. Any breach of confidentiality will be reported and the perpetrator will be liable to a custodial sentence not exceeding three years or to a monetary penalty (Art. 162 of the Swiss Criminal Code; SCC, SR 311.0).

In the event of non-compliance with this confidentiality agreement, the provider will also be liable to pay liquidated damages of CHF 100,000 for each individual breach of confidentiality. Payment of liquidated damages will not release the provider from the obligation to comply with this confidentiality agreement.

Non-compliance can also lead to immediate and irrevocable exclusion from the procurement process.

Company:

Place, Date:

Signature(s):

** Only those signatures of persons who are authorized signatories for the company, firm or consortium of planning offices or bidders are valid.*

Deklartion Antikorruption

Any rights accruing to the contractor under this contract may not be assigned to a third party, in particular the right to remuneration of sums owing and payable, without the prior written consent of the client.

The bidder and the instructing party undertake to take all necessary measures to avoid corruption, in particular that no payments, gifts or other advantage will be offered or accepted.

Should this integrity clause be disregarded, the contractor must pay a contract penalty. This will amount to 10 % of the contract value, a minimum of USD 3 000 per contravention.

The bidder should take note that a contravention of the integrity clause generally results in the annulment of the tender and the premature termination of the contract for important reasons by the instructing party.

SELF DECLARATION

Procedural principles in accordance with the Federal Act on Public Procurement (PPA; SR 172.056.1) and the associated ordinance (PPO; SR 172.056.11):

For work performed in Switzerland, the tenderer undertakes to comply with the **workplace health and**

The tenderer further undertakes to ensure **equal treatment of men and women**, particularly the principle of **equal pay**, for work performed in Switzerland.

Tenderers who pass on the contracts awarded to them, or parts thereof, to third parties are obliged to enter into a **written agreement** on compliance with the aforementioned **principles** also with such **third parties**.

The client is entitled to check compliance with the workplace health and safety provisions, working conditions and the equal treatment of men and women, or to have it checked. The tenderer must provide proof of such compliance upon request.

In the absence of compliance with the procedural principles, the client can exclude the tenderer from the procedure, revoke the award or charge a contract penalty after conclusion of the contract.

Moreover, the tenderer confirms having paid the applicable federal taxes and social security contributions (federal taxes, VAT, contributions for old age and survivors insurance, disability insurance, compensation for loss of earnings, unemployment insurance, occupational pensions and accident insurance).

If work is performed abroad, the tenderer undertakes to comply with the fundamental conventions of the International Labour Organization (ILO) in accordance with Appendix 2a to the PPO.

By signing, the tenderer confirms the accuracy of the information provided and agrees to provide substantiation upon request.

The tenderer expressly authorizes the tax authorities, social security establishments, equal opportunities commissions and other public-sector bodies to provide information to the procuring office in connection with the aforementioned issues, even if this is contrary to provisions of law that provide otherwise.

Company:

Place, Date:

Signature(s):

** Only those signatures of persons who are authorized signatories for the company, firm or consortium of planning offices or bidders are valid.*

EXHIBIT K

Manager's Scope of Duties

1. Administration

Manager's Role:	Architect's Role and Additional Notes:
a. GENERAL: Manage all consultants and contractors on Project and the overall Project including the Project Budget, Project Schedule, and general communication with Owner, BBL, Swissnex, and the local Consulate (the " Client Group ") and regulatory agencies.	Architect will be responsible for all design and will coordinate with Manager and Owner's other consultants, Cost Consultant, and selected General Contractor (" GC "), however, Manager will manage the overall Project including maintaining the Project Budget, Project Schedule, and general communication with Client Group and regulatory agencies.
b. Participate in Request for Proposals for consultants and assist in identifying project team, roles, and communication channels.	Architect to have primary responsibility to determine consulting team and shall directly engage the following consultants (and to advise Owner is any other consultants are recommended or necessary): (i) Structural Engineer; (ii) Civil Engineer; (iii) Geotechnical Engineer (not including borings and soil capacity invasive testing); (iv) Mechanical, Electrical, Plumbing, Fire Protection, and California Title 24 Engineers; (v) Lighting Designer; (vi) Elevator Consultant; (vii) Audiovisual, Technology, and Security Consultant; (viii) Specifications Consultant (if necessary); (ix) Acoustical Consultant; (x) Waterproofing Consultant; and (xi) Landscape Architect (if necessary).
c. Establish procedures for decisions and approvals with Owner including draw payment procedures.	
d. Co-manage weekly design meetings and Owner / Architect / Contractor (" OAC ") meetings with Architect.	Co-manage OAC weekly meetings with Manager. Architect shall produce and distribute meeting minutes from such meetings at least two (2) business days prior to the next weekly scheduled meeting.
e. Review, approve (or object as necessary) and maintain OAC meeting minutes prepared by Architect and communicate with Owner regarding same.	Architect to revise OAC meeting minutes as appropriate.
f. Communicate with Owner on a regular basis, no less than once a week, either in email or by telephone.	Architect shall communicate with Manager continuously during Project.
g. Provide monthly written reports which shall include project updates, budget and schedule tracking, current risks, and impending tasks.	Architect to assist Manager with preparation of monthly reports by responding to requests for information in a timely manner.
h. Maintain organized project files.	

2. Initial Design and Budget Management

Manager's Role:	Architect's Role:
a. Assist Owner with evaluation of and comment on conceptual design and programming documents produced by Architect.	Concept and Programming Phase: During the Conceptual Design and Programming Phase, Architect to lead meetings with Client Group regarding space programming needs including but not limited to:

Manager's Role:	Architect's Role:
	<ul style="list-style-type: none"> (i) gather program requirements from Client Group and produce final program document in both square feet and square meters; (ii) coordinate with design team including all engineering disciplines to confirm technical viability of program; and (iii) explore permissibility and requirements for additional residential and/or meeting space to be added on roof level.
b. Assist Owner with evaluation of and comment on SD documents produced by Architect	<p>Schematic Design ("SD") Phase: During the SD Phase, Architect shall coordinate and manage design team to generate a SD level drawing set. Architect shall, among other things:</p> <ul style="list-style-type: none"> (i) prepare floor plans including new roof level expansion layout and sidewalks; (ii) prepare elevations (exterior and unique interior conditions) including new roof level expansion bounds and layout; (iii) prepare sections and details as needed to convey design intent to Owner; (iv) prepare specification development appropriate to SD level drawings with consideration for early procurement; (v) recommend and select the type of HVAC system; (vi) select structural strategy and determine preliminary requirements; (vii) make presentations and attend feedback meetings with Owner and Manager to refine design according to Owner's requests and requirements and to receive approval to proceed; (viii) produce 50% SD Plan Set for pricing by Cost Consultant;
c. Based on the 50% SD Plan Set, develop and maintain Project Budget including a cash flow of actual expenditures and projections. Manager to rely on the Cost Consultant's work during this process.	Architect to participate in evaluating estimating SD Cost Estimate and to perform value engineering if required in order to set construction budget
d. Based on the 50% SD Plan Set, review and analyze cost estimates and bids and lead efforts on value engineering as necessary.	Architect to participate in evaluating cost estimates and to perform value engineering if required in order to set construction budget and coordinate with Owner's other consultants, not limited to Manager, any pre-construction contractor, Cost Consultant, and selected General Contractor (GC).
e. Coordinate Owner's approval of the 50% SD Plan Set following value engineering in order to allow Architect to prepare 50% SD Plan Set for submission to San Francisco Planning Department.	Following Owner's approval of the 50% SD Plan Set, produce 100% SD Plan Set.
f. Assist Owner with evaluation of and comment on Design Development Documents produced by Architect.	<p>Design Development Phase (DD): Architect shall coordinate and manage design team to define and coordinate all building systems (Mechanical, Electrical, Plumbing, Structural, Fire/Life Safety, Audio-Visual, Information Tech, Security/Access Control and Acoustical among others) with architectural design to meet the Program and approved construction budget. Architect shall, among other things:</p>

Manager's Role:	Architect's Role:
	<ul style="list-style-type: none"> (i) Further develop all interior and exterior plans, elevations, sections, and details including unique circumstances; (ii) Develop vertical circulation systems drawings; (iii) Analyze and determine horizontal and vertical personnel access, flow, capacity and exiting requirements; (iv) Prepare reflected Ceiling Plans showing device and lighting locations; (v) Develop interior and exterior (building envelope) assemblies including floors, walls, window and door framing, roof, and penetrations; (vi) Prepare furniture systems specifications and coordinate with Client Group on selection; (vii) Prepare material Schedules including for doors, windows, finishes, hardware, accessories, and equipment; (viii) Further develop Specifications, with consideration for any long lead or early procurement materials and equipment as well as for Client Group' review of any materials or equipment that may have an impact on Project Schedule; (ix) Make presentations of DD Plan Set to Client Group and hold feedback meetings to define changes and reach alignment on design for approval to proceed. (x) Produce 100% DD Plan Set for pricing by Cost Consultant.
g. Based on the 100% DD Plan Set, update Project Budget and review and analyze updated cost estimates and bids and lead efforts on value engineering as necessary.	Participate in evaluating estimate and value engineering if required in order to stay within budget
h. Assist Owner with evaluation of and comment on CD Phase Documents produced by Architect	<p>Construction Documentation Phase (CD): Architect to coordinate and manage design team to finalize, and detail documents for all required permits from San Francisco Department of Building Inspection (DBI) and other applicable permitting agencies as well as for tender for bid to GCs including but not limited to:</p> <ul style="list-style-type: none"> (i) Developer, coordinate and consolidate all required code analysis drawings and calculations for submittal to DBI. (ii) Complete development of plans, reflected ceiling plans, details, exterior and interior elevations, wall and building sections, vertical circulation systems, all interior and exterior assembly types, all interior and exterior construction details and schedules necessary to permit, build, and construct Project. (iii) Complete all millwork drawings, details, and specifications necessary to permit, build, and construct Project. (iv) Complete finishes plans and final finishes specifications including furniture systems and other FF&E. (v) Complete building specifications necessary to permit, tender, build, and construct Project.

Manager's Role:	Architect's Role:
	(vi) Present proposed CD Plan Set and pertinent specifications to Client Group to confirm alignment and receive approval to proceed with construction based on the CDs and Specifications. (vii) Produce Permit Set which may be either 50% CD or other agreed upon deliverable timeframe. (viii) Produce 100% CD Plan Set to be used for tender.
i. Based on the 100% CD Plan Set, update Project Budget and review and analyze updated cost estimates and bids and lead efforts on value engineering as necessary.	Participate in evaluating estimate and value engineering if required in order to stay within budget
j. At each phase, inform Owner on variances to budget and obtain necessary consent for budget changes.	
k. Review invoices and contractor payment applications for approval on a monthly schedule. Manage disputed payments with consultants and contractors.	
l. Monitor insurance compliance of design professionals and contractors. Submit to Owner's risk manager/administrator for final evaluation as necessary.	

3. Schedule Management

Manager's Role:	Architect's Role:
a. Prepare Master Development Schedule including an outline of responsibilities of team members. Contractor will maintain more detailed construction schedule during construction or during pre-construction if brought on early.	
b. Manage team to adherence to schedule. Notify Owner of variances and recommendations for correction.	
c. Monitor and make effectual the timely submission of project documents including pricing sets, estimates, permit applications, and other requested documentation.	

4. Entitlements

Manager's Role:	Architect's Role:
a. Manage the entitlement process including working with Owner's land use attorney to submit a Planning Application.	Based on approved 50% SD Plan Set, Architect to include specific portions of 50% SD Plan Set in Planning Application for submission to San Francisco Planning Department
b. Coordinate and attend subsequent meetings and communication with San Francisco Planning Department.	<ul style="list-style-type: none"> Architect to attend meetings with the San Francisco Planning Department, as requested by Owner Architect to assist Manager in preparing responses and adjustments required by Planning Department. The Owner's Manager will manage this regulatory process with the City and Owner's other consultants.
c. Manage Architect and communicate with Owner on when decisions need to be made and the content of the response.	

Manger's Role:	Architect's Role:
d. Present or assist Architect in presentation to San Francisco Planning Department, Planning Commission and Board of Supervisors as necessary to achieve entitlements.	Present to San Francisco Planning Department, Planning Commission and Board of Supervisors as necessary to achieve entitlements.
e. Conduct community and neighbor outreach as necessary.	

5. Design Management

Manger's Role:	Architect's Role:
a. Negotiate agreements with design professionals, consultants, and pre-construction contractors not yet contracted.	
b. Provide feedback to legal counsel on contracts.	
c. Organize kick-off that will include a partnering session to ensure alignment of goals and a cross-collaborative approach between all design and construction consultants.	Attend kick-off meeting
d. Manage design, constructability, and cost meetings with design team and contractor.	
e. Provide design and value engineering recommendations to Owner.	Architect to participate in evaluating estimate and value engineering if required in order to stay within approved construction budget.
f. Manage compliance to entitlement conditions of approval.	Architect to assist as necessary.
g. Manage the timely preparation and submission of tender and permit documents.	Prepare tender and permit documents sets
	<p>Note that as part of Design Management, Architect shall:</p> <ul style="list-style-type: none"> (i) Perform full design, documentation, and construction administration of code compliant interior and exterior of Project as further defined by the tasks below. (ii) Stamp and sign permit drawings with current California State Architect's license. (iii) Manage and be responsible for Architect's sub-consultants' work, schedule, and fees. (iv) Generate and maintain Revit models of "base building" to be used as current as-built field conditions by full design team; provided the General Contractor shall be responsible to create the final as-built documents (v) Maintain files and compiled drawing record sets throughout the project using file sharing host websites as approved by Manager and Owner. (vi) Manage notification, continuous access, and distribution and to project team of all drawing sets. All drawings or documents shall be in both empirical and metric format.

6. Bid/Negotiation and Permit Management

Manager's Role:	Architect's Role:
a. Oversee production of tender documents, bid forms, bid process, interviews, award and negotiation of construction contracts, including (i) leveling bids; (ii) preparing one set of requests for information (RFIs) to be submitted to Architect; and (iii) coordinating submission of plan check comments to Architect	<p>Architect to provide coordinated responses to one set of questions from the bidding GCs.</p> <p>Architect to provide assistance as requested and required by the Manager to evaluate bid and scope packages provided by bidding GCs.</p> <p>Architect to participate in value engineering if required in order to stay within approved construction budget.</p> <p>If required, Architect to produce an 'Issued For Construction Set' of documents for the selected GC.</p> <p>Architect to coordinate with design team to respond to plan check comments by permitting agencies.</p>
b. Work with Owner's construction contract attorneys.	
c. Assist Owner in procurement of furniture, fixtures, and equipment (FF&E) not in construction contract.	
d. If necessary, hire permit expediting firm either directly to Owner or as a sub-consultant.	

7. Construction Project Management

Manager's Role:	Architect's Role:
a. Oversee General Contractor and design team in the construction of the project to stay on-schedule and on-budget including attending weekly OAC meetings and other on-site issues meetings.	<ul style="list-style-type: none"> Architect to continue to attend weekly OAC meetings throughout the course of Construction and to prepare minutes as provided above
b. Manage the timely processing of RFIs, submittals, and mock-ups.	<ul style="list-style-type: none"> Architect to have primary responsibility to prepare coordinated responses to Requests For Information (RFIs) from the GC, Sub-Contractors, or other members of the design team to resolve unforeseen conditions, conflicts found in the field, design gaps and omissions, and as related to the GC's means and methods or schedule constraints. Architect to have primary responsibility to review of submittals and mock-ups by the GC and their Sub-Contractors (and Client Group in the case of Owner Furnished/Contractor Installed (OFICI) materials and equipment) for approval, comment and revision, or record.
c. Coordinate review of applications for payment, change order requests, change orders.	<ul style="list-style-type: none"> Architect to have primary responsibility to review and coordinate comments with design team on applications for payment, change order requests, change orders. Architect to have primary responsibility to review and approval sign-off of GC's applications for timely payment with monthly "pencil draw" draft application meetings, site walks as needed to review and confirm percentage completion, and commentary to Manager and GC on necessary revisions.

Manger's Role:	Architect's Role:
d. Track and collect certificates of occupancy, lien releases, Substantial Completion, and Final Completion certificates.	<ul style="list-style-type: none"> • Architect to prepare certificates of Substantial Completion and Final Completion.
e. Attend punch walks and coordinate with end users on appropriate reviews.	<ul style="list-style-type: none"> • Architect to have primary responsibility to generate logs and monthly progress reports tracking typical CA activities, deliverables, and milestones. • As needed (monthly minimum) Architect to perform site walks of the building and issuance of field reports to Manager, GC, and design team. • Architect to review and add to/amend preliminary punch list of items by the GC prior to project Final Completion.
f. Manage close-out including ensuring a complete package of warranties, O&M manuals and as-built drawings.	GC to prepare final as-built drawings
g. Manage timing and installation of FF&E by vendors. Attend punch walks and close-out documentation.	

EXHIBIT L

Conditional Waiver and Release
Upon Progress Payment

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment: Date(s) of waiver and release: _____ Amount(s) of unpaid progress payment(s): \$ _____
- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

EXHIBIT M

Unconditional Waiver and Release Upon Progress Payment

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$_____.

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

EXHIBIT N

Conditional Waiver and Release Upon Final Payment

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

Exceptions

This document does not affect any of the following: Disputed claims for extras in the amount of:
\$_____.

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

EXHIBIT O

Unconditional Waiver and Release Upon Final Payment

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect the following: Disputed claims for extras in the amount of:
\$_____.

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____